

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Lona Beach, CA 90802-4664

1 MEMORANDUM OF UNDERSTANDING

2 **35823**

3 THIS MEMORANDUM OF UNDERSTANDING ("MOU" or "Agreement") is
4 made and entered, in duplicate, as of December 8, 2020, for reference purposes
5 only, pursuant to a minute order adopted by the City Council of the City of Long Beach at
6 its meeting held August 4, 2020, by and between the CITY OF LONG BEACH, a municipal
7 corporation ("CLB") and the CITY OF SIGNAL HILL, a municipal corporation ("CSH").

8 WHEREAS, the Long Beach City Council authorized the City Manager to
9 enter into a contract with R.J. Noble Company ("Contractor") to provide construction
10 services for street improvements on Temple Avenue; and

11 WHEREAS, the work consists of roadway improvements on Temple Avenue,
12 which include concrete work, pavement rehabilitation, and construction of a Class IV
13 bikeway (the "Project"); and

14 WHEREAS, the Project also includes improvements within the CSH right-of-
15 way; and

16 WHEREAS, CSH will share in the cost of the Project in an amount not-to-
17 exceed \$398,519 (the "CSH Contribution"); and

18 WHEREAS, the parties desire to enter into this MOU for the purpose of
19 setting forth their respective roles and responsibilities;

20 NOW, THEREFORE, in consideration of the mutual terms and conditions in
21 this Agreement, the parties agree as follows:

22 1. SCOPE OF WORK. The Project consists of the approved work
23 identified in Plans and Specifications No. R-7042 dated January 17, 2020.

24 2. COSTS. The budget for the Project is estimated to be One Million Four
25 Hundred Two Thousand Three Hundred Sixty-Four Dollars (\$1,402,364). CSH will share
26 in the cost of the Project by making the CSH Contribution to CLB in an amount not-to-
27 exceed Three Hundred Ninety-Eight Thousand Five Hundred Nineteen Dollars (\$398,519),
28 as calculated based on the proposed improvements to be completed within CSH right-of-

1 way.

2 3. CLB'S RESPONSIBILITIES. CLB shall:

3 A. Act as the lead for the Project, including managing the
4 construction schedule of performance.

5 B. Assume responsibility for the project in its entirety including all
6 construction and procurement activities, all undertaken in accordance with CLB's
7 ordinances and policies, including the preparation of plans and specifications, cost
8 estimates and all Project construction documents, utility identification and location,
9 construction, engineering and management services, inspections, and financial
10 accounting for Project activities.

11 C. Administer the contract for construction of the Project as
12 required by applicable law.

13 D. Ensure Contractor's commercial general liability and business
14 automobile liability insurance name CSH as additional insured and provide for
15 waiver of subrogation and primary and non-contributory endorsements in favor of
16 CSH.

17 E. Ensure CSH is indemnified under the construction contract with
18 Contractor to the same extent as CLB is indemnified.

19 F. Hold weekly Project meetings with the Contractor as required.

20 G. Maintain an accounting of Project costs and expenditures, and
21 provide a copy of said accounting to CSH on a monthly basis.

22 4. CSH'S RESPONSIBILITIES. CSH shall:

23 A. Conduct Project inspections as necessary for the portion of the
24 Project located within the CSH right-of-way in the event the CLB inspector is
25 uncertain as to how to interpret CSH standards.

26 B. Timely review and approve changes to the plans and
27 specifications that would affect work in CSH right-of-way.

28 C. Submit timely and complete invoices for CSH services,

1 including but not limited to, inspection and plan check services performed according
2 to CSH's standard fee schedule for reimbursement to CLB.

3 5. MUTUAL AGREEMENTS.

4 A. CLB's contract plans signed by CSH shall constitute CSH's
5 acceptance of and official approval of said plans.

6 B. The duties of CLB and CSH under this Agreement may be
7 performed either by CLB or CSH employees or by persons or entities hired through
8 separate agreements with CLB or CSH.

9 C. If existing public and/or private utilities conflict with the
10 construction of the Project, CLB will identify such utilities and CLB will make all
11 necessary arrangements with the owners of such utilities for their protection,
12 relocation or removal.

13 D. During the course of construction, CSH may request CLB to
14 include additional work in the Project's scope, and the parties will negotiate in good
15 faith to determine whether such additional work can and will be incorporated into
16 the Project, provided such additional work does not exceed allotted Project funds.

17 E. Following its completion but prior to acceptance of the Project,
18 , CLB will confer with CSH, in good faith, to obtain CSH's concurrence that those
19 components of the Project that are located within CSH's right-of-way have been
20 completed in conformance with the approved plans and specifications and CSH
21 standards. It is understood that CSH will not unreasonably withhold said
22 concurrence so long as the improvements conform with the foregoing.

23 F. Should any portion of Project be paid for using funds with
24 specific expenditure requirements or limitations, all applicable laws, regulations, and
25 policies relating to the use of such funds shall apply notwithstanding other provisions
26 of this Agreement.

27 6. FINAL ACCOUNTING. Within one hundred twenty (120) calendar
28 days after final acceptance of the Project, CLB shall cause a final accounting of the Project

1 to be prepared and delivered to the CSH. Following completion of the Project, CLB shall
2 provide CSH the opportunity to perform a final inspection and to review and approve of
3 record drawings for that portion of the Project within CSH right-of-way. After final
4 inspection sign-off and approval of record drawings by CSH, CLB shall provide a final
5 invoice to CSH for the CSH Contribution. CSH will pay all undisputed amounts invoiced
6 by CLB within 60 calendar days of receipt of CLB's invoice.

7 7. WARRANTY. CLB will require its contractor(s) to warranty all
8 materials and workmanship furnished in the construction of the Project for one year from
9 the date of final completion of the Project. CLB shall manage and oversee CSH's warranty
10 rights related to the Project and pursue and enforce the warranty for defects in
11 workmanship or materials and require the construction contractor to repair or replace the
12 defective work so that it complies with the plans and specifications for the Project.

13 8. INDEMNIFICATION.

14 A. Pursuant to Government Code Section 895.4, CSH shall
15 indemnify, defend and hold CLB harmless from any liability imposed for injury (as
16 defined by Government Code Section 810.8) occurring by reason of any acts or
17 omissions on the part of CSH under or in connection with any work, authority or
18 jurisdiction delegated to CSH under this Agreement.

19 B. Pursuant to Government Code Section 895.4, CLB shall
20 indemnify, defend and hold CSH harmless from any liability imposed for injury (as
21 defined by Government Code Section 810.8) occurring by reason of any acts or
22 omissions on the part of CLB under or in connection with any work, authority or
23 jurisdiction delegated to CLB under this Agreement.

24 9. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES.

25 A. No officer or employee of the City of Long Beach shall be
26 personally liable to the City of Signal Hill in the event of any default or breach by the
27 City of Long Beach or for breach of any obligation of the terms of this Agreement.

28 B. No officer or employee of the City of Signal Hill shall be

1 personally liable to the City of Long Beach in the event of any default or breach by
2 the City of Signal Hill or for breach of any obligation of the terms of this Agreement.

3 10. NOTICE. Any notice hereunder by either party shall be in writing and
4 personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid,
5 addressed to the City of Long Beach at 411 West Ocean Boulevard, Long Beach, California
6 90802, Attn: City Manager; and to the City of Signal Hill at 2175 Cherry Avenue, Signal
7 Hill, California 90755, Attn: City Manager. Notice shall be deemed given on the date that
8 is one (1) day after being deposited in the mail or on the date personal delivery is made,
9 whichever first occurs.

10 11. ENTIRE AGREEMENT. This Agreement constitutes the entire
11 understanding between the parties and supersedes all other agreements, whether oral or
12 written, with respect to the subject matter herein.

13 12. AMENDMENT. This Agreement shall not be amended except in
14 writing signed by the parties that expressly refers to this Agreement.

15 13. TERMINATION.

16 A. This Agreement may be terminated by either party for any
17 reason by giving thirty (30) days advance written notice to the other party up until
18 the completion of the Project. In the event of termination by said notice, funds
19 reimbursed to CLB will include those costs identified in subsection B below.

20 B. CLB may submit invoices to CSH for final allowable payments
21 for Project costs in accordance with the terms of this Agreement that were incurred
22 by CLB on or prior to the effective date of the termination of this Agreement, or such
23 other time agreed upon by the parties. The total project cost to be invoiced by CLB
24 in the event of termination of this Agreement prior to completion of the Project shall
25 be limited to only Project construction costs for work in the CSH right-of-way and
26 will not exceed fifty thousand dollars (\$50,000) unless mutually agreed to by CLB's
27 and CSH's Directors of Public Works.

28 C. This Agreement shall terminate upon completion and

1 acceptance of the Project, except for all indemnification, document retention and
2 audit provisions, which will remain in effect until terminated or modified in writing by
3 the parties.

4 14. SEVERABILITY. If any term, provision, covenant or condition of this
5 Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable,
6 the remaining provisions of the Agreement shall continue in full force and effect, unless
7 both parties would be materially affected by such interpretation.

8 15. GOVERNING LAW. This Agreement shall be governed by and
9 construed in accordance with the laws of the State of California, with venue in any action
10 in a court of competent jurisdiction located in Los Angeles County.

11 16. THIRD PARTY BENEFICIARY. This Agreement is not intended or
12 designed to or entered for the purpose of creating any benefit or right for any person or
13 entity of any kind that is not a party to this Agreement.

14 17. LEGAL ACTION. In addition to any other rights or remedies, either
15 party may take legal action, in law or in equity, to cure, correct or remedy any default, to
16 recover damages for any default, to compel specific performance of this Agreement, to
17 obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the
18 purposes of this Agreement.

19 18. GENERAL PROVISIONS. This Agreement and all terms and
20 conditions hereof shall be governed by and construed and enforced in accordance with the
21 laws of the State of California, with venue in any action in the Superior Court of Los Angeles
22 County. Any term herein can be waived only by a written waiver signed by the party against
23 whom such waiver is to be asserted. This Agreement may be executed in one or more
24 counterparts, each of which when so executed shall be deemed an original, and all of
25 which, together, shall constitute one and the same instrument. Signatures transmitted
26 electronically shall be deemed originals for all purposes of this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

CITY OF LONG BEACH, a municipal corporation

February 9, 2021
~~2020~~

By *Sonda J. Jatum*
City Manager

EXECUTED PURSUANT TO SECTION 301 OF

This Agreement is approved as to form on February 9, 2021
~~2020~~
THE CITY CHARTER

CHARLES PARKIN, City Attorney

By *[Signature]*
Deputy

CITY OF SIGNAL HILL

February 1, 2020

By *Hanh Shin-Heydom*
Hanh Shin-Heydom, City Manager

Approved as to form:

By *[Signature]*
Matthew Richardson
Interim City Attorney

ATTEST:

By *[Signature]*
Carmen R. Brooks, City Clerk
Deputy

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