



## STAFF REPORT

**DATE:** JULY 23, 2019

**TO:** MAYOR AND CITY COUNCIL

**FROM:** DAVID WAHBA, DIRECTOR OF COMMUNITY DEVELOPMENT & PUBLIC WORKS

**SUBJECT:** MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN CITIES OF RHE & RPV TO JOIN RPV'S RE-PAVEMENT PROJECT AT WHITLEY COLLINS DR. AND NEIGHBORHOOD VICINITY

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### OVERVIEW

The following is a request for the City Council to approve a Memorandum of Understanding (MOU) between the City of Rancho Palos Verdes (RPV) and Rolling Hills Estates (RHE) to join RPV's re-paving project of the Mesa Palos Verdes neighborhood, consisting of those portions of streets that are located in RHE (Quailwood Dr., Scotwood Dr., Stonecrest Rd. and Whitley Collins Dr.).

### BACKGROUND AND ANALYSIS

The City of RPV has solicited bids to repave the Mesa Palos Verdes neighborhood, located just south and east of Ridgecrest Middle School and east of Highridge Rd. Much of this neighborhood is located in the City of RPV; however, the jurisdictional boundary line runs through the western portion of the neighborhood, such that a small portion of the streets to the west of the jurisdictional boundary are in RHE. RPV had approached staff to include the portions of streets in RHE as an additive alternative to their re-paving project.

Bids were received last month from four qualified paving companies. The engineer's estimate for the entire project was calculated at \$3,366,730 and the portions of roadway within RHE were estimated at \$212,970. The total bids received ranged from \$2,720,127 (Hardy & Harper) to \$4,938,000 (Excel Paving). Hardy & Harper was also the low bidder for RHE's portion of the project at \$174,460 or \$38,510 below the engineer's estimate.

Similar to what staff was going to enter into with the City of Rolling Hills for our PVDN project, the City Attorney prepared a Memorandum of Understanding (MOU) with RPV so

that we could participate in their much larger project (only paying for the portions of roadway in our city) at a lower cost due to the economies of scale of the project.

RPV will be taking this project to their Council for approval on August 6<sup>th</sup>. If approved, the project is planned to be carried out in September/October of this year.

### FISCAL IMPACT

The total fiscal impact of this project is \$199,781, which includes a 10% contingency of \$17,446; inspection and construction management services of \$4,775; and contract community outreach services of \$3,100.

Funds for this project have been budgeted for FY 19-20, in which \$150,000 has been budgeted in the General Fund for street resurfacing projects. In addition, the City is expecting to receive \$134,250 in SB-1 Funds, \$100,000 in Measure M Funds, \$100,000 in measure R Funds, and \$200,000 in Prop C Funds, for a grand total of \$684,250. Thus, with the recently-approved PVDN resurfacing project of \$522,082 (which includes a 10% contingency) and this project of \$199,781 (also including a 10% contingency), the total cost of both projects could be as high as \$721,863, which would require a budget adjustment potentially as high as \$37,613. This estimated total amount between both projects should be lower if the contingencies are not used in their entirety, such that a budget adjustment may not be necessary.

### PUBLIC OUTREACH

Staff will conduct public outreach for this project through our various social media platforms as well as the City of RPV prior to the commencement of the project.

### RECOMMENDATION

Staff recommends that the City Council enter into a Memorandum of Understanding (MOU) with the City of Rancho Palos Verdes (RPV) to participate in RPV's re-surfacing project to repave our portions of streets located in the Mesa Palos Verdes neighborhood (Quailwood Dr., Scotwood Dr., Stonecrest Rd. and Whitley Collins Dr.), for a cost not to exceed \$199,781.

#### *Attachments:*

- A. MOU with RPV*
- B. Location map*

## MEMORANDUM OF UNDERSTANDING

### RESIDENTIAL STREET REHABILITATION PROJECT, PHASE I AREA 3 AND 4 PCC IMPROVEMENTS AND AC REPAIRS PROJECT #8834

THIS MEMORANDUM OF UNDERSTANDING (“**MOU**”) is effective as of \_\_\_\_\_, 2019, and is between the City of Rancho Palos Verdes (“**RPV**”) and the City of Rolling Hills Estates (“**RHE**”). RPV and RHE are sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

#### RECITALS

A. RPV intends to proceed with its Residential Street Rehabilitation Project Phase I Area 3 and 4 PCC Improvements and AC Repairs Project #8834 (“**RPV Street Rehabilitation Project**”), as more particularly described and depicted in the construction plans (“**Plans**”) prepared by Sunbeam Consulting (“**Sunbeam**”), which are part of the bid package and contract documents for the RPV Street Rehabilitation Project and incorporated herein by this reference.

B. Certain portions of the work for the RPV Street Rehabilitation Project are to be performed on Whitley Collins Drive, Quailwood Drive, Stonecrest Road, and Scottwood Drive, which are located within the City of Rolling Hills Estates (“**RHE Project Portion**”).

C. RHE agrees to pay for the RHE Project Portion, including construction, inspection, and associated community outreach costs using local funding sources.

D. RPV shall serve as the lead agency and shall be responsible for making all final decisions for the RPV Street Rehabilitation Project.

E. The Parties desire to work cooperatively to benefit both agencies with lower construction bids and cost efficiencies from using the same consultant design engineer and construction management firm and coordinating staff. Accordingly, the Parties desire to incorporate the RHE Project Portion into the overall RPV Street Rehabilitation Project.

#### AGREEMENT

NOW, THEREFORE, the Parties in consideration of the mutual promises set forth in this MOU, agree as follows:

1. Purpose of Memorandum of Understanding. The purpose of this MOU is for the Parties to work cooperatively to incorporate the RHE Project Portion into the RPV Street Rehabilitation Project. RHE will provide funds to RPV for all costs associated with designing, constructing, coordinating with utilities, inspecting and managing, and administering bids and payments for the RHE Project Portion.

## 2. Responsibilities of the Parties.

### 2.1 RPV. RPV agrees to do the following:

(a) Provide inspection services, construction management services, and community outreach services for the RHE Project Portion.

(b) Prepare bid documents including bid schedule, contract, general conditions, and special provisions for the purpose of entering into a construction contract for the Project, subject to reasonable review and approval by RHE for the final RHE Project Portion only, in accordance with Section 2.2(b) below.

(c) Advertise for bids and award a construction contract that includes the RHE Project Portion as part of the RPV Street Rehabilitation Project.

(d) Notify RHE of the lowest responsive and responsible bidder for the RPV Street Rehabilitation Project and provide an itemized bid abstract of costs for the RHE Project Portion. If the portion of the bid for the RHE Project Portion is greater than the engineer's estimate submitted by Sunbeam, RPV will consult with RHE on various options such as authorizing an increased budget or reducing the scope of work via a negotiated change order with the bidder in order to allow RPV to proceed with awarding the contract and to prevent a delay in the start of construction activities.

(e) Require the lowest responsive and responsible bidder for the RPV Street Rehabilitation Project that is awarded the contract (the "Project Contractor") to indemnify and hold harmless both RHE, its officers, employees, and agents and RPV, its officers, employees, and agents to the same extent; require the Project Contractor to obtain an insurance policy that names RHE, its officers, employees, and agents as additional insureds for general and automotive liability policies and to waive any subrogation rights against RHE, its officers, employees, and agents to the same extent RPV requires such contractor to obtain a policy that adds RPV as an additional insured and waives subrogation rights as to RPV; and require Project Contractor to obtain any insurance policy required by law, such as workers compensation insurance.

(f) Administer the RPV Street Rehabilitation Project design and construction contracts.

(g) Invite RHE to participate in inspections and walkthroughs and meetings with the Project Contractor during the construction of the RHE Project, and to work with Project Contractor in good faith to address any of RHE's concerns about the work pertaining to the RHE Project Portion.

(h) Provide RHE with requested information from Project Contractor's accounts and records and RPV's accounts and records, within five business days of the request, to identify and account for all costs pertaining to the RHE Project Portion to assure proper accounting for all funds.

(i) Deduct only RHE-approved construction contract and construction management costs, including inspection services and community outreach services, relating to the RHE Project Portion from RHE's deposits with RPV.

(j) Confer with RHE without delay on all change orders and construction contract claims associated with the RHE Project Portion and obtain RHE's approval, which will not be unreasonably withheld, as to all such change orders any payments of construction contract claims.

(k) Provide RHE with a monthly progress report, which includes at a minimum a final pay estimate of costs for the RHE Project Portion and a monthly balance update for the account in which RHE deposits funds with RPV for purposes of the RHE Project Portion that reflects the amount and substance of deductions by RPV.

(l) Refund RHE the remainder of any deposit (except 5% retention held for construction contracts) within 14 days of substantial completion of the RHE Project Portion.

(m) Remain responsible for its own costs for the RPV Street Rehabilitation Project.

(n) Work cooperatively and in good faith with RHE to implement the RPV Street Rehabilitation Project.

2.2 RHE. RHE agrees to do the following:

(a) Provide RPV and its contractors with temporary access to RHE's right of way and easements for performance of the RHE Project Portion, while retaining all rights, obligations, and liabilities with respect to the facilities subject to the RHE Project Portion except as otherwise set forth in this MOU. RHE may reasonably condition such temporary access as it deems necessary.

(b) Review bids, and if the total of the bid items for the RHE Project Portion exceeds the engineer's estimates, direct RPV which option RHE would like to proceed with, either authorizing an increased budget or reducing the scope of work via a negotiated change order, within two business days in order to allow RPV to proceed with awarding the contract without any delay.

(c) Provide direction and authorization to RPV on how to proceed with change orders and construction contract claims as soon as possible, but no later than three business days after request by RPV.

(d) Submit an initial deposit in the amount of \$199,781, representative of 100% of the bid award for the construction costs for the RHE Project Portion, within 14 days after receipt of invoice from RPV, which invoice will be submitted at the time of the notice of award of contract.

(e) Review monthly progress reports from RPV for the RHE Project Portion and provide any requested changes or approvals within two business days unless RHE has requested information from Project Contractor's accounts and records or RPV's accounts and records in which case RHE will provide any requested changes or approvals within two business days of receipt of the requested information.

(f) Attend pre-construction meetings and construction meetings with RPV and the Project Contractor wherein the RHE Project Portion is to be discussed.

(g) Submit any additional, approved costs for Sunbeam's services or construction costs within 14 days after receipt of invoice from RPV.

(h) Provide written confirmation to RPV that the RHE Project Portion is substantially complete.

(i) Provide written confirmation directly to the Project Contractor that RHE accepts the completed work for the RHE Project Portion.

(j) Work cooperatively and in good faith with RPV to implement the RPV Street Rehabilitation Project.

### 3. Mutual Indemnification.

3.1 RHE hereby agrees to indemnify, defend, assume all liability for and hold harmless RPV and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including without limitation any fines, penalties, judgments, actual litigation expenses and attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons ("**Claims Against RPV**"), arising out of or in any way connected to the negligence or willful misconduct of RHE, its officers, agents or employees in connection with or arising from any of the activities under this MOU, except to the extent Claims Against RPV are indemnified by the contractors pursuant to Section 2.1(e) above.

3.2 RPV hereby agrees to indemnify, defend, assume all liability for and hold harmless RHE and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including without limitation any fines, penalties, judgments, actual litigation expenses and attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons ("**Claims Against RHE**"), arising out of or in any way connected to the negligence or willful misconduct of RPV, its officers, agents or employees in connection with or arising from any of the activities under this MOU, except to the extent Claims Against RHE are indemnified by the contractors pursuant to Section 2.1(e) above.

4. No Waiver. The waiver by any Party of any breach or violation of any requirement of this MOU will not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU.

5. Notices. Any notice or other communication (“Notice”) which either Party may desire to give to any other Party under this MOU must be in writing and may be given by any commercially acceptable means, including via first class Certified Mail, personal delivery or overnight courier, to the Party to whom the Notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by Notice. Any Notice shall be deemed received immediately if delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail, Certified and postage prepaid, return receipt requested, and on the next business day if sent via nationally recognized overnight courier.

RPV: City of Rancho Palos Verdes  
30940 Hawthorne Blvd.  
Rancho Palos Verdes, CA 90275  
Attention: City Manager

RHE: City of Rolling Hills Estates  
4045 Palos Verdes Drive North  
Rolling Hills Estates, CA 90274  
Attention: City Manager

6. Interpretation. This MOU will be interpreted, construed, and governed according to the laws of the State of California. Each Party has had the opportunity to review this MOU with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.

7. Third-Party Beneficiaries. Nothing contained in this MOU will be construed to create any rights in third parties and the Parties do not intend to create such rights.

8. Attorneys’ Fees. In the event that any Party commences legal action of any kind or character to either enforce the provisions of this MOU or to obtain damages for breach thereof, the prevailing party in such litigation will be entitled to all costs and reasonable attorneys’ fees incurred in connection with such action.

9. Severability. If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision will be severable and will not in any way impair the enforceability of any other provision of this MOU.

10. Amendment of MOU. This MOU may be amended at any time by mutual agreement of the Parties. Any amendment must be in writing and signed by both Parties.

11. Entire Agreement. This MOU constitutes the entire agreement between the Parties relating to the subject of this MOU and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF the Parties hereby execute this Agreement as follows:

**CITY OF RANCHO PALOS VERDES**, a  
municipal corporation

By: \_\_\_\_\_  
Douglas Willmore, City Manager

Attest:

By: \_\_\_\_\_  
Emily Colborn, City Clerk

**CITY OF ROLLING HILLS ESTATES**, a  
municipal corporation

By: \_\_\_\_\_  
Greg Grammer, City Manager

Attest:

By: \_\_\_\_\_  
Heidi Luce, City Clerk



RANCHO PALOS VERDES/ROLLING HILLS ESTATES  
MESA PALOS VERDES NEIGHBORHOOD STREET RE-PAVEMENT PROJECT



-  **PORTION OF RHE STREETS**
- WHITLEY COLLINS DRIVE
- STONECREST ROAD
- QUAILWOOD DRIVE
- SCOTWOOD DRIVE