

CRESCENTA VALLEY WATER DISTRICT

BOARD OF DIRECTORS - STAFF REPORT

Agenda Item No. 4
June 2, 2015

To: Honorable President and Members of the Board of Directors
From: David S. Gould, P.E. – District Engineer
Subject: **Right of Entry Agreement for Temporary Storage at Rockhaven Site, Project E-940**

AGENDA ITEM

Right of Entry Agreement for Temporary Site Storage at Rockhaven Site and Amendment No. 1 to Agreement with E & R Construction, Project E-940 – Consideration and motion to authorize the General Manager to enter into a Right of Entry Agreement with the City of Glendale for temporary storage at the Rockhaven site. Consideration and motion to authorize the General Manager to enter into Amendment No. 1 to the Agreement with E & R Construction for the use of the temporary storage site at Rockhaven

BACKGROUND

CVWD has entered into an agreement with Glendale for the use of the Rockhaven site for installation of a new well. The project also includes installation of 1200 linear feet of 8-inch water transmission main from the Rockhaven site to the intersection of La Crescenta Ave and Sycamore Ave.

CVWD awarded a contract to E & R Construction for the installation of the 8-inch water transmission main, and construction should begin on June 8, 2015.

CVWD has met previously with staff from Glendale about using the vacant lot on Honolulu Ave for a temporary storage site for construction material and equipment (See attached). CVWD received preliminary approval from Glendale and it was requested that CVWD enter into a Right of Entry Agreement for use of the site.

DISCUSSION

CVWD Staff and legal counsel has worked with Glendale to prepare the Right of Entry Agreement to use the site for temporary storage (See attached). The agreement allows CVWD and its contractor to use the site at no cost, allows for the contractor to install a temporary fence for site security and the restoration of the site to its original condition.

Since the Right of Entry Agreement is between CVWD and Glendale, staff has prepared an Amendment to the Contractor's agreement to transfer the conditions of the Right of Entry Agreement from CVWD to the Contractor, E & R Construction (See attached). The conditions include, but are not limited to fencing, operating responsibilities, restoration of the site, insurance, and indemnity.

E & R Construction has reviewed the Amendment No. 1 to Construction Agreement and has agreed to the conditions as shown.

RECOMMENDATION

It is staff's recommendation to authorize the General Manager to enter into the Right of Entry Agreement between CVWD and Glendale for the temporary storage site. Also, it is staff's recommendation to authorize the General Manager to incorporate Amendment No. 1 into the Agreement with E & R Construction.

ENVIRONMENTAL REVIEW

N/A

FUNDING AVAILABILITY

N/A

Prepared by:

Submitted by:

David S. Gould, P.E.
District Engineer

Thomas A. Love
General Manager

Attachment:

1. Site Map
2. Right of Entry Agreement between CVWD and Glendale
3. Amendment No. 1 to Agreement with E & R Construction

Location Map



RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (“Right of Entry Agreement”) is made and entered into this ____ day of _____, 2015 by and between **THE CITY OF GLENDALE**, a municipal corporation (hereinafter “**GLENDALE**”) and **CRESCENTA VALLEY WATER DISTRICT** (hereinafter “**CVWD**”) (hereinafter also individually referred to as “Party” and collectively referred to as “Parties”).

WITNESSETH:

WHEREAS, pursuant to a Lease Agreement dated February 23, 2015 (hereinafter “Lease Agreement”), CVWD has leased a portion of GLENDALE’s property for the purpose of installation/construction of vertical turbine pump and motor, a small building enclosure on a concrete pad over the groundwater well, above ground discharge piping with a flow meter, electrical/telemetry system to provide power for the pumps and ability to remotely monitor and control the pump, asphaltic concrete paving and on-site improvements, underground discharge piping to waste, and 8-inch water main which will connect to an existing 8-inch water main (hereinafter “CVWD Facilities”), to CVWD’s Nitrate Removal Treatment and ingress, egress and parking of motor vehicles by CVWD and its employees, representatives and agents. The property subject to the Lease Agreement is legally described in Exhibit “A” and shown in the map attached as Exhibit “B” (hereinafter “Lease Property”). Said Exhibits “A” and “B” are attached hereto and incorporated herein by reference;

WHEREAS, CVWD has identified an area adjacent to the Lease Property, which area is also owned by GLENDALE, which appears to be suitable for CVWD’s use as a temporary storage site for the storage of materials and equipment related to the construction of the CVWD Facilities (hereinafter “Storage Site”). The Storage Site has been identified and marked as “CVWD Storage Site” in the map attached as Exhibit “B”; and

WHEREAS, GLENDALE is willing to grant to CVWD the right to enter upon the Storage Site for the intended use as described herein, on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto and each of them do agree as follows:

1. PREMISES:

1.01 Grant. GLENDALE hereby grants to CVWD and its authorized employees, agents, contractors and engineers, a non-exclusive right of entry to the Storage Site as described herein, all at CVWD’s expense. CVWD’s use of the Storage Site includes the right to drive and park vehicles upon the Storage Site during the right of entry period as set forth in the herein Right of Entry Agreement. CVWD acknowledges that it has inspected the Storage Site, has knowledge of the condition thereof, and assumes full responsibility for any injury to persons or damage to property by reason of use of the Storage Site pursuant to this Right of Entry Agreement. CVWD shall place the appropriate fencing and signage to secure the Staging Area for safety purposes. CVWD shall coordinate with GLENDALE in the placement of the fence.

1.02 Temporary Access. Solely for the purpose of CVWD’s use of the Storage Site for the storage of construction-related equipment and materials as described herein, and pursuant, to terms and conditions negotiated with GLENDALE, GLENDALE hereby allows CVWD and its employees,

agents, contractors and engineers the right of entry and use of the Storage Site as depicted in Exhibit "B". At the end of the Term of Right of Entry Agreement, CVWD, at its sole cost and expense, shall restore the Storage Site to its condition immediately preceding CVWD's use of said Storage Site.

2. TERM:

2.01 Term. The right of entry shall be effective upon execution of this Right of Entry Agreement by both Parties, for a period of six (6) months and shall terminate on the earlier of December 31, 2015, or upon CVWD's notification to GLENDALE that it no longer required the Storage Site, by providing 48 hours written notice to GLENDALE of its intention to terminate the Term of this Right of Entry Agreement, whichever occurs first, unless extended in writing, executed by both GLENDALE and CVWD.

3. TAXES:

3.01 Tax Liability. The right of entry granted hereunder shall not give rise to any tax liability by GLENDALE.

4. OPERATING RESPONSIBILITIES:

4.01 Compliance with Law. CVWD shall conform to and abide by all Federal, State and municipal laws and regulations, insofar as the same or any of them are applicable to CVWD's activities at the Storage Site, and shall be responsible for applying for and obtaining any permits and/or licenses that are required for the activities associated with CVWD's use of the Storage Site.

4.02 CVWD Access. For safety and operational reasons, during the placement and storage of the construction related equipment, CVWD may require exclusive use of a portion or portions of, or the entire Storage Site, and may cordon off a portion or portions of, or the entire Storage Site.

4.03 Security. Each Party shall be solely responsible for providing security for their respective activities at the Storage Site.

4.04 Maintenance. CVWD shall be responsible at all times for maintaining the Storage Site in a clean and sanitary condition. CVWD, at its sole cost, shall repair and reconstruct any damage to the Storage Site, provided that such damage results from the use of the Storage Site by CVWD.

5. INSURANCE:

5.01 CVWD agrees that it shall provide, at its own expense and prior to the execution of this Right of Entry Agreement and at all times during the Term of this Right of Entry Agreement, at a minimum, the required insurance as set forth below:

An "occurrence" policy for Commercial General Liability (including Contractual Liability) which shall protect CVWD and GLENDALE from claims for injuries and damages. The policy shall add GLENDALE, its officers, agents and employees as additional named insureds under the policy in the following amounts:

COMMERCIAL GENERAL LIABILITY INSURANCE in an amount not less than One Million Dollars (\$1,000,000) per occurrence for personal injuries, including accidental death, to any one person.

PROPERTY DAMAGE INSURANCE in an amount not less than One Million Dollars (\$1,000,000); and subject to the above limits and combined single limit of insurance in an

amount not less than One Million Dollars (\$1,000,000).

BUSINESS AUTOMOBILE LIABILITY INSURANCE in an amount not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury (including accidental death) to any one person and One Million Dollars (\$1,000,000) per occurrence for property damage, or Two Million Dollars (\$2,000,000) combined single limit.

POLLUTION LIABILITY INSURANCE in an amount not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in aggregate.

Complete WORKERS' COMPENSATION INSURANCE meeting or exceeding the coverages and amounts that California law requires.

5.02 At all times, the insurance company issuing the policy shall be an "admitted" insured in the State of California; shall be domiciled within, and organized under the laws of, a state of the United States; and shall carry an A.M. Best & Company minimum rating of "A-"

5.03 All policies shall contain a "Separation of Insured" clause and a "Primary Coverage" clause for any loss arising out of or caused by CVWD's occupation or use of the Staging Area. In addition, the policies shall contain a statement of obligation on the insurance carrier's part to notify GLENDALE, by registered mail, at least thirty (30) days in advance of any policy cancellation, termination or reduction of the state limits.

5.04 Before signing this Right of Entry Agreement, CVWD shall deliver to GLENDALE a "certificate of insurance" and an "additional insured endorsement", both documents countersigned by the insurance carrier or its authorized representative, on forms satisfactory to GLENDALE, which set forth the above provisions.

5.05 Thirty (30) days prior to each anniversary date of this Right of Entry Agreement, CVWD shall deliver to GLENDALE a renewal certificate of insurance and renewal additional insured endorsement, in conformance with the requirements set forth herein.

5.06 The countersigned certificate, along with the additional insured endorsement, shall state: "The City of Glendale, its officers, agents and employees are added as additional names insureds under this policy. This insurance is primary to the coverage of the City of Glendale. Neither GLENDALE nor any of its insurers shall be required to contribute to any loss. The insurance shall apply separately to each insured. The issuing company shall mail thirty (30) days advance notice to GLENDALE of any policy cancellation, termination or reduction of the stated limits."

5.07 Additionally, any deductibles or self-insured retentions shall be set forth on the certificate and shall be subject to GLENDALE's review and approval. GLENDALE reserves the right to modify its insurance requirements on an annual basis.

5.08 CVWD's failure to comply with the provisions of this Section shall constitute a material breach upon which GLENDALE may immediately terminate this Right of Entry Agreement.

5.09 This Right of Entry Agreements' insurance provisions shall be separate and independent from the indemnification and defense provisions of Section 6 of the Right of Entry Agreement and shall not in any way limit the applicability, scope, or obligations of the indemnification defense provisions in Section 6.

6. INDEMNITY:

6.01 CVWD agrees to indemnify and hold harmless GLENDALE, and its officers, agents

and employees from and against any and all liability, suits, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death or property damage), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent caused by either (1) any dangerous condition at the Storage Site (other than dangerous conditions created by the GLENDALE) upon the performance of activities at the Storage Site under this Right of Entry Agreement; or (2) the acts, errors or omissions of the CVWD upon the Storage Site.

7. GENERAL PROVISIONS:

7.01 Entire Agreement. This Right of Entry Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Right of Entry Agreement which is not contained herein shall be valid or binding.

7.02 Assignment. CVWD shall not assign this Right of Entry Agreement except to any of CVWD's affiliate or subsidiary companies.

7.03 No Third Party Beneficiaries. Nothing in this Right of Entry Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Right of Entry Agreement on any person other than the Parties to it, nor is anything in this Right of Entry Agreement intended to relieve or discharge any obligation of any third person to any Party to this Right of Entry Agreement or give any third person any right of subrogation or action over against any Party to this Right of Entry Agreement.

7.04 Governing Law. The validity of this Right of Entry Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of California.

7.05 Waiver. Any waiver by either Party of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of either Party to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Right of Entry Agreement or estopping either Party from enforcing the full provisions thereof.

7.06 Remedies Cumulative. The remedies set forth in this Right of Entry Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a Party, except where limited herein.

7.07 Severability. Should any part, term or provision of this Right of Entry Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

7.08 Notices. All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post Office; or when sent via facsimile to a Party at the facsimile number set forth below or to such other or further facsimile number provided in a notice sent under the terms of this paragraph, on the date of transmission of that facsimile. Should CVWD or GLENDALE have a change of address, they shall immediately

notify the other Party in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from CVWD to GLENDALE, and from GLENDALE to CVWD, shall be given and addressed as follows:

GLENDALE: City of Glendale
541 W. Chevy Chase Dr. #10
Glendale, CA 91204
Attn: Koko Panossian, Sr. Park Services Manager
Tel. No. (818) 548-2054
Fax. No. (818) 546-2024

CVWD: Crescenta Valley Water District
2700 Foothill Blvd
La Crescenta, CA 91214
Attn: Thomas A. Love
General Manager
Tel. No. (818) 248-3925
Fax. No. (818) 248-1659

Counterparts. This Right of Entry Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Right of Entry Agreement to be executed as follows:

CRESCENTA VALLEY WATER DISTRICT

By: _____
THOMAS A. LOVE

GENERAL MANAGER

Date: _____

CITY OF GLENDALE

By: _____
SCOTT OCHOA

CITY MANAGER

Date: _____

Amendment No. 1 to Agreement

This is Amendment No. 1 to the Agreement dated June 1, 2015 between Crescenta Valley Water District, as Owner, and E & R Construction, Inc., as Contractor.

Contractor shall have the right to use property owned by the City of Glendale as a temporary storage site for the storage of materials and equipment related to the Work, as provided in the Right of Entry Agreement dated June ____, 2015, between the City of Glendale and Owner.

Contractor shall perform all obligations of Owner under the Right of Entry Agreement, including, without limitation, fencing, operating responsibilities, restoration of the site, insurance, and indemnity.

No adjustment shall be made to the Contract Price as a result of this amendment.

IN WITNESS WHEREOF: The parties hereto have caused this Amendment No. 1 to be executed as of June ____, 2015.

"OWNER"

"CONTRACTOR"

By: _____
Its _____
[TITLE]

By: _____
Its _____
[TITLE]