

RESOLUTION NO. 04-12-2022

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE MALAGA COUNTY WATER DISTRICT
RESCINDING THE AWARD OF CONTRACT APPROVED UNDER RESOLUTION NO. 02-22-
2022A AND ACCEPTING BID AND AWARDING CONTRACT FOR THE FIRE HYDRANT
REPLACEMENT PROJECT, CDBG NO. 19451**

WHEREAS, the Invitation to Bid for the Fire Hydrant Replacement Project was advertised in the Business Journal on December 15 and 22, 2021; and

WHEREAS, the project will consist of the replacement of twenty-six (26) fire hydrants along with associated underground and surface improvements in the Community of Malaga; and

WHEREAS, the following bids for the project were publicly opened and read aloud at the Malaga County Water District ("District") Office on January 6, 2022 at 11 am:

	Bidder	Base Bid	Add Alt 1	Total
1)	Brough Construction, Inc.	\$ 258,916.00	\$ 186,463.00	\$ 445,379.00
2)	West Valley Construction Company, Inc.	\$ 262,950.00	\$ 187,154.00	\$ 450,104.00
3)	Sutton Enterprises	\$ 290,428.00	\$ 231,388.00	\$ 521,816.00
4)	RTC Construction Management	\$ 313,273.00	\$ 210,728.00	\$ 524,001.00
5)	Floyd Johnston Construction Co.	\$ 343,536.00	\$ 256,377.00	\$ 599,913.00
6)	Bill Nelson General Engineering Construction	\$ 377,443.00	\$ 266,232.00	\$ 643,675.00

; and

WHEREAS, the CDBG Engineer's estimates for the project were \$193,924.00, \$135,908.00 and \$329,832.00 for the Base Bid, Add Alt 1 and Total Bid, respectively; and

WHEREAS, at its regularly scheduled meeting of February 22, 2022, the District awarded a contract for the work to Brough Construction in the amount of \$258,916.00 under Resolution No. 02-22-2022A; and

WHEREAS, when Brough Construction, Inc. was notified of the award of the contract by the District, they indicated that they could not execute the contract for the price bid and would require a change order to cover costs of material price increases since their original bid submission; and

WHEREAS, within the authority of the bidding documents, and upon failure of the low bidder to execute a contract, the Board may award to the second bidder; and

WHEREAS, the second bidder, West Valley Construction Company, Inc. (“West Valley”), has indicated that they will not require any change to the original bid price for the project provided that an award is made by April 14, 2022; and

WHEREAS, Staff and Fresno County have reviewed the contract documents and bid documents of West Valley and recommend that said award be made to West Valley.

NOW, THEREFORE BE IT RESOLVED, by the Board of Directors of the Malaga County Water District, California, as follows:

1. The above recitals are true and correct and are adopted as the findings of the Board of Directors.
2. Upon the recommendation of the CDBG Engineer that the contract awarded for the Fire Hydrant Replacement Project to Brough Construction, Inc. by Resolution No. 02-22-2022A on February 22, 2022, in the amount of Two hundred fifty-eight thousand nine hundred sixteen Dollars and no Cents (\$258,916.00) be rescinded.
3. Upon the recommendation of the CDBG Engineer that the Fire Hydrant Replacement Project be awarded to: West Valley Construction Company, Inc. in the amount of Two hundred sixty-two thousand nine hundred fifty Dollars and no Cents (\$262,950.00).
4. The General Manager is hereby authorized to sign the Construction Agreement (Exhibit A to this Resolution) on behalf of the District.

This resolution was adopted at a Regular Meeting of the Board of Directors of the Malaga County Water District held on April 12, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Charles E. Garabedian, Jr., Board President

ATTEST:

Moises Ortiz, Secretary to the Board of
Directors of the Malaga County Water District

Exhibit A
Construction Agreement

AGREEMENT

THIS AGREEMENT, made at Fresno, in Fresno County, California, by and between West Valley Construction Company, Inc., hereinafter called the Contractor, and the Malaga County Water District, hereinafter called the Owner.

The Contractor and the Owner, for the consideration hereinafter named, agree as follows:

ARTICLE I. The Contractor agrees to furnish all labor and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims of mechanics, teamsters, draymen and laborers required for construction of

FIRE HYDRANT REPLACEMENT PROJECT CDBG PROJECT NO. 19451

All work shall be completed in strict compliance with the Plans, Drawings and Specifications therefore prepared for the Owner by Yamabe & Horn Engineering, Inc.

ARTICLE II. The Contractor and the Owner agree that the Advertisement (Notice to Contractors), the Wage Scale (Prevailing Wages), the Standard Specifications, the Special Provisions, the Plans and Drawings, the Addenda and thereto, and the Proposal hereto attached, together with this agreement, form the Contract, and they are as fully a part of the Contract as if herein repeated. In the event of a conflict between this agreement and any portion of the standard specifications or special provisions, to the extent of such conflict, this Agreement shall be controlling.

ARTICLE III. The Owner agrees to pay the Contractor for the performance of the Contract the sum of Two hundred sixty-two thousand nine hundred fifty Dollars and no Cents (\$262,950.00).

It being understood that said price is based upon the estimated quantities of materials to be used as set forth in the Proposal; and upon completion of the project, the final contract price shall be revised, if necessary, to reflect the true quantities used at the stated unit price thereof as contained in the Contractor's Proposal hereto attached.

ARTICLE IV. If the Contractor should be adjudged bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should repeatedly violate any of the provisions of the contract, or if he or any of his subcontractors should repeatedly disregard laws, ordinances or the instructions of the Engineer, then the Owner may, upon certificate of the Engineer that grounds for termination exist, serve written notice upon the Contractor and his surety of its intention to terminate the contract. Such notice shall contain the reasons for such intention to terminate the contract, and unless within five (5) days after the serving of notice, such violations shall cease and satisfactory arrangements for correction thereof be made, the Contract shall, upon the expiration of said five (5) days, cease and terminate. The period for service of written notice begins upon deposit of the notice by prepaid postage into the United States mail, or by better means of service.

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract, provided, however, that if the surety within ten (10) days after the serving upon it of notice of termination does not give Owner written notice of its intention to take over and perform, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plans, and other property belonging to the Contractor as may be on the site of the work and necessary therefore. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the expenses of finishing the work,

including compensation for additional managerial and administration services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner, as herein provided, and damage incurred through the Contractor's default, shall be certified by the Engineer.

ARTICLE V. The County of Fresno, The Malaga County Water District, HUD and Yamabe & Horn Engineering, Inc., must be 'held harmless' and covered as an additional insured.

With respect to any work required to be done under this contract, the Contractor will indemnify and hold harmless the COUNTY OF FRESNO, THE MALAGA COUNTY WATER DISTRICT, THE UNITED STATES OF AMERICA, HUD, YAMABE & HORN ENGINEERING, INC., and all other participating public agencies, whether, or not said agencies are named herein, who have jurisdiction within the areas in which the work is to be performed, and all officers and employees of the County, the Malaga County Water District, the United States of America, the Engineer and said other participating agencies, against any and all claims, demands, causes of action, damages (including damage to the Owner's property or property of the participating agencies), costs or liabilities (including costs, or liabilities of the Owner or the participating agencies with respect to its employees), in law or in equity of every kind and nature whatsoever, directly or proximately resulting from or caused by the performance of the contract, whether such performance by the Contractor, his subcontractor or anyone directly or indirectly employed by him; and the Contractor shall, at his sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against the Owner, the participating agencies, their officers and employees on any such claim, demand or cause of action, and the Contractor shall pay and satisfy any judgment or decree which may be rendered against the Owner, the participating agencies, their officers and employees in any such suit, action or other legal proceedings.

To the maximum extent permitted by Civil Code Section 2782 et seq., Owner shall not be liable for, and Contractor shall defend and indemnify the Owner and its officers, agents, engineers, architects, consultants, employees and volunteers, the County of Fresno, HUD, all other participating public agencies, whether or not said agencies are named herein, who have jurisdiction within the areas in which work is to be performed, and all officers and employees of the County, the Owner, the United States, and said other participating agencies (collectively "Owner Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, causes of action, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges, costs or liabilities of any kind or character, including attorneys' fees and court costs (collectively referred to as "Claims"), which arise directly or proximately out of, or are in any way connected to, the work covered by this Agreement arising directly from any act, error, omission, negligence, or concurrent negligence of Contractor or its officers, employees, agents, contractors, sub-contractors, licensees or servants. However, Contractor shall have no obligation to defend or indemnify Owner Parties against Claims caused by the active negligence, sole negligence or willful misconduct of Owner Parties. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor.

Contractor, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire terms of this agreement, the following-described insurance coverage, insuring not only Contractor and its subcontractors, if any, but also, with the exception of workers' compensation and employer's liability insurance, the District, its officers, agents, and employees of each of them:

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

3. Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this product / location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

OTHER INSURANCE PROVISIONS

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) The County of Fresno, Owner, HUD, and all other participating public agencies, its officers, officials, employees, agents and volunteers are to be covered as insureds evidenced by Insurance Services Office endorsements CG 20 10 and CG 20 37 as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees, agents or volunteers.
- (2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the Owner, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Owner, its officials, employees, agents or volunteers.
- (4) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Each insurance policy required by this clause shall be endorsed to state the coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Owner.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

VERIFICATION OF COVERAGE

Contractor shall furnish the District with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the District before work commences. The Contractor's insurer shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

An Additional Insured Endorsement to the Contractor's Liability Insurance policy naming the District, the County of Fresno, the United States, HUD, the Engineer, the above said agencies and all other participating public agencies (if applicable) and all officers and employees of the above, shall be furnished in triplicate.

SUBCONTRACTOR

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

Contractors Property Damage Liability insurance shall include coverage for property damage caused by blasting, collapse, structural injuries or damage to underground utilities. The policy shall not contain "x", "c" or "u" exclusions.

Certificates of such insurance shall be filed with the Owner concurrently with the execution of this agreement or, with Owner's approval, within ten (10) days thereafter. Said certificates shall be subject to the approval of the Owner.

ARTICLE VI. Contractor represents that he has secured the payment of Worker's Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. Contractor shall supply the Owner with certificates of insurance, in triplicate, evidencing that Worker's Compensation Insurance is in effect and providing that the Owner will receive ten (10) days written notice of cancellation. If the Contractor self-insures Worker's Compensation, Certificate of Consent of self-insured should be provided the Owner.

ARTICLE VII. The Contractor shall forthwith furnish in triplicate, a faithful performance bond in an amount equal to 100% of the contract price and a labor and materials bond in an amount equal to 100% of the contract price, both bonds to be written by a surety company acceptable to the Owner and in the form prescribed by law.

The payment bond shall contain provisions such that if the Contractor or his subcontractor shall fail to pay (a) amounts due under the Unemployment Insurance Code with respect to work performed under the contract, or (b) any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of the employees of the Contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the surety will pay these amounts. In case suit is brought upon the payment bond, the surety will pay a reasonable attorney's fee to be fixed by the court.

ARTICLE VIII. The improvement contemplated in the performance of this contract is a U.S. Department of Housing and Urban Development, Community Development Block Grant improvement over which the County of Fresno shall exercise general supervision. The County of Fresno therefore, shall have the right

to assume full and direct control over this contract whenever the County of Fresno at its sole discretion shall determine that its responsibility to the United States so requires.

ARTICLE IX. Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the plans and specifications, due to any of the above causes, all within twelve (12) months after date on which the completed project is accepted by the Owner, the undersigned agrees to reimburse the Owner, upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or, upon demand by the Owner, to replace any such materials and to repair said work completely without cost to the Owner so that said work will function successfully as originally contemplated.

The Owner shall have the unqualified right to make any needed replacement or repairs after a written notice to cure has been served upon the Contractor and a reasonable time to cure has expired. In the event the Owner elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made within a reasonable time after the receipt of demand from the Owner. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the Owner shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of the said failure or refusal.

ARTICLE X. In the event of litigation concerning this agreement the prevailing party shall be awarded reasonable attorney fees and costs of suit, in addition to appropriate compensatory damages or other relief ordered for the benefit of the prevailing party.

IN WITNESS WHEREOF, they have executed this Agreement this _____ day of _____, 2022.

MALAGA COUNTY WATER DISTRICT

WEST VALLEY CONSTRUCTION COMPANY, INC.

(Owner)

(Contractor)

By: _____
Moises Ortiz, General Manager

By: _____

Title: _____

Approved as to form:

(Federal Taxpayer I.D. No.)

Michael Slater, Attorney for District