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RESOLUTION NO.: R-2023-062

*Authorizing the City Manager to execute a Memorandum of Understanding
Between the City of Columbia and City of West Columbia for a Cost Share of a New Pedestrian
Bridge*

BE IT RESOLVED by the Mayor and City Council of the City of Columbia, South Carolina this 5th day of September, 2023, that the City Manager is hereby authorized to execute the attached Memorandum of Understanding, or on a form to be approved by the City Attorney, between the City of Columbia and City of West Columbia, a municipal corporation, for a cost share of a new pedestrian bridge over Saluda River with a new 30" sewer force main for the Saluda River Force Main Extension Project (SS7568).

Requested by:


City Manager _____

Mayor


Approved by:


City Manager

Approved as to form:


City Attorney

ATTEST:


City Clerk

Introduced: 9/5/2023

Final Reading: 9/5/2023

STATE OF SOUTH CAROLINA)
) **MEMORANDUM OF UNDERSTANDING**
COUNTY OF RICHLAND)

This Memorandum of Understanding entered into by and between the City of Columbia, South Carolina ("Columbia"), a municipal corporation, and the City of West Columbia, South Carolina ("West Columbia"), a municipal corporation, (collectively the "Parties" and individually a "Party").

WHEREAS, Columbia intends to construct a new 30" force main crossing the Saluda River at a location immediately north of the Riverbanks Zoo and Botanical Gardens;

WHEREAS, West Columbia plans to construct a foot bridge linking the existing parks and greenways on the east side of the Saluda River to future parks and greenways to be built on the west side of the Saluda River and to the Botanical Gardens;

WHEREAS, Columbia and West Columbia have determined that it may be in their mutual interests to combine the force main crossing and footbridge into a single project thereby reducing costs and limiting crossings in Saluda River greenway area; and

WHEREAS, Columbia and West Columbia have agreed to jointly evaluate the costs and benefits of constructing a combined footbridge and force main, and

WHEREAS, Columbia has selected an Engineer for the design of the force main under a professional services contract, and

WHEREAS, Columbia has selected a contractor for construction of the force main under a construction manager at risk contract, and

WHEREAS, Columbia is willing to amend the existing engineering and construction contracts to provide for evaluation of the combined force main and footbridge.

NOW THEREFORE, Columbia and West Columbia agree as follows:

1. Definitions

Pipeline means those portions of Columbia's proposed new 30" sewer force main that cross the Saluda River as an element of Capital Improvement Project SS7568; and,

Bridge means a footbridge to construct linking existing parks and greenways on the east side of the Saluda River to the Botanical Gardens and future parks and greenways on the west side of the Saluda River,

Bridge with Pipeline means a single structure comprising both the Bridge and Pipeline.

Joint Project means the joint project by which Columbia and West Columbia would share in the costs and responsibilities for constructing the Bridge with Pipeline.

Design Contract means the existing professional services contract under Capital Improvement Project SS7568.

Design Engineer means the consultant selected by Columbia and now working on the design phase of the Design Contract.

CMAR Contract means the existing construction management at risk contract under Capital Improvement Project SS7568.

CMAR Contractor means the contractor selected by Columbia and now working in the preconstruction phases of CMAR Contract.

GMP means the guaranteed maximum price, subject to certain conditions, under which the CMAR contractor agrees to complete the Joint Project.

Design Costs means the costs of design services through the development of the GMP for the Joint Project to be provided under the Design Contract.

Preconstruction Costs means the costs of pre-construction services for the Joint Project to be provided under the CMAR Contract.

Permitting Costs mean the cost of obtaining permits from state and local authorities for the Joint Project.

Construction Administration Costs means the cost of construction observation and administration services for the Joint Project provided by the Design Engineer.

2. **Design, Preconstruction, and Permitting Costs.** Columbia and West Columbia agree to share in Design, Preconstruction, and Permitting costs for the Joint Project on a 50% - 50% basis. Combined estimated costs for Design, Preconstruction, and Permitting efforts of the Joint Project are \$1,050,000 with Columbia's share estimated at \$525,000 and West Columbia's share estimated at \$525,000.

3. **Design Stage Review.** Columbia and West Columbia agree to review and approve in writing the estimated GMP construction costs developed for the Joint Project at the 30% design, 60% design and 90% design stages. West Columbia will not be bound for any additional costs unless it agrees in writing to proceed with the Joint Project within fourteen (14) calendar days after each such review.

4. **Information Flow.** Columbia shall cause the Design Engineer and the CMAR Contractor to include West Columbia as a recipient of all design and construction updates, change orders,

proposed change orders, notice of force majeure events, or notices of unanticipated conditions related to the Joint Project and to provide other information that West Columbia may reasonably request. Columbia will promptly notify West Columbia of the individual with authority to act on behalf of Columbia in its capacity overseeing and approving decisions related to the construction project. West Columbia will promptly notify Columbia of the individual with authority to act on behalf of West Columbia in its capacity overseeing and approving decisions related to the construction project.

5. Coordination Meetings. Columbia shall ensure that West Columbia is invited to participate in all project coordination meetings related in whole or in part to the Joint Project and is provided with reasonable notice of them.

6. GMP. In consultation with West Columbia, Columbia will obtain a GMP for the Joint Project from the CMAR Contractor.

7. Base Allocation of Construction Cost. The Parties shall make a proposed base allocation of Joint Project's construction cost between Parties based on an engineering evaluation of the cost developed by the Design Engineer at the 30% OPCC. The percentages for the base cost allocation will be calculated by determining the proportional share of the cost of the Bridge without the Pipeline (West Columbia's share) versus the additional cost of the Bridge designed for the Pipeline along with the Pipeline cost itself (Columbia's share), both excluding general conditions and general requirements.

8. Value Added Allocation of Construction Cost. After the Base Allocation of Construction Cost is determined, the Parties shall negotiate a reasonable, equitable, and fair percentage adjustment to the Base Allocation to represent the value added to Columbia for the Pipeline being located on West Columbia's Bridge. The value added allocation shall be 15% of the West Columbia Base Allocation of Construction Cost, as defined above. This additional percentage shall be paid by Columbia.

9. Total Allocation of the Construction Cost. The Total Allocation of the Construction Cost will be determined from the Base Allocation of Construction Cost adjusted by the Value Added Allocation of Construction Cost. The Parties shall agree to in writing the Total Allocation of Construction Cost that will apply to the GMP (including change orders related to the Joint Project) after the 60% design stage of the Joint Project. Upon submittal of the Final GMP from the CMAR Contractor, the Design Engineer will determine each Parties proportional share utilizing the Total Allocation of the Construction Cost percentages. Both Parties shall agree in writing to the cost allocations prior to final acceptance of the GMP and issuance of the NTP to the CMAR Contractor.

10. Construction Administration Costs. Columbia and West Columbia agree to share in the Construction Administration Costs for the Joint Project on a 50%-50% basis. The Design

Contract will be amendment to include the Construction Administration Costs upon written agreement of the cost to be incurred by West Columbia and approval by Columbia.

11. **Notice to Proceed.** Columbia will not issue a notice to proceed for construction of the Joint Project until West Columbia shall have reviewed and approved in writing the GMP and the proposed allocation of costs between the Parties.

12. **Additional and Definitive Documents.** Once both Parties have approved in writing the final GMP and the cost allocations for the Joint Project:

- a. The Parties will enter into an addendum to this Memorandum of Understanding or other definitive documents to define the allocation of cost between them and other terms under which they will pursue the Joint Project; and
- b. Columbia will include the Joint Project in the CMAR Contract
 - i. including commercially reasonable provisions transferring warranty rights and other causes of action to West Columbia related to the Bridge, and
 - ii. including West Columbia as a named beneficiary to all required insurance policies.

13. **Ownership of Assets and Operation and Maintenance Responsibilities.**

- a. Columbia will be the owner and operator of the Pipeline and will provide all maintenance and operation services required for the Pipeline.
- b. West Columbia will be the owner and operator of the Bridge and will provide all maintenance and operation services required for the Bridge.

14. **Permitting.** All required permitting services for the Joint Project are included in the Design Contract. The Design Engineer will prepare and submit all permits for the Joint Project on behalf of the specified applicant. West Columbia will be the sole applicant for all permits required to construct the Bridge portion of the Joint Project. Columbia will be the sole applicant for all permits required to construct the Pipeline on the Bridge.

15. **Easements from Third Parties.** Columbia will obtain all easements from third parties required for the Joint Project including easements for the Bridge, its landings, for the Pipeline to cross the Saluda River and for associated interconnections between the Pipeline and other sewer facilities. West Columbia will provide support as reasonably requested. All easements for the Bridge and its landings will be held in the name of West Columbia. Columbia will apply for and obtain all required easements from third parties. Columbia and West Columbia agree to

share easement acquisition costs on a 50%-50% basis. All costs shall be identified and agreed upon in writing prior to proceeding with final acquisition.

16. Encroachment Permit for the Pipeline. West Columbia will provide Columbia with an encroachment permit or other written approval for the placement, operation, and maintenance of the Pipeline as part of the Joint Project which West Columbia will provide at no charge to Columbia. This encroachment permit or written approval shall include reasonable provisions

- a. for Columbia to access to the Bridge for the inspection, maintenance, renewal and replacement of the Pipeline, including the right to exclude the public from the Bridge during periods of inspection or construction access,
- b. allowing Columbia the right to increase or decrease the Pipeline size as needed in the future provided that such change can be accommodated by the existing bridge structure and that Columbia bears all associated costs, and
- c. committing Columbia to ensure that noxious or corrosive gases from the Pipeline do not damage the Bridge or interfere with its use by pedestrians.

17. Project Management. Columbia will be responsible for project management and shall be the sole entity to direct the CMAR Contractor concerning the project. Columbia will make and communicate all decisions related to project execution, including but not limited to final approval of all project costs and payments; project accounting; project scheduling; design consultant selection and approval; selection, oversight, and approval of contractors; and ensuring conditions and requirements of Project contributions are met subject to the following limitations:

- a. Columbia will obtain prior written approval from West Columbia for all costs West Columbia is required to reimburse to Columbia prior to issuing final approval of such costs.
- b. West Columbia shall retain decision authority for any and all elements of the Project that relate to items owned or maintained by West Columbia and Columbia will obtain prior written approval from West Columbia for all design components or changes in design components for the Bridge.
- c. West Columbia and Columbia will jointly review, collaborate, and agree on the aesthetics of the Bridge prior to construction of the Bridge. The structural landing on the Columbia side of the Saluda River and connection to the existing trail system shall be coordinated with Columbia.

18. Public Relations. West Columbia will be the sole spokesman for the Parties concerning public relations, outreach, concerns, and conflicts associated with the Joint Project except that Columbia shall be the sole spokesman for items related exclusively to Pipeline.

19. **Future Agreements.** It is the express intention of the Parties to negotiate definitive agreements at the conclusion of the Design and Preconstructions phase of the Joint Project if they desire to proceed with this Joint Project. By entering this Memorandum of Understanding, West Columbia incurs no obligations apart from those contained in Section 2, Design, Preconstruction, and Permitting Costs, above, as limited by Section 3, Design Stage Review and Section 7, Notice to Proceed, and other provisions of this Memorandum of Understanding.

20. **Limited Enforcement.** There are no third-party beneficiaries to this Memorandum of Understanding.

21. **Integration Clause.** This Memorandum of Understanding represents the entire and integrated agreement between Columbia and West Columbia.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the day and year last written below.

WITNESSES:

Crystal Panknight
Michelle M. Dickerson

CITY OF WEST COLUMBIA

By: Brian E. Carter
Printed Name: BRIAN E. CARTER
Title: CITY ADMINISTRATOR

CITY OF COLUMBIA, South Carolina

C.E. S.
Teresa B. Wilson

By: Teresa B. Wilson
Printed Name: Teresa B. Wilson
Title: City Manager

APPROVED AS TO FORM

[Signature]
Legal Department City of Columbia, SC
08/15/2023