

AGREEMENT

THIS AGREEMENT ("Agreement"), dated this _____ day of _____, 2018, is made and entered into by and between the City of Westminster, a municipal corporation, hereinafter referred to as "**WESTMINSTER**" and the City of Garden Grove, a municipal corporation, hereinafter referred to as "**GARDEN GROVE**".

WITNESSETH:

WHEREAS, WESTMINSTER is contemplating the rehabilitation of the pavement surface of that portion of Westminster Avenue from Newland Street to Magnolia Street, located in the City of Westminster, (hereinafter the "**WESTMINSTER PORTION**"); and,

WHEREAS, there is a portion of Westminster Avenue located within the boundaries of **GARDEN GROVE** (hereinafter "**GG PORTION**"); and,

WHEREAS, GARDEN GROVE desires to have **WESTMINSTER** rehabilitate the **GG PORTION** of Westminster Avenue in conjunction with the **WESTMINSTER PORTION**, collectively the "**PROJECT**", and **WESTMINSTER** is willing to do so. The exact location of the **GG PORTION** is described in detail in the document attached hereto as Exhibit A, incorporated herein by this reference. The estimated cost of the **GG PORTION**, including a ten percent (10%) contingency, is One Hundred Seventy-Three Thousand and Two Hundred and Thirty-One Dollars (\$173,231) (the "Estimated Cost").

NOW, THEREFORE, in consideration of the following promises, covenants, and conditions, the parties hereto do agree as follows:

1. **DUTIES OF WESTMINSTER**

- a. Upon commencement of the **PROJECT, WESTMINSTER** shall include the **GG PORTION** as a part of **WESTMINSTER's** public works project, prepare the request for bids, hire the lowest responsible bidder (the "Successful Contractor"), and oversee and administer the **PROJECT** in the **GG PORTION** in the same manner and to the same extent as the **WESTMINSTER PORTION**, all in accordance with all applicable laws governing construction of public works by **WESTMINSTER**, including, but not limited to, the California Environmental Quality Act and laws governing public bidding and the payment of prevailing wages. If **WESTMINSTER**, in its sole discretion, determines not to proceed with the **PROJECT** at any time prior to commencement of actual work, this Agreement shall terminate with no further action required by either party. In the event the projected actual cost

of the **GG PORTION**, as reflected in the Successful Contractor's bid, exceeds the Estimated Cost by twenty percent (20%), **WESTMINSTER** shall not award a contract to the Successful Bidder for the **GG PORTION** without prior written approval of **GARDEN GROVE**.

- b. At least thirty (30) calendar days prior to release of the Notice Inviting Bids for the **PROJECT**, **WESTMINSTER's** City Engineer shall provide **GARDEN GROVE's** City Engineer a copy of the **PROJECT's** plans and specifications for his approval, which approval shall not be unreasonably withheld. If **GARDEN GROVE's** City Engineer objects to the plans and specifications, and if his objections cannot be satisfied through discussions with **WESTMINSTER's** City Engineer, the **GG PORTION** shall not be included in the **PROJECT** and **WESTMINSTER** shall proceed with the **WESTMINSTER PORTION** only.
- c. **WESTMINSTER** agrees that it shall not permit nor cause any hazardous materials to be brought upon, kept, used, stored, generated or disposed of in, or, or about the **GG PORTION**. "Hazardous Materials" shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, or any combination thereof, is deemed by a federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.
- d. **WESTMINSTER** shall ensure that its contract with the Successful Contractor requires the Successful Contractor provide insurance acceptable to **GARDEN GROVE** as shown in Exhibit "B," to name **GARDEN GROVE** as an additional insured, and to indemnify, defend, and hold harmless **GARDEN GROVE** in the same manner and to the same extent as **WESTMINSTER**. **WESTMINSTER** shall not permit construction of any portion of the **PROJECT** to commence until evidence of the required insurance and additional insured endorsements have been provided to and approved by **GARDEN GROVE**.

2. **GARDEN GROVE'S DUTIES**

- a. **GARDEN GROVE** shall pay **WESTMINSTER** for the actual cost of the work on the **GG PORTION** based upon unit prices bid of the Successful Contractor and quantities actually used on the **GG PORTION**. **GARDEN GROVE** shall pay **WESTMINSTER** the total amount due for the **GG PORTION** upon official final approval of the work by **GARDEN GROVE** provided that such final approval shall not be unreasonably withheld.
- b. **GARDEN GROVE** agrees that any permits required by the Successful

Contractor for the work to be performed on the **GG PORTION** shall be issued to the Successful Contractor at no cost to **WESTMINSTER** or the Successful Contractor.

- c. **GARDEN GROVE** shall provide its own inspection services for the **GG PORTION** of the work.
- d. **GARDEN GROVE** agrees to fully cooperate with **WESTMINSTER** and the Successful Contractor in the prosecution of the work, traffic control, and any other matters required for completion of the **PROJECT** in the **GG PORTION**.
- e. **GARDEN GROVE** acknowledges that **WESTMINSTER** is not the contractor for the **PROJECT** and that **WESTMINSTER** does not warrant any work performed by the Successful Contractor. Notwithstanding the above, **WESTMINSTER** shall require the Successful Contractor to provide **GARDEN GROVE** with any and all warranties, insurance coverage, and indemnities and any other rights the Successful Contractor agrees to provide to **WESTMINSTER** under the construction contract and as provided by law.
- f. In addition to the above, **GARDEN GROVE** also agrees to pay **WESTMINSTER** for all costs associated with any change orders pertaining to the **GG PORTION**, provided the change orders have been previously approved in writing by **GARDEN GROVE's** City Engineer.

3. ENTIRE AGREEMENT

This writing constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all oral or written representations or written agreements that may have been entered into between the parties. No modifications or revisions shall be of any force or effect, unless the same is in writing and executed by the parties hereto.

4. ORDER OF PRECEDENCE

In the event of an inconsistency in this Agreement and any of the attached Exhibit, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

5. **ASSIGNMENT**

Neither **GARDEN GROVE** nor **WESTMINSTER** may assign or transfer its rights or obligations under this Agreement, or any part thereof, without the written consent of the other party.

6. **ATTORNEYS' FEES**

In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7. **GOVERNING LAW**

This Agreement shall be governed by the laws of the State of California. If any portion of this Agreement is held invalid under any applicable statute or rule of law, then such portion only shall be deemed invalid. Venue shall exclusively be in a court of competent jurisdiction in the County of Orange, California.

8. **NO WAIVER**

No waiver or failure to exercise any right, option, or privilege under the terms of this Agreement on any occasion shall be construed to be a waiver of any other right, option, or privilege on any other occasion.

9. **NO THIRD PARTY RIGHTS**

The parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

10. **NOTICES**

Notices and communication concerning this Agreement shall be sent to the following addresses:

WESTMINSTER

City of Westminster
Attention: Marwan Youssef, Ph.D., P.E.
Public Works Director/City Engineer
8200 Westminster Blvd.

GARDEN GROVE

City of Garden Grove
Attention: Dan Candelaria, P.E., T.E.
City Engineer
11222 Acacia Parkway

Either party may, by notice to the other party, change the address specified above. Any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery, facsimile or mail and shall be addressed as set forth above. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) five (5) calendar days after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

11. **EFFECTIVE DATE**

The effective date of this Agreement shall be the latest date of execution hereinafter set forth opposite the names of the signatures hereto.

12. **INDEMNITY**

WESTMINSTER and **GARDEN GROVE** each hereby agrees to indemnify, defend, protect and hold harmless the other party, and its elected and appointed officials, officers, employees, representatives, volunteers, and agents from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, workers' compensation benefits, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses of any kind or nature, arising from the activities of the indemnitor or its officers, agents, or employees on the **PROJECT**, or any breach of contract, negligent acts, omissions or breach of law, or willful misconduct of the indemnitor, or its officers, agents, or employees arising out of the performance of, or failure to perform, any provisions of this Agreement. Neither party assumes liability for the acts or omissions of persons other than each party's respective officers, agents, or employees. In the event judgment is entered against both parties because of joint or concurrent negligence of both parties, or their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. The respective obligations of the parties pursuant to this Section shall survive expiration or earlier termination of this Agreement.

13. **COOPERATION**

In the event any claim or action is brought against **WESTMINSTER** relating to the performance rendered under this Agreement, **GARDEN GROVE** shall render any reasonable assistance and cooperation which **WESTMINSTER** might require.

14. **COSTS**

Each party shall bear its own costs and fees incurred in the preparation and

negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

15. **HEADINGS**

Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

16. **CONSTRUCTION.**

The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

17. **SEVERABILITY**

If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

18. **COUNTERPARTS**

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

19. **CORPORATE AUTHORITY**

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

CITY OF WESTMINSTER,
a municipal corporation

ATTEST:

By: _____
Eddie Manfro, City Manager

Christine Cordon, Westminster City Clerk

APPROVED AS TO FORM:

DATE OF EXECUTION:

Richard D. Jones, Westminster City Attorney

CITY OF GARDEN GROVE,
a municipal corporation

ATTEST:

By: _____
Scott C. Stiles, City Manager

Teresa Pomeroy, Garden Grove City Clerk

APPROVED AS TO FORM:

DATE OF EXECUTION:



Omar Sandoval, Garden Grove City Attorney