

COOPERATIVE AGREEMENT

THIS AGREEMENT (“Agreement”), is made and entered into on this ____ day of _____, 2019, by and between the:

CITY OF GARDEN GROVE, a Municipal Corporation
hereinafter referred to as “GARDEN GROVE”;

AND

CITY OF ANAHEIM, a Municipal Corporation,
hereinafter referred to as “ANAHEIM.”

GARDEN GROVE and ANAHEIM are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as “Parties.”

RECITALS

WHEREAS, the Parties are municipal corporations duly organized and validly existing under the laws of the State of California with the power to carry on their business as it is now being conducted under the statutes of the State of California; and

WHEREAS, ANAHEIM has formed Underground District No. 50 (“Underground District”) for the removal and relocation of overhead facilities within ANAHEIM’s City limits to, among other things, eliminate an unusually heavy concentration of these facilities within the public right-of-way; and

WHEREAS, as part of the work associated with Underground District, ANAHEIM will be required to rehabilitate the surface of Euclid Street from Ord Way to Katella Avenue in the affected area within ANAHEIM’s City limits, the area and work are more particularly depicted and described in Exhibit “A” (“Anaheim Rehabilitation”), which is attached hereto and incorporated by reference; and

WHEREAS, GARDEN GROVE is contemplating the rehabilitation of the surface on the west side of the Anaheim Rehabilitation, as more particularly depicted in Exhibit “B” (“GG Rehabilitation”), which is attached hereto and incorporated by reference; and

WHEREAS, the GG Rehabilitation and the Anaheim Rehabilitation are in the same vicinity and scheduled to occur on or about a similar timeline; and

WHEREAS, it is advantageous to the Parties for the GG Rehabilitation and the Anaheim Rehabilitation to occur simultaneously to minimize the impacts to area residents and businesses and avoid the unnecessary digging of trenches and disruption of traffic; and

WHEREAS, GARDEN GROVE agrees to design, administer, and manage a construction contract for the construction of the the GG Rehabilitation and Anaheim Rehabilitation (collectively “the Projects”); and

WHEREAS, the Parties agree to enter into an Agreement for the work associated with the Anaheim Rehabilitation in a manner and subject to the terms and conditions set forth below.

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

Section 1: Recitals. The Recitals above are deemed true and correct, are hereby incorporated in this Section as though fully set forth herein, and each Party to this Agreement acknowledges and agrees that they are bound by the same.

Section 2: Elements of Agreement. GARDEN GROVE and ANAHEIM will work cooperatively together so the Projects can be constructed in a manner that minimizes the costs and impacts to the public. The specific terms and conditions governing the elements of this Agreement are set forth hereinafter.

Section 3: GARDEN GROVE’s Specific Obligations.

- A. GARDEN GROVE will be responsible for the GG Rehabilitation’s compliance with the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, Section 21000 et seq.).
- B. GARDEN GROVE will enter into and administer contracts for the design services needed for the Anaheim Rehabilitation which includes contracting with the necessary engineering consulting services to accomplish the design efforts. GARDEN GROVE will issue an amendment, if required, to the consultant currently retained by GARDEN GROVE to design GG Rehabilitation. This amendment will contain a scope of work that will ensure the Anaheim Rehabilitation is designed and constructed as required by ANAHEIM.
- C. GARDEN GROVE will submit prepared plans and specifications for the design and construction of the Anaheim Rehabilitation for review, comment, and written approval by ANAHEIM. If ANAHEIM does not approve the proposed plans and specifications, ANAHEIM will provide GARDEN GROVE its basis for denial and GARDEN GROVE shall require its hired consultant to correct the plans and specifications to ANAHEIM's reasonable satisfaction. The plans and specifications approved in writing by ANAHEIM’s City Engineer shall be referred hereinafter to as "Approved Plans and Specifications".

- D. GARDEN GROVE shall be responsible for advertising, awarding, and administering a contract for the construction of the Anaheim Rehabilitation, in conformance with all applicable laws governing construction of public works. GARDEN GROVE will issue a public works bid package and enter into a construction contract in accordance with the Approved Plans and Specifications and applicable laws and regulations. The contract will also contain GG Rehabilitation so the Projects will be constructed under a single contract. The bid package will contain specific bid items that pertain to the Anaheim Rehabilitation which will be used to determine the reimbursement amount ANAHEIM will pay to GARDEN GROVE for the Anaheim Rehabilitation.
- E. GARDEN GROVE shall ensure the contractor for the Anaheim Rehabilitation has the appropriate license from the California State License Board and ensure contractor complies with prevailing wage laws including, but not limited to, California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws").
- F. Upon award of the contract to the successful bidder for the Projects, GARDEN GROVE will submit such information to ANAHEIM for their files.
- G. For the duration of the construction of the Anaheim Rehabilitation, GARDEN GROVE will (a) Provide ANAHEIM staff with contractor schedules and updates within ten (10) days of acceptance by GARDEN GROVE staff; and (b) Invite ANAHEIM staff to construction progress meetings.
- H. GARDEN GROVE shall allow ANAHEIM to review, check, and inspect any part of the Anaheim Rehabilitation at any time. GARDEN GROVE shall provide ANAHEIM inspectors uninhibited access to the area of the Anaheim Rehabilitation and an adequate on-site work space to perform such work. GARDEN GROVE shall not accept any portion of the work associated with the Anaheim Rehabilitation unless the work has been inspected and approved in writing by ANAHEIM. GARDEN GROVE will document and inform ANAHEIM of the date of final acceptance, which is the date when the notice of completion is filed. GARDEN GROVE shall furnish ANAHEIM with one set of record drawings for the completed Anaheim Rehabilitation and a copy of the filed notice of completion. No notice of completion shall be filed by GARDEN GROVE until GARDEN GROVE receives ANAHEIM's prior written concurrence to such filing.
- I. GARDEN GROVE will obtain on behalf of ANAHEIM a one-year warranty on the work to be performed for the Anaheim Rehabilitation from GARDEN GROVE's construction contractor. This one-year

warranty shall commence at the time the notice of completion is issued specifically for the Anaheim Rehabilitation.

- J. GARDEN GROVE, its agents and contractors shall keep the Anaheim Rehabilitation free from any statutory or common law liens arising out of any work performed, materials furnished or obligations incurred by GARDEN GROVE, its agents or contractors.
- K. GARDEN GROVE shall obtain all necessary permits plan checks, and inspection for the Anaheim Rehabilitation. Costs for the payment of the foregoing shall be allocated between the Parties in accordance with Section 5 of this Agreement.
- L. GARDEN GROVE shall ensure that in all contracts or agreements GARDEN GROVE enters into with any person(s) or firm(s) to perform work on the Anaheim Rehabilitation, including without limitation construction contractors, design professionals, and consultants, shall contain indemnification and insurance provisions, in favor of GARDEN GROVE and ANAHEIM, their respective officials, officers, and employees, that include requirements, limits, coverages, and terms and conditions in conformance with sound risk management principles for projects of this kind, nature, risk, and complexity. Further, GARDEN GROVE shall ensure that such contracts or agreements provide for indemnity and insurance protection for ANAHEIM in amounts and form at least equal to the protection GARDEN GROVE secures for itself.

Section 4: ANAHEIM's Specific Obligations.

- A. ANAHEIM Will be responsible for the Anaheim Rehabilitation's compliance with the California Environmental Quality Act ("CEQA") (Pub. Resources Code, Section 21000 et seq.).
- B. ANAHEIM will provide inspection services for the Anaheim Rehabilitation as it deems necessary, or promptly upon request by GARDEN GROVE as described in Section 4.B to assure compliance with the Approved Plans and Specifications, including, but not limited to, shop drawing review and/or material inspection. ANAHEIM will promptly notify GARDEN GROVE if any portion of the work appears not to conform to the Approved Plans and Specifications, and GARDEN GROVE shall cause its contractor to correct such non-conforming work.
- C. ANAHEIM will respond to GARDEN GROVE's request for an inspection within two (2) working days. ANAHEIM will be responsible for GARDEN GROVE's contractor's downtime and/or delay due to failure to comply with this provision.

- D. GARDEN GROVE shall promptly inform ANAHEIM of any proposed changes to the construction contract as it relates to the Anaheim Rehabilitation, and obtain ANAHEIM's written approval prior to agreeing to a change order relating to the Anaheim Rehabilitation. Copies of proposed changes affecting ANAHEIM will be provided to ANAHEIM within five (5) working days of submission to GARDEN GROVE. ANAHEIM shall not be responsible for increased costs due to any change order related to the Anaheim Rehabilitation without ANAHEIM's prior written approval. ANAHEIM's Public Utilities General Manager may approve or deny change order requests on behalf of the ANAHEIM.
- E. ANAHEIM shall return comments to GARDEN GROVE on all Anaheim Rehabilitation shop drawing submittals, requests for information, and change order requests within ten (10) working days from receipt of submittals by ANAHEIM. ANAHEIM will be responsible for GARDEN GROVE's contractor's downtime and/or delay due to failure to comply with this provision. This provision shall not apply to plan and specification review process.
- F. Prior to ANAHEIM's acceptance of Anaheim Rehabilitation and GARDEN GROVE filing a notice of completion, ANAHEIM shall review and provide written approval of the Anaheim Rehabilitation. The ANAHEIM's written approval shall only be withheld for work not completed in accordance with the Approved Plans and Specifications. Upon ANAHEIM's written approval, ANAHEIM shall assume ownership and maintenance obligations for improvements within the Anaheim Rehabilitation.

Section 5: Reimbursement

ANAHEIM's entire obligation to reimburse GARDEN GROVE hereunder for the design and construction of the Anaheim Rehabilitation shall not exceed a cumulative total of Four Hundred and Five Thousand Eight Hundred and Nine Dollars (\$ 405,809) ("Total Reimbursement"), except that the Public Utilities General Manager may authorize additional reimbursement equal to not more than fifteen percent (15%) of the Total Reimbursement.

Section 6: Timing of Reimbursement

For each progress payment made by GARDEN GROVE to its consultant or contractor for the Anaheim Rehabilitation, GARDEN GROVE shall submit an invoice to ANAHEIM setting forth ANAHEIM's share of the payment, accompanied by all supporting documentation. ANAHEIM will review the progress payment request and provide GARDEN GROVE with any comments within ten (10) working days. After the invoice is approved by ANAHEIM, ANAHEIM shall pay GARDEN GROVE within forty-five (45) days of ANAHEIM's receipt of invoices and supporting documentation. ANAHEIM shall pay invoices to GARDEN GROVE based on progress payments until 100% of ANAHEIM's share is paid.

Section 7: Indemnification.

- A. Neither GARDEN GROVE nor any officer or employee thereof shall be responsible for any damage or liability incurred by reason of anything done or omitted to be done by ANAHEIM under or in connection with any work, authority or jurisdiction delegated to ANAHEIM under this agreement. Pursuant to Government Code Section 895.4, ANAHEIM shall fully indemnify and hold GARDEN GROVE harmless from any liability imposed for injury as defined in Section 810.8 occurring by reason of anything done or omitted to be done by ANAHEIM under or in connection with any work, authority or jurisdiction delegated to under this Agreement.
- B. Neither ANAHEIM nor any officer or employee thereof shall be responsible for any damage or liability incurred by reason of anything done or omitted to be done by GARDEN GROVE under or in connection with any work, authority or jurisdiction delegated to GARDEN GROVE under this AGREEMENT. Pursuant to Government Code Section 895.4 GARDEN GROVE shall fully indemnify and hold ANAHEIM harmless from any liability imposed for injury as defined in Section 810.8 occurring by reason of anything done or omitted to be done by GARDEN GROVE under or in connection with any work, authority or jurisdiction delegated to GARDEN GROVE under this Agreement.

Section 8: Term. This Agreement will be in full force and effect until the specified obligations of both Parties have been fulfilled. Notwithstanding the foregoing, either Party may terminate this Agreement with or without cause upon giving the other Party one hundred (100) days prior written notice. If this Agreement is terminated, GARDEN GROVE will be paid for those incurred reimbursable costs in accordance with Section 5.

Section 9: Agents. Any contractor or subcontractor performing work in connection with the work described herein on behalf of either Party will be conclusively deemed to be the servant and agent of each respective Party employing the contractor or subcontractors hereof, acting on behalf and within the scope of such contractor and subcontractor employment for the Party.

Section 10: Notices. All notices or other communications required or permitted hereunder will be in writing and will be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by electronic transmission, and will be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications will be addressed as follows:

To GARDEN GROVE: City of Garden Grove
 Public Works Department

Attention: Navin Maru
11222 Acacia Parkway
Garden Grove, CA 92842
(714) 741-5578 Fax

To ANAHEIM: City of Anaheim – Public Utilities Department
201 South Anaheim Boulevard, Suite 1101
Anaheim, CA 92805
Attention: Dukku Lee, Public Utilities General Manager
Facsimile: (714) 765-4138

Section 11: Jurisdiction. In the event of a dispute regarding performance or interpretation of this Agreement, the venue for any action to enforce or interpret this Agreement will lie in the Superior Court of California for Orange County.

Section 12: No Third Party Beneficiaries. This Agreement is entered into by and for ANAHEIM and GARDEN GROVE, and nothing herein is intended to establish rights or interests in individuals or entities not a party hereto.

Section 13: Force Majeure. Except for the payment of money, neither Party will be liable for any delays or other non-performance resulting from circumstances or causes beyond its reasonable control, including without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, acts of third parties, or any law, order, or requirement of any governmental agency or authority.

Section 14: Governing Law. This Agreement will be governed by the laws of the State of California.

Section 15: Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes all previous negotiations and agreements between the Parties pertaining to the subject matter hereof.

Section 16: Waiver. A waiver of a breach of the covenants, conditions, or obligations under this Agreement by either Party will not be construed as a waiver of any succeeding breach of the same or other covenants, conditions, or obligations of this Agreement.

Section 17: Modification. Alteration, change, or modification of this Agreement will be in the form of a written amendment, which will be signed by both Parties.

Section 18: Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will continue in full force and effect.

Section 19: Agreement Execution and Authorization. Each of the undersigned represents and warrants that they are duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity on whose behalf they are executing this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF GARDEN GROVE

By: _____
Scott C. Stiles, City Manager

APPROVED AS TO FORM:

ATTEST:

By: _____
Omar Sandoval,
Deputy City Attorney

By: _____
Teresa Pomeroy, City Clerk

CITY OF ANAHEIM

By: _____
Dukku Lee, Public Utilities General Manager

APPROVED AS TO FORM:

ATTEST:

By: _____
Daniel A. Ballin,
Deputy City Attorney

By: _____
Linda Andal, City Clerk