

**COOPERATIVE AGREEMENT
BETWEEN CITY OF ORANGE AND CITY OF GARDEN GROVE
FOR FUNDING AND CONSTRUCTION OF THE LEWIS STREET IMPROVEMENT
PROJECT**

This **COOPERATIVE AGREEMENT** ("Agreement") is made and entered into this _____ day of _____ 2019 ("Agreement"), by and between the CITY OF ORANGE ("Orange"), a municipal corporation in the State of California, and the CITY OF GARDEN GROVE ("Garden Grove"), a municipal corporation in the State of California (the "Parties").

RECITALS

A. Lewis Street is an existing four-lane secondary arterial street located on the border of Orange and Garden Grove, laying partially in Orange and partially in Garden Grove, as shown in the Project Location Map attached as Exhibit "A" and incorporated herein by reference. Lewis Street runs generally in a north-south direction, and the portion pertinent to this Agreement runs from Chapman Avenue to Garden Grove Boulevard.

B. The Parties agree that Lewis Street is in need of rehabilitation, on portions of the street located in Orange as well in Garden Grove (the "Project").

C. Project improvements will include: 1) traffic control; 2) ADA ramps; 3) asphalt concrete (AC) grinding; 4) AC overlaying; 5) unclassified excavation; 6) AC dig-out repairs with deep lift pavement; 7) adjustment of surface grade utility boxes; 8) covers and vault lids; 9) traffic detector loops; 10) pavement striping; 11) legends; 12) sidewalks; 13) curbs and gutters; 14) alley aprons; and 15) raised pavement markers.

D. Orange has obtained a bid for the Project. Garden Grove has reviewed the bid and agrees with the work to be performed in Garden Grove as well as the contractor's estimated costs therefor. The bid, including the estimate for that portion of the work to be performed in Garden Grove, is attached as Exhibit "B" and incorporated herein by reference.

E. The Parties agree that Orange shall take the lead in managing the Project and that Garden Grove shall reimburse Orange for that portion of the work within Garden Grove according to the provisions set forth herein.

F. Each Party has authorized sufficient funds in its budget to cover the costs of the Project in its respective jurisdiction.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual covenants and conditions contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Project Funding Obligations.

1.1 Garden Grove will be responsible for one hundred percent (100%) of the cost for those portions of the Project which occur within Garden Grove ("Garden Grove Portion"), as set forth in Exhibit "B" ("Garden Grove's Costs"). Garden Grove will pay Orange directly, upon invoice and statement of work completed.

1.2 Orange will be responsible for one hundred percent (100%) of the cost for those portions of the Project which occur within Orange ("Orange Portion"), as set forth in Exhibit "B" ("Orange's Costs"). Orange will also be responsible for the cost of the bid preparation, and all costs associated with Project management. Orange will pay the contractor directly and be reimbursed by Garden Grove for the Garden Grove Portion as provided in Section 2.1.

2. Payment Obligation.

2.1 Garden Grove shall pay for the Garden Grove Portion based on its proportionate share of the actual pavement quantities as measured in the field. The contractor shall provide and verify such amounts to the satisfaction of Garden Grove. In the event of a dispute over the pavement quantity allocations, the Parties shall work cooperatively with the contractor to resolve such dispute.

3. Construction Responsibilities.

3.1 Project Engineer. Orange shall act as Project Engineer and be responsible for all tasks necessary to prepare construction plans, specifications and cost estimates in accordance with all applicable criteria from Orange, Garden Grove, the County of Orange, and Caltrans.

3.2 Utility Relocation/Impacts. Orange and Garden Grove shall work together to identify all conflicting utilities within the Project. Orange shall issue all utility relocation request letters or other communications with utilities.

3.3 Project Plans, Insurance & Warranties.

a. Orange has submitted Project Scope of Work and the contractor's bid proposal to Garden Grove for review and approval and Garden Grove has approved said Project Scope of Work and bid proposal. All work completed in Garden Grove shall be constructed per Garden Grove specifications.

b. Orange shall require the contractor to identify the City of Garden Grove as an additional insured with insurance sufficiently broad to the satisfaction of Garden Grove.

c. Orange shall require the contractor to pass through and assign all warranties to Garden Grove associated with the Garden Grove Portion.

3.4 Project Inspection. Garden Grove shall have access to the Project at all times during construction for the purpose of inspection. Garden Grove shall inspect the Garden Grove Portion regularly. Garden Grove agrees to cooperate with Orange on any joint inspections as requested by Orange. Should Garden Grove deem any remedial work to be necessary, Garden Grove shall notify Orange in writing thereof within three (3) business days of inspection, specifically describing the needed corrections and proposed remedial work. Garden Grove shall be solely responsible for any remedial work that is not brought to Orange's attention in accordance with this Section.

3.5 Traffic Control. Traffic control for the Project may require road/lane closures and traffic signal management. The Parties agree that Orange shall take the lead in coordinating traffic control in and around the Project area and Garden Grove agrees to work cooperatively with Orange in traffic management.

3.6 Permits.

a. Orange shall obtain any and all permits required for the Project, including encroachment permits, Caltrans permits, etc.

b. Garden Grove shall issue any required encroachment permits necessary for the Project at no charge.

3.7 Community Notification. Orange shall provide any and all required notification regarding the Project, including business and neighborhood community notifications.

3.8 Contract Change Orders. Garden Grove shall process any contract change orders ("CCOs") that are deemed necessary by Orange for construction of the Project. If CCOs are needed within the Garden Grove Portion, Garden Grove shall review and approve such CCOs and provide a Project liaison, e.g., City Engineer, during construction to coordinate CCO approval. City Engineer shall provide concurrence on CCOs within three (3) business days of Orange's submittal to Garden Grove. If Garden Grove fails to concur with or propose changes to CCO within such time, such CCO shall be deemed approved.

3.9 Project Acceptance. Prior to Orange's acceptance of Project improvements and filing a notice of completion, Garden Grove City Engineer shall review and provide written approval of all Project work. The Project liaison's written approval shall only be withheld for work not completed in accordance with the construction contract documents

for the Project, which uncompleted work shall be identified during Garden Grove's regular inspections as provided in Section 2.4. Orange shall furnish Garden Grove with one set of record drawings for the completed Project and a copy of the filed notice of completion.

3.10 Garden Grove's Obligations Post-Construction. Upon Garden Grove City Engineers' written approval and Orange's final acceptance of the Project, Garden Grove shall assume ownership, maintenance obligations and environmental mitigation responsibilities for the Garden Grove Portion of the Project.

4. Miscellaneous Obligations.

4.1 Time is of the essence in the execution and performance of this Agreement.

4.2 Indemnification & Hold Harmless. The Parties shall indemnify, defend with counsel approved by the other Party in writing, save and hold each of its elected officials, officers, directors, agents and employees harmless from any and all claims, injuries, liabilities, actions, damages, losses or expenses, of every type and description to which they may be subjected arising out of any act or omission of, its employees, representatives, agents and independent contractors in connection with the implementation of the actions described in this Agreement.

4.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. No assignment of either Party's interest in this Agreement shall be made without the written consent of the other Party.

4.4 Entirety & Amendments. This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated herein shall be binding on either of the Parties.

4.5 Severability. If any part of this Agreement is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

4.6 Notices. Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

CITY OF ORANGE
Public Works Department
300 E. Chapman Ave.
Orange, CA 92866
Attn: City Engineer

CITY OF GARDEN GROVE
Public Works Department
11222 Acacia Parkway
Garden Grove, CA 92840
Attn: City Engineer

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above.

Notwithstanding the above, the Parties may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business hours, on the following business day. Any notices, correspondence, reports and/or statements authorized or required by this Agreement, addressed in any other fashion shall be deemed not given.

4.7 Governing Law & Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

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

4.9 Termination. In the event Orange or Garden Grove defaults in the performance of any of their obligations under this Agreement or materially breaches any of the provisions of this Agreement, the non-breaching Party shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. In the event the breaching Party cures such default within such thirty (30) day period, the election to terminate shall be deemed revoked and of no further force and effect as to that particular default.

4.10 Consent to Breach Not Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

IN WITNESS WHEREOF, each City has caused this Agreement to be executed by its respective mayor and attested by its respective Clerk on the dates written opposite their signatures, all thereunto duly authorized by their City Council respectively.

CITY OF ORANGE,
a municipal corporation

Date: _____

By:

Mark A. Murphy, Mayor

Attest:

Approved as to Form:
ORANGE CITY ATTORNEY

By:

Pamela Coleman, City Clerk

Mary E. Binning, Sr. Asst. City Attorney

CITY OF GARDEN GROVE,
a municipal corporation

Date: _____

By:

Scott C. Stiles, City Manager

Attest:

Approve as to Form:
GARDEN GROVE CITY ATTORNEY

By:

Teresa Pomeroy, City Clerk

Omar Sandoval, City Attorney

EXHIBIT "A"

PROJECT LOCATION MAP

[Beneath this sheet]