

COOPERATIVE AGREEMENT BETWEEN COUNTY OF ORANGE AND CITY OF FOUNTAIN VALLEY

THIS Cooperative AGREEMENT, hereinafter referred to as “**Agreement**”), dated this _____ day of _____, 2020, is made and entered into by and between the COUNTY OF ORANGE, a political subdivision of the State of California, hereinafter referred to as “**County**” and the City of FOUNTAIN VALLEY, a municipal corporation in the State of California, hereinafter referred to as “**City**”. The County and City shall sometimes be referred to separately as a “Party” and collectively as the “Parties”.

RECITALS:

WHEREAS, **City** is contemplating the rehabilitation of the pavement surface of that portion of the SCE Easement Pathway from Bluebird Avenue to Warner Avenue. The Project name shall be Corridor D Bikeway Improvements (the “**Project**”).

WHEREAS, the Project is located within the Easement of SOUTHERN CALIFORNIA EDISON shown on the attached Exhibit A; and

WHEREAS, County desires to contract with City to rehabilitate the Project, and County is willing to do so as the Project Limits are identified in Orange County Transportation Authority’s Districts 1 and 2 Bikeways Strategy Report as a prospective Bikeway Corridor.

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

1. DUTIES OF FOUNTAIN VALLEY

- a. **City** will perform (or cause to be performed) the entire **Project** as a part of **City’s** Public Works pavement rehabilitation efforts. **City** will prepare the request for bids, conduct the bid openings, let the contract to the lowest responsible bidder (the “Successful Contractor”), and oversee and administer the **Project**. In addition, **City** specifically agrees to comply with all Federal, State and local law, including California public works contracting and prevailing wage laws. **County** agrees not to contest or interfere with **City’s** performance of the bidding process nor its selection of the Successful Contractor. However, if County, at its sole discretion, determines the bid process, selection of contractor or other pre-award procedure are not proceeding according to its standards prior to award of contract, County may terminate this Agreement with no liability or obligation to either Party. If **City**, in its sole discretion, determines not to proceed with the **Project** at any time prior to award of contract, this Agreement will terminate with no further action required by either Party.
- b. At least thirty (30) calendar days prior to release of the Notice Inviting Bids for the **Project**, **City** City Engineer shall provide **County’s** Director of Public

Works a copy of the **Project's** plans and specifications for his approval, which approval shall not be unreasonably withheld. If **County's** Director of Public Works objects to the plans and specifications, and if his objections cannot be satisfied through discussions with **City's** City Engineer, this Agreement will automatically terminate and neither Party will have any liability or obligation to the other.

2. **DUTIES OF COUNTY OF ORANGE**

- a. **County** shall pay **City** for the actual cost of the work based upon the unit prices set forth in the bid of the Successful Contractor and quantities actually used but is not to exceed Five Hundred Thousand, Dollars and 00/100 (\$500,000.00). The estimated cost of the **Project** is One Million Sixty Thousand Two Hundred, Dollars and 00/100 (\$1,060,200). **County** shall make one payment to **City** for the **Project** upon official final approval of the work by **City**.
- b. **County** will fully cooperate with **City** and the Successful Contractor in the prosecution of the work, traffic control, and any other matters required for completion of the **Project**.
- c. **County** acknowledges that **City** is not the contractor for the **Project** and that **City** does not warrant any work performed by the Successful Contractor. Notwithstanding the above, **City** shall require in writing that as a condition to performing the **Project**, the Successful Contractor to provide **County** with any and all warranties, insurance coverage, and indemnities and any other rights the Successful Contractor agrees to provide to **City** under the construction contract and as provided by law.

3. **ENTIRE AGREEMENT**

Except as provided above, 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. **ASSIGNMENT**

Neither **City** nor **County** may assign or transfer its rights or obligations under this Agreement, or any part thereof, without the written consent of the other Party.

5. **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.

6. **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.

7. **NO THIRD PARTY RIGHTS**

Except as contemplated herein, 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.

8. **NOTICES**

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

COUNTY OF ORANGE

OC Public Works
601 N. Ross Street
PO Box 4048
Santa Ana, CA 92701
Attn: Director/County Engineer, OC Public Works

CITY OF FOUNTAIN VALLEY

Public Works Department
10200 Slater Avenue
FOUNTAIN VALLEY, CA
92708-4736
Attn: Public Works Director

Either Party may, by notice to the other Party, change the address specified above. Service of notice or communication shall be complete, if personally served, when received at the designated address, for three (3) calendar days after deposit of said notice or communication in the United States mail.

9. **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.

10. **TERM**

The term of this Agreement shall begin upon the Effective Date and run until the Project is completed, but in no event will the term of this Agreement extend beyond July, 2021, without the express written consent of both Parties.

11. **INDEMNIFICATION**

Except for claims arising out of the gross negligence or willful misconduct of **County**, its officers, employees, or agents, **City** hereby agrees to indemnify, defend and hold harmless **County** and its elected and appointed officials, officers, agents and employees from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, and claims for unpaid wages including prevailing wage, for injury to or death of, any person, and for injury to any property, or otherwise arising out of or in any way connected with the performance of this Agreement.

12. **SEVERABILITY**

If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants and conditions shall continue in full force and effect. In addition, the Parties shall cooperate in good faith in an effort to amend or modify this Agreement so that the purpose of the invalidated or voided provision, covenant, and condition can be accomplished to the maximum extent legally permissible; provided, however, that in no event shall any Party be required to agree to an amendment or modification of this Agreement that materially adversely impacts its rights or materially increases its obligations or risks as set forth herein.

13. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts by the Parties hereto. All counterparts shall be construed together and shall constitute one Agreement.

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

CITY OF FOUNTAIN VALLEY,
a municipal corporation

ATTEST:

By: Steve A. Nagel
Steve Nagel, Mayor

Rick Miller
Rick Miller
FOUNTAIN VALLEY City Clerk

APPROVED AS TO FORM:

DATE OF EXECUTION:

Colin Burns
Colin Burns
Attorney for the City
City of Fountain Valley

11/13/2019

IN WITNESS WHEREOF, County has caused this Agreement to be executed by the Chairwoman of the Board of Supervisors and attested by its Clerk on the dates written opposite their signatures, all thereunto duly authorized by the Board of Supervisors.

COUNTY OF ORANGE,
A political subdivision of the State of California

ATTEST:

By: _____
Chairwoman, Board of Supervisors

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

DATE OF EXECUTION



Deputy County Counsel
