

AGREEMENT

This AGREEMENT (“**Agreement**”) is made as of _____, 2022 (“**Effective Date**”) by and between COUNTY OF ORANGE (“**COUNTY**”), political subdivision of the State of California, and the CITY OF FULLERTON (“**CITY**”), a municipal corporation. COUNTY and CITY may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties.**”

RECITALS

- A. On December 12, 2021 the CITY, as the lead agency of the Orangethorpe Avenue Improvement Project (“**Project**”) under the California Environmental Quality Act (CEQA), adopted the exempt status 15301 (c) to rehabilitate a segment of Orangethorpe Avenue between Harbor Boulevard and Lemon Street, as illustrated on “**Exhibit A,**” which shall include but not limited to pavement reconstruction, driveway approach reconstruction for compliance with the Americans with Disabilities Act (“**ADA**”), 42 U.S.C. § 12101 et seq., repair of damaged curb, gutter and sidewalk, construction of missing sidewalk, concrete bus pads, pedestrian push button upgrades for ADA compliance, sewer manhole and water valve adjustments and roadway signage and striping.
- B. The COUNTY acknowledges Orangethorpe Avenue is a significant thoroughfare in the COUNTY’s arterial road network connecting cities and freeways, and that the segment within the Project limits at times serves as an alternative route for State Route 91 and State Route 57; and provides pedestrian access to a Fullerton Park and Ride.
- C. COUNTY is amenable to bringing a resolution (“**Resolution**”) to the Orange County Board of Supervisors (“**Board**”) for the Board to find the Project is of general COUNTY interest in that it would make rights-of-way ADA compliant and improve connectivity for residents and business throughout northern Orange County.
- D. Upon Board adoption of the Resolution by four-fifths vote of its members, COUNTY is agreeable to paying the City \$1,000,000 toward the Project as COUNTY aid extended per Sections 1680-1684 of the California Street and Highway Code.

E. This Agreement defines the specific terms, conditions and funding responsibilities between the Parties for the Project.

NOW, THEREFORE, it is mutually agreed between the Parties as follows:

1. INCORPORATION OF RECITAL TERMS

The terms set forth above in the Recitals are fully incorporated herein by this reference as though set forth fully herein.

2. TERM

This Agreement shall commence on the Effective Date and continue in full force and effect until the COUNTY has received the accounting required by 4.e below unless earlier terminated by either Party in accordance with the terms herein.

3. TERMINATION

Either Party may only terminate this Agreement within five (5) business days of Agreement execution by written notice to the other as set forth herein.

4. CITY RESPONSIBILITIES

CITY agrees to:

- a. Be the lead agency for funding, managing, and implementing the Project, design, PS&E, right-of-way acquisitions, relocations;
- b. Maintain CEQA and other regulatory agency compliance, and furnish COUNTY documentation of compliance upon request;
- c. Invoice the COUNTY for payment of a one-time contribution of \$1,000,000 to the CITY in accordance with this Agreement and acknowledge the COUNTY has no other financial or other obligation for the Project, except as stated in Section 5 subsection (a) below, and that the COUNTY is not responsible for Orangethorpe or any property or installations within the Project limits.
- d. Be solely responsible for all operation and maintenance for Orangethorpe Avenue or any property or installations within the Project limits during the Project and post-Project.

e. Maintain an accounting of the funds provided by the COUNTY pursuant to Section 5 (COUNTY RESPONSIBILITIES), subsection a, below. Sixty (60) days after the Project is completed, the CITY shall provide to the COUNTY an accounting of the funds used and return any remaining funds, if any, to the COUNTY per Section 1684 of the Streets & Highways Code.

5. COUNTY RESPONSIBILITIES

COUNTY agrees to:

a. Adopt a resolution and make findings concerning the Project in order for COUNTY to pay the CITY \$1,000,000 toward the Project as COUNTY aid extended per Sections 1680-1684 of the California Street and Highway Code;

b. Within forty (40) business days of receipt of an invoice from the CITY in accordance with this Agreement, shall make a one-time contribution of \$1,000,000 to the CITY to be applied towards the Project cost. COUNTY shall pay the CITY this one-time contribution sent to the CITY at the address in Section 8 (NOTICE) below.

6. COMPLIANCE WITH LAWS AND PERMITS

CITY shall, at its own cost and expense, promptly and at all times observe, comply with and carry out all present and future orders, regulations, directions, rules, laws, ordinances, permits and requirements of all governmental authorities, including but not limited to environmental regulatory authorities, with jurisdiction in, on, over and about the Project, or which arise from this Agreement.

In addition, CITY shall ensure that all construction contemplated herein is performed in accordance with any NPDES permit requirements or other water quality statutes, regulations, ordinances, or permits, applicable to the construction, including but not limited to use of appropriate best management practices, so as to ensure that pollutants are not discharged into a flood control system.

No approvals or consents given hereunder by COUNTY, as a party to this Agreement, shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

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7. INDEMNIFICATION

A. To the fullest extent permitted by law, CITY shall defend (at CITY's sole cost and expense with legal counsel reasonably acceptable to COUNTY), indemnify, protect, and hold harmless the COUNTY and their elected and appointed officials, officers, employees, agents, contractors and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board (collectively and individually referred to as the "COUNTY's Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (CITY's employees included), for damage to property, including property owned by COUNTY, or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful misconduct of CITY or CITY's Indemnified Parties [as defined below] in connection with or arising out of the performance of this Agreement.

B. The indemnification and defense obligations of this Agreement shall survive its expiration or termination. The Parties agree that this Agreement shall constitute a separate agreement from any approval via third parties, and if the CITY Project is invalidated, in part or in whole, rendered null or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section (INDEMNIFICATION), which shall survive such invalidation, nullification or setting aside.

8. NOTICES

All notices, documents, correspondence and communications concerning this Agreement shall be addressed as set forth in this Section, or as the Parties may hereafter designate by written notice and shall be sent through the United States mail with postage prepaid. Any such mailing shall be deemed served or delivered forty-eight (48) hours after mailing. Either Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery or by Federal Express or similar courier service and so given shall be deemed to have been given upon receipt.

ORANGETHORPE AVE IMPROVEMENTS (HARBOR BLVD – LEMON ST) PROJECT

MA#-080-__ _

To COUNTY:

County of Orange
OC Public Works
601 N. Ross Street
Santa Ana, CA 92701
Attn: Kevin Onuma, PE
County Engineer, OC Public Works
Tel: (714) 647-3939
Email: Kevin.Onuma@ocpw.ocgov.com

To CITY:

City of Fullerton
303 W. Commonwealth Avenue
Fullerton, CA 92832
Attn: Meg McWade, Public Works Director
Tel: (714) 738-6723
Email: MMcWade@cityoffullerton.com

9. AUTHORITY

The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

10. NO THIRD-PARTY BENEFICIARIES/RELATIONSHIP OF PARTIES

This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person, group or entity as a third-party beneficiary. This Agreement is by and between COUNTY and CITY and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between COUNTY and CITY.

11. GOVERNING LAW

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed in accordance with 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. The Parties specifically agree that by soliciting and entering into and performing services under this Agreement, CITY shall be deemed doing business within Orange County from the time of initiation of work, through the period when all work under this Agreement is terminated.

12. SEVERABILITY

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

13. WAIVER OF RIGHTS

The failure of any Party to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any right or remedy that Party may have; and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Agreement thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Agreement. Any waiver, in order to be effective, must be signed by the Party whose right or remedy is being waived.

14. LITIGATION FEES

In the event of a dispute between the Parties concerning claims arising out of this Agreement, or in any action or proceeding brought to enforce or interpret any provision of this Agreement or where any provision hereof is validly asserted as a defense, each Party shall bear its own litigation and collection expenses, witness fees, including but not limited to attorney fees and court costs.

15. REMEDIES

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment or any other remedy consistent with the purposes of this Agreement.

16. FORCE MAJEURE

Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other Party; when satisfactory evidence of such cause is presented to

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the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

17. COUNTERPARTS

Agreement may be executed and delivered in any number of counterparts, each of which, shall be deemed an original, and all of which together shall constitute the same Agreement.

18. AMENDMENT(S)

It is mutually understood and agreed that no addition to, alteration of, or variation of the terms of this Agreement, nor any oral understanding or agreement not incorporated herein, shall be valid unless made in writing and signed and approved by all necessary Parties.

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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

COUNTY

Approved as to Form
Office of the County Counsel
Orange County, California

By: _____
Deputy

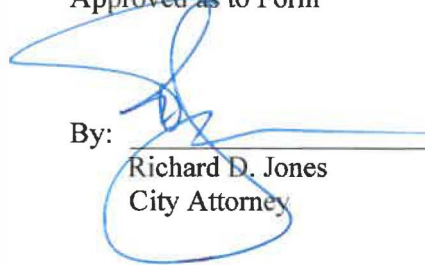
Date: _____

County of Orange,
a political subdivision of the State of
California,

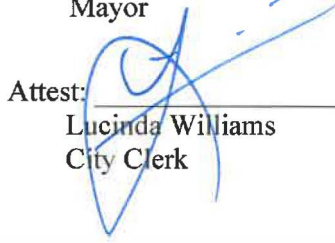
By: _____
Chairman of the Board of Supervisors
Orange County, California

CITY OF FULLERTON

Approved as to Form


By: _____
Richard D. Jones
City Attorney


By: _____
Fred Jung
Mayor


Attest: _____
Lucinda Williams
City Clerk

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535

ATTEST:

Robin Stieler
Clerk of the Board of Supervisors
Orange County, California

Approved

By: _____

Date: _____

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MA#-080-_____

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

COUNTY

Approved as to Form
Office of the County Counsel
Orange County, California

By: 
Deputy, Stephanie Clark

Date: 10/20/2022

County of Orange,
a political subdivision of the State of
California,

By: _____
Chairman of the Board of Supervisors
Orange County, California

CITY OF FULLERTON

Approved as to Form

By: _____
Richard D. Jones
City Attorney

By: _____
Fred Jung
Mayor

Attest: _____
Lucinda Williams
City Clerk

Signed and certified that a copy of this
document has been delivered to the Chair
of the Board per G.C. Sec. 25103,
Reso 79-1535

ATTEST:

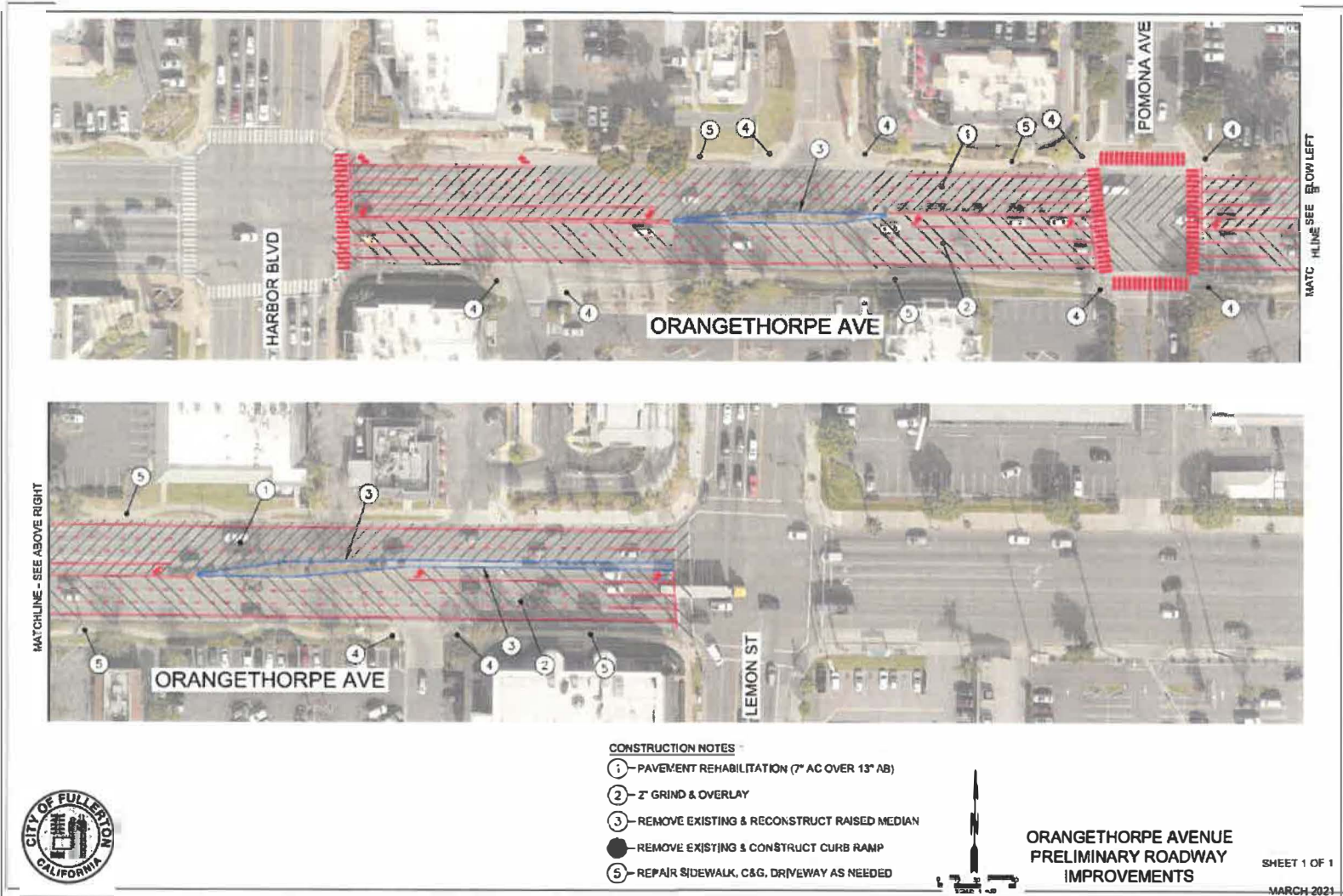
Robin Stieler
Clerk of the Board of Supervisors
Orange County, California

Approved

By: _____

Date: _____

Exhibit A



MATCHLINE - SEE ABOVE RIGHT

MATCHLINE SEE BELOW LEFT



- CONSTRUCTION NOTES**
- ① - PAVEMENT REHABILITATION (7" AC OVER 13" AB)
 - ② - 2" GRIND & OVERLAY
 - ③ - REMOVE EXISTING & RECONSTRUCT RAISED MEDIAN
 - ④ - REMOVE EXISTING & CONSTRUCT CURB RAMP
 - ⑤ - REPAIR SIDEWALK, C&G, DRIVEWAY AS NEEDED



ORANGETHORPE AVENUE
PRELIMINARY ROADWAY
IMPROVEMENTS

SHEET 1 OF 1
MARCH 2021