

JUL 5 2019

COOPERATIVE AGREEMENT
BETWEEN
THE CITY OF COSTA MESA
AND
THE CITY OF SANTA ANA
FOR THE PAVEMENT REHABILITATION OF MACARTHUR BOULEVARD
FROM THE SANTA ANA RIVER TO HARBOR BOULEVARD

THIS COOPERATIVE AGREEMENT ("Agreement") is made and entered into this 2nd day of July, 2019, by and between the CITY OF COSTA MESA, a municipal corporation ("COSTA MESA"), and the CITY OF SANTA ANA, a municipal corporation ("SANTA ANA").

RECITALS:

A. WHEREAS, COSTA MESA and SANTA ANA desire to enter into an agreement to resurface and stripe the roadway pavement on MacArthur Boulevard from the Santa Ana River to Harbor Boulevard (the "PROJECT"); and

B. WHEREAS, the PROJECT is included in COSTA MESA plans for its Street Rehabilitation Project (Zones 2 and 5), Project No. 18-16, a record of which is available at the office of the City Clerk, 77 Fair Drive, Costa Mesa, California, and incorporated herein by this reference; and

C. WHEREAS, the PROJECT has been awarded to R.J. Noble Company to perform the construction work; and

D. WHEREAS, the PROJECT lies partly within the corporate and jurisdictional limits of SANTA ANA and partly within the corporate and jurisdictional limits of COSTA MESA; and

E. WHEREAS, SANTA ANA and COSTA MESA are each empowered by law to expend public monies to improve MacArthur Boulevard; and

F. WHEREAS, SANTA ANA and COSTA MESA desire to accomplish all of the needed work as described herein by a single public works project in which COSTA MESA will act as the lead agency, and SANTA ANA will reimburse COSTA MESA for SANTA ANA's portion of the construction costs; and

G. WHEREAS, the total PROJECT construction cost is estimated at \$515,050.13, and the parties desire to share the construction costs as set forth herein; and

H. WHEREAS, the PROJECT is declared categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301(c).

NOW, THEREFORE, COSTA MESA AND SANTA ANA agree as follows:

1.0 CONSTRUCTION COST

The total PROJECT construction cost is estimated at \$515,050.13, as shown in Exhibit "A," attached hereto and incorporated herein by this reference. The total estimated PROJECT construction cost will be divided between the parties as follows:

	<u>COSTA MESA</u>	<u>SANTA ANA</u>	<u>TOTAL</u>
Construction Cost	\$450,481.73	\$53,807.00	
Contingency (10%)		\$5,380.70	
Construction Management (10%)		\$5,380.70	
Total		\$64,568.40	\$515,050.13

2.0 COSTA MESA'S RIGHTS AND DUTIES

- 2.1 COSTA MESA will be the lead agency for the design and construction work and will provide all construction management. COSTA MESA will be solely responsible for the administration and performance of the contract awarded to the contractor for the construction of the PROJECT.
- 2.2 COSTA MESA will pay its proportionate share of materials testing, site surveys, construction engineering and construction management.
- 2.3 COSTA MESA will pay its proportionate share of construction cost, which is estimated in Exhibit "A" of this Agreement.
- 2.4 COSTA MESA will notify SANTA ANA in writing of any changes, increased costs, and meetings associated with COSTA MESA's lead agency responsibilities for the PROJECT.
- 2.5 COSTA MESA will request written approval of change orders from SANTA ANA's Executive Director of the Public Works Agency for work within SANTA ANA, prior to implementation of such change orders. COSTA MESA will permit SANTA ANA to enter and inspect within COSTA MESA boundaries for the purpose of overseeing COSTA MESA lead agency functions.
- 2.6 COSTA MESA will require Contractor to obtain a SANTA ANA business license prior to starting work.
- 2.7 COSTA MESA will provide SANTA ANA final record drawings for the PROJECT within sixty (60) days of the completion and acceptance of construction.

3.0 SANTA ANA'S RIGHTS AND DUTIES

- 3.1 SANTA ANA will waive all permit fees for work within SANTA ANA.
- 3.2 SANTA ANA will review all progress payments for PROJECT. If SANTA ANA contests a progress payment, SANTA ANA will request withholding of the payment within five (5) business days of receipt of such payment request. SANTA ANA will provide the information necessary to substantiate its position that the required

progress has not been met.

- 3.3 SANTA ANA's Executive Director of the Public Works Agency will review COSTA MESA's change order requests for changes to work within SANTA ANA. Approval of such requests will not be unreasonably withheld. SANTA ANA will have a minimum of five (5) working days to review and approve change orders.
- 3.4 SANTA ANA will have inspection authority within SANTA ANA jurisdictional boundaries and will be notified of the progress of the PROJECT for such purposes. SANTA ANA will also have the right to enter and inspect within COSTA MESA boundaries at all times for the purposes of overseeing COSTA MESA lead agency functions.
- 3.5 SANTA ANA will pay its proportionate share of construction, materials testing, site surveys, construction engineering and construction management cost, which is estimated in Exhibit "A" of this Agreement, within thirty (30) days after receipt of an invoice from COSTA MESA.

4.0 JOINT RIGHTS AND DUTIES

- 4.1 If the amounts expended for the PROJECT exceed the cost estimates set forth in Exhibit "A," then SANTA ANA will be solely responsible for paying for the additional costs occurring within the jurisdictional boundaries of SANTA ANA, and COSTA MESA will be solely responsible for paying for the additional costs occurring within the jurisdictional boundaries of COSTA MESA.
- 4.2 If this Agreement involves expenditures of State funds aggregating in excess of Ten Thousand Dollars (\$10,000), then, pursuant to California Government Code section 8546.7, both parties will be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under this Agreement.
- 4.3 Mutual Indemnification
 - (a) Neither SANTA ANA nor any elected official, officer, agent or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by COSTA MESA, its officers, agents, employees or engineers under or in connection with any work, authority, or duties delegated to COSTA MESA under this Agreement. It is also understood and agreed that, pursuant to Government Code section 895.4, COSTA MESA shall fully indemnify, defend and hold harmless SANTA ANA, its elected officials, officers, agents, employees and engineers from any liability imposed for any injury (as defined by Government Code section 810.8), occurring by reason of anything done or omitted to be done by COSTA MESA, its officers, agents, employees or engineers under or in connection with any work, authority, or duties delegated to COSTA MESA under this Agreement.
 - (b) Neither COSTA MESA nor any elected official, officer, agent or employee thereof shall be responsible for any damage or liability occurring by reason

of anything done or omitted to be done by SANTA ANA, its officers, agents, employees or engineers under or in connection with any work, authority, or duties delegated to SANTA ANA under this Agreement. It is also understood and agreed that pursuant to Government Code section 895.4, SANTA ANA shall fully indemnify, defend and hold harmless COSTA MESA, its elected officials, officers, agents, employees and engineers from any liability imposed for any injury (as defined by Government Code section 810.8) occurring by reason of anything done or omitted to be done by SANTA ANA, its officers, agents, employees or engineers in connection with any work, authority, or duties delegated to SANTA ANA under this Agreement.

5.0 GENERAL PROVISIONS

- 5.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.
- 5.2 Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours 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.

IF TO SANTA ANA

City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701
Tel: (714) 647-5690
Attn: Fuad Sweiss,
Executive Director

IF TO COSTA MESA:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5291
Attn: Raja Sethuraman,
Public Services Director

- 5.3 Attorneys' Fees. In any action or proceeding to enforce or interpret any provision of this Agreement, each party will bear its own attorneys' fees and costs.
- 5.4 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

- 5.5 **Compliance with All Laws.** The parties shall comply with all applicable statutes, ordinances, regulations, and requirements of all governmental entities in the performance of this Agreement.
- 5.6 **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.
- 5.7 **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.
- 5.8 **Amendments.** Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.
- 5.9 **Waiver.** The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.
- 5.10 **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.
- 5.11 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.
- 5.12 **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 appear on the following page.]

IN WITNESS WHEREOF, COSTA MESA and SANTA ANA have caused this Agreement to be executed by and through their respective authorized officers, as of the date first written above.

CITY OF SANTA ANA

CITY OF COSTA MESA

By: *Kristine Ridge*
Kristine Ridge
City Manager

By: *Lori Ann Farrell Harrison*
Lori Ann Farrell Harrison
City Manager

ATTEST:

ATTEST:

Daisy Gomez 
Daisy Gomez
Clerk of the Council

Brenda Green 
Brenda Green
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

John M. Frank
Sophia Carvalho *for*
City Attorney

Kimberly Hall Barlow
Kimberly Hall Barlow
City Attorney

RECOMMENDED FOR APPROVAL:

RECOMMENDED FOR APPROVAL:

Fuad Swais
Fuad Swais
Public Works Agency Executive Director

BM Raja Sethuraman
Raja Sethuraman
Public Services Director

EXHIBIT A
ESTIMATED CONSTRUCTION COSTS

