

COOPERATIVE AGREEMENT BETWEEN CITY OF ORANGE AND CITY OF ANAHEIM
FOR FUNDING, DESIGN AND CONSTRUCTION OF THE ORANGEWOOD AVENUE
BRIDGE WIDENING OVER THE SANTA ANA RIVER AND A NEW CITY OF ORANGE
WATER MAIN ALONG ORANGEWOOD AVENUE

This Cooperative Agreement is made and entered into this 13th day of February 2018 ("Agreement"), by and between the CITY OF ORANGE ("Orange"), a municipal corporation in the State of California, and the CITY OF ANAHEIM ("Anaheim"), a municipal corporation in the State of California. The Cities shall sometimes be referred to separately as a "Party" and collectively as the "Parties."

RECITALS

- A. Orangewood Avenue, from the I-5 Freeway to Eckhoff Street, is a designated Primary Arterial on the City of Anaheim's Planned Roadway Network and the Orange County Transportation Authority's Master Plan of Arterial Highways (MPAH). Orangewood Avenue has a high volume Average Daily Traffic of 25,000 vehicles per day per Orange County Transportation Authority's 2016 Traffic Flow Map.
- B. The segment of Orangewood Avenue between the west bank of the Santa Ana River to the SR-57 Freeway is currently a four-lane undivided highway with an eastbound right turn lane at the SR-57 Freeway. This segment of Orangewood Avenue also includes Caltrans Bridge No. 55C0050 over the Santa Ana River.
- C. Orangewood Avenue from State College Boulevard to the Santa Ana River, is an existing four-lane undivided highway.
- D. Based on the City of Anaheim's Platinum Triangle Implementation Plan, Update #4 for Public Works Backbone Facilities Improvements (PTIP), the Orangewood Avenue widening projects include:
- Project 3B from the State College Boulevard to South DuPont Drive,
Project 3C from South DuPont Drive to the Santa Ana River (City boundary limit),
Project 3D from the Santa Ana River to East of the SR-57 Freeway (all within the City of Orange limits).
- Collectively the projects will widen Orangewood Avenue from a four-lane undivided highway into a six-lane divided facility. The Orangewood Bridge (Project 3D) will be widened to accommodate one additional westbound lane and sidewalks with a five-lane divided highway configuration ("Project").
- E. The existing Orangewood Avenue Bridge over the Santa Ana River provides no existing sidewalk on the south side of the bridge. Anaheim has identified a need to improve pedestrian access of the Orangewood Avenue Bridge over the Santa Ana River with sidewalks on both sides of the bridge and Class II bike lanes. The Project will provide the necessary width, however the Class II bike lanes will not be installed on the widened bridge until it can be accommodated with

the Caltrans interchange improvements at the SR-57 Freeway, which is currently in the environmental study phase.

F. The Project is within the municipal jurisdictions of the City of Anaheim and the City of Orange, the County of Orange, and Caltrans. The City of Orange has acknowledged ownership and maintenance responsibilities of the existing Orangewood Avenue Bridge over the Santa Ana River.

G. Pursuant to State and local guidelines, this project is required to satisfy the requirements of the California Environmental Quality Act (CEQA). This project was analyzed on a program level by Supplemental Environmental Impact Report No. 339, which was certified by the Anaheim City Council on October 26, 2011. The project will provide an amendment to the Impact Report No. 339 for the Orangewood Avenue Bridge Widening for City Council approval, to complete and satisfy the statutory requirements of the California Environmental Quality Act of 1970 (CEQA), as amended.

H. Project improvements for the bridge and roadway transition will include: 1) widening and restriping the existing roadway to five through lanes with a bike lane and a sixth eastbound right turn lane dropping at the SR-57 Freeway; 2) widening of the existing bridge with raised sidewalks, concrete barriers, pedestrian railing; 3) reconstruction of paved bike trails undercrossing ramps and driveway approaches; 4) drainage improvements; 5) landscape improvements; 6) retaining walls; and 7) a new transmission water main on Orangewood Avenue through the bridge.

I. The Project will develop plans to accommodate a new transmission water main on Orangewood Avenue from State College Boulevard through the widened portion of the bridge, under the SR-57 Freeway and tie in at Eckhoff Street. The plans for the water main shall be prepared in accordance with the City of Orange Standards. Street restoration, signing and striping plans shall per the City of Orange's standards.

J. The Orange Water Main will be designed and constructed in two separate phases. Phase I will be designed and constructed as part of Project 3B and 3C with the Orangewood Widening from State College to the Orangewood Avenue Bridge at the Santa Ana River. Phase II will be designed and constructed as part of the Project 3D with the Orangewood Avenue Bridge Widening over the Santa Ana River to the Eckhoff Street.

K. The Cities wish to specify their respective responsibilities for the design, right-of-way acquisition, utility relocation, environmental documents, and construction of the Project.

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. Anaheim Project Funding Obligations

1.1 Anaheim will be responsible for one hundred percent (100%) funding for completion of the street and bridge portions of the Project, including the costs for engineering design, review, inspection, oversight, utility relocation coordination, construction, construction engineering, financial coordination, property acquisition assistance and any other Project related administration performed by Anaheim ("**Anaheim's Costs**").

- a. Anaheim shall be responsible for actual project costs and expenses for the work to be performed within the City of Orange from the Platinum Triangle Community Facilities District Funds in the estimated amount of Nine Million, Eight Hundred and Twelve Thousand, Seven Hundred and Fifty-Eight Dollars (\$9,812,758).
- b. Anaheim shall be responsible for right-of-way and permits, including title and appraisal reports, and administration by Anaheim, required for the bridge widening.

1.2 Orange will be responsible for one hundred percent (100%) funding for Orange Water Main design, review, inspection, construction, construction engineering and any other Project -related administration costs performed by Anaheim ("**Orange's Costs**").

- a. Orange shall pay Anaheim for all actual expenses, an estimated amount of Two Million, Seven Hundred and Eighty-Two Thousand, One Hundred and Eighty-Seven Dollars (\$2,782,187), for Design, including right-of-way engineering, Construction, Construction Contingency, and Construction Management & Inspection of the Orange Water Main.
- b. Orange shall pay Anaheim as follows:
 - i. One Hundred and Twenty Thousand, Eight Hundred and Sixty Dollars (\$120,860), for the Design within thirty (30) calendar days from the date of this Agreement; and
 - ii. Two Million, Six Hundred and Sixty-One Thousand, Three Hundred and Twenty-Seven Dollars (\$2,661,327), for Construction, Construction Contingency, and Construction Management & Inspection within sixty (60) calendar days from the construction bid opening date.
- c. The Project may be constructed in segmented portions, as may be determined by Anaheim, in its sole discretion.
- d. Orange shall be responsible for any and all unforeseen costs above and beyond the estimated amounts noted in the paragraphs above for the Orange Water Main. Anaheim shall be responsible for returning any unspent funds to Orange, within ninety (90) calendar days from filing the Notice of Completion for the Project.

2. Environmental, Right-of-Way Acquisition, Design, and Construction

2.1 CEQA. City of Anaheim is hereby designated as the Lead Agency for Project and is responsible for preparing, processing and securing all necessary environmental documents required by CEQA, as amended.

2.2 Project Engineer. Anaheim is hereby designated as Project Engineer to perform all tasks necessary to prepare construction plans, specifications and cost estimates in accordance with all applicable criteria from Orange, the County of Orange, and Caltrans, and to advertise, award and administer the construction of Project and to execute and deliver all documents required in connection with the construction of Project. Anaheim shall comply with all applicable provisions of the Public Contract Code and other applicable federal, state and local laws. Furthermore, Anaheim shall coordinate with Orange when dealing with the community to ensure that community concerns are addressed in a manner acceptable to the Parties.

2.3 General Plan Conformance. Anaheim and Orange have determined that the Project conforms to their respective City General Plan.

2.4 Right-of-Way Acquisition. Anaheim shall be responsible for identifying right-of-way requirements within the Project limits, and shall also be responsible for any appraisals of properties needed for the Project and conducting the right-of-way acquisition.

2.5 Orange Water Main Encroachment.

a. Repairs, Renewals, Replacements, Upgrading and Modifications.

Orange shall be responsible for scheduling, contracting and implementing any repairs, renewals, replacements, upgrading and modifications that may be required in order to maintain the integrity of the Orange Water Main and associated facilities. All street trenching and restorations in Anaheim's right of way shall be performed in accordance with any and all of Anaheim's standards and requirements.

b. Permit Requirements.

Anaheim shall have the right, during the term of this Agreement, to review any proposed alterations or improvements or attached fixtures or structures to the Orange Water Main within Anaheim's Right-of-Way. Anaheim shall also have the right to approve said alterations, improvements and structures, in its sole and reasonable discretion. Orange shall obtain from Anaheim a no-fee Right-of-Way Construction Permit (RCP) to allow Orange and/or its contractors access to the Orange Water Main facilities within Anaheim's Right-of-Way. Any municipal property damaged or destroyed by Orange and/or its contractors in the exercise of the rights hereunder shall be promptly repaired or replaced by Orange and/or its contractors, and restored to its pre-existing condition at no cost to Anaheim.

c. Relocation.

Orange understands and agrees that (i) Anaheim at some future time, may need to work on the Anaheim Right-of-Way under and/or around the area occupied by the Orange Water Main (such work including but not limited to the following: street improvements, storm drains, sewer, potable and non-potable water lines, electric lines, etc.); (ii) such work may cause damage to Orange Water Main and/or may require relocation of all or part of the Orange Water Main; (iii) except in the case of an emergency, Anaheim shall consult with Orange as to whether or not such work should be performed, or attempted to be performed, without relocating of all or part of the Orange Water Main; (iv) Orange shall be responsible for all expenses related to demolishing, repairing and replacing the Orange Water Main, and under no circumstances shall Anaheim be required to replace or repair the Orange Water Main or be required to compensate Orange for any expenses related to the demolition, repair, relocation or replacement of the Orange Water Main; (v) in the event that, after consultation with Orange, Orange prefers that the work be attempted without relocating the Orange Water Main (i.e. attempt to work around the Orange Water Main), Orange agrees to reimburse Anaheim, for any additional costs Anaheim may reasonably incur to enable the work to be attempted, and for minimizing any damage to Orange Water Main, without relocation of the Orange Water Main; provided however, that such costs shall not include any costs, including but not limited to labor, equipment, materials, contractors, or subcontractors, which Anaheim would have incurred, in order to perform the necessary work in the absence of the Orange Water Main.

d. Emergency Work.

In the event of a bona fide emergency, any Party may proceed with enforcement measures it reasonably deems necessary to protect the existing street improvements within Anaheim's Right-of-Way, but such Party shall notify the other Party of such action as soon thereafter as possible. Orange shall be responsible for any damage cause by the Orange Water Main.

e. Removal and Abandonment of the Orange Water Main.

Should Orange at any time abandon the use of the Orange Water Main, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then Anaheim shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement. Anaheim, at its option, may remove any improvements remaining on the abandoned property, at Orange's expense.

f. Orange shall not assign, sublet or transfer this Agreement or any right hereunder to any other party or parties. Any assignment, subletting, or transferring of this Agreement, shall be void for all purposes and Anaheim may, at its option, declare a forfeiture of the same in any manner provided by law and may terminate this Agreement.

2.6 Utility Relocation. Anaheim and Orange shall work together to identify all conflicting utilities within the Project. Anaheim shall issue all utility relocation request letters. Anaheim shall issue concurrence letters to all utilities for relocation requests, assist with relocation efforts and perform relocations of Anaheim-owned utilities as required.

2.7 Project Plans, Insurance & Warranties.

- a. Anaheim shall submit Project plans, specifications and engineer's estimate to Orange for review and approval prior to advertising Project for construction bids. Prior to Anaheim advertising Project, Orange shall promptly review the plans and special provisions and either approve or provide comments on said plans and special provisions within fifteen (15) business days of receipt of such plans and special provisions from Anaheim. Should Orange fail to provide timely comments on, and/or approval of these plans or special provisions in accordance with this time period, Anaheim may make a written demand to Orange for a response. If Orange thereafter fails to provide comments on, and/or approve such plans or special provisions within three (3) business days of receipt of such demand, such plans or special provisions shall be deemed approved by Orange.
- b. Anaheim shall require its contractor to identify Orange as an additional insured with insurance sufficiently broad to the satisfaction of Orange.
- c. Anaheim shall require its contractor to pass through and assign all warranties to Orange associated with the project in Orange and their Water Main.

2.8 Project Advertisement. Upon written approval of the final Project plans, specifications and engineer's estimate by Orange, Anaheim shall perform all of the administrative work required for advertising for bids, dealing with bid disputes and awarding the construction contract to the lowest responsible and responsive bidder. Anaheim may in its discretion reject all bids. If, after bids are opened, it is determined that insufficient funds are available to construct Project, Anaheim and Orange shall meet and confer to determine a course of action for the Project.

2.9 Project Inspection. Orange shall have access to the Project at all times during construction for the purpose of inspection. Orange, at their own expense, shall inspect the Project regularly. Should Orange deem any remedial work to be necessary, Orange shall notify Anaheim in writing thereof within three (3) business day of inspection, specifically describing the needed corrections and proposed remedial work. Orange shall be solely responsible for any remedial work that is not brought to Anaheim's attention in accordance with this paragraph.

2.10 Contract Change Orders. Anaheim shall process any contract change orders ("CCOs") that are necessary for construction of the Project. If CCOs are needed within the Orange Water Main Portion (Orange Costs), Orange shall review and approve such CCOs and provide a Project liaison ("City Engineer") during construction to coordinate CCO approvals. City Engineer shall provide concurrence on CCOs within three (3) business days of Anaheim's

submittal to Orange. If Orange fails to concur with or propose changes to CCO within such time, such CCO shall be deemed approved.

2.11 Project Acceptance. Prior to Anaheim's acceptance of Project improvements and filing a notice of completion, City Engineer shall review and provide written approval of all Project work. The City Engineer'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 dealt with during Orange's regular inspections. Anaheim shall furnish Orange with one set of record drawings for the completed Project and a copy of the filed notice of completion.

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

3. Miscellaneous Obligations

3.1 Time is of the Essence. The funding source for the Project requires construction funds to be expended by a date certain. Therefore, time is of the essence. Orange agrees to execute its responsibilities in an expeditious manner so as not to jeopardize Project funding.

3.2 Indemnification & Hold Harmless. The Parties shall indemnify, defend with counsel approved 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.

3.3 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.

3.4 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.

3.5 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.

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

CITY OF ANAHEIM
Public Works Department
200 S. Anaheim Blvd
Anaheim, CA 92805
Attn: City Engineer

CITY OF ORANGE
Public Works Department – Water Division
189 S. Water Street
Orange, CA 92866
Attn: Water Manager

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, 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.

3.7 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.

3.8 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.

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

3.10 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 ANAHEIM,
a municipal corporation

Date: 1/9/18

By: 
Tom Tait, Mayor

Attest:

Approve as to Form:
ANAHEIM CITY ATTORNEY

By: 
Bryn M. Morley, Deputy City Attorney


Theresa Bass, Acting City Clerk

CITY OF ORANGE,
a municipal corporation

Date: 2/21/18

By: 
Teresa E. Smith, Mayor

Approved as to Form:

Attest:

By:  chief clerk
Mary E. Murphy, City Clerk
124739

By: 
Wayne W. Winthers, City Attorney