

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal
Dept: City Manager
Subject: COOPERATIVE AGREEMENT FOR
KATELLA AVENUE SMART STREET W/
THE CITY OF ANAHEIM

From: Keith G. Jones
Dept: Public Works
Date: October 27, 2009

OBJECTIVE

Request for City Council approval to enter into an agreement with the City of Anaheim for street improvements for Katella Avenue Smart Street from Humor Drive to Jean Street.

BACKGROUND

Katella Avenue has been designated as a Smart Street by the Orange County Transportation Authority (OCTA) on the Master Plan of Arterial Highways. Katella Avenue between Humor Drive to Jean Street (the project limits) is in need of widening and re-striping in order to increase the traffic carrying capacity. Improvements to the intersections include widening and re-striping to six through lanes, median modifications, traffic signal improvements, coordination and construction of bus turnouts, sidewalk, curb and gutter, handicap ramps, and drainage improvements.

A portion of the proposed widening on the south side of Katella Avenue between Euclid Street and 150 feet east of Jean Street will be in Garden Grove. Also, a portion of Brookhurst Street south of Katella Avenue is entirely within Garden Grove. Because the project lies within the City of Anaheim and the City of Garden Grove, both cities must enter into a cooperative agreement for these improvements.

DISCUSSION

This agreement establishes that the City of Anaheim will be the lead agency for the project and be responsible for all work involved in the construction of the project including advertising, bid award, and construction. Anaheim will prepare construction plans, specification, and cost estimates in accordance with the Katella Avenue Smart Street Implementation Plan and submit copies to Garden Grove for review and approval.

FINANCIAL IMPACT

Garden Grove's cost share for the project is \$136,357.00, which will come from Measure M Turnback funds.

COMMUNITY VISION IMPLEMENTATION

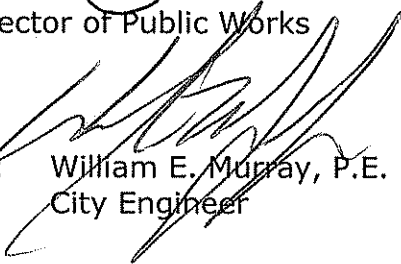
This project is consistent with the community vision for maintaining and improving the transportation system to ensure the safe, efficient flow of traffic.

RECOMMENDATION

It is recommended that the City Council:

- Approve the Cooperative Agreement with the City of Anaheim
- Authorize the Mayor to execute the Agreement on behalf of the City


KEITH G. JONES
Director of Public Works

By: 
William E. Murray, P.E.
City Engineer

Recommended for Approval


Matthew Feral
City Manager

Attachment: Cooperative Agreement

ORIGINAL

A G R E E M E N T

THIS AGREEMENT, dated for purposes of identification only this _____ day
of _____, 2009, is made and entered into by and between the

CITY OF ANAHEIM, a municipal corporation, hereinafter referred to as "ANAHEIM,"

A

N

D

CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as
"GARDEN GROVE".

W I T N E S S E T H:

WHEREAS, Katella Avenue has been designated as a Smart Street by the Orange County Transportation Authority ("OCTA") from the Los Angeles County Line (in the vicinity of I-605) to Villa Park Road (in the vicinity of SR-55) on the Master Plan of Arterial Highways; and

WHEREAS, in May 1996, OCTA prepared a Katella Avenue Smart Street Implementation Plan for the improvement of Katella Avenue between the Los Angeles County Line and Villa Park Road, within the municipal jurisdictions of Los Alamitos, Cypress, Stanton, Garden Grove, and Anaheim (collectively, the "Cities"); and

WHEREAS, pursuant to state and local guidelines, OCTA prepared and distributed a Notice of Preparation and Initial Study and prepared Draft Environmental Impact Report (EIR) 538 for the Katella Avenue Smart Street Implementation Plan and said EIR 538 was subsequently certified by OCTA as final, complete and adequate to

satisfy the statutory requirements of the California Environmental Quality Act of 1970 ("CEQA"), as amended; and

WHEREAS, GARDEN GROVE and ANAHEIM agree that Katella Avenue Smart Street between Humor Drive and Jean Street is in need of increased traffic carrying capacity by improvements including widening; restriping to six through lanes; median modification; traffic signal improvements; construction of bus turnouts, sidewalk, curb & gutter, handicap ramps; drainage improvements; hydrodynamic separator; landscaping; and irrigation systems (the "PROJECT"); and

WHEREAS, a portion of Brookhurst Street south of Katella Avenue is entirely within GARDEN GROVE city limits; and

WHEREAS, two bus bays on eastbound Katella Avenue at Dallas Drive and Palmwood Drive are within the GARDEN GROVE city limits; and

WHEREAS, a portion of the proposed widening on northbound Brookhurst Street of Katella Avenue, due to the added right turn lane, is within GARDEN GROVE city limits; and

WHEREAS, GARDEN GROVE and ANAHEIM previously entered into Agreement No. AGR-5037 for the design and right-of-way acquisition for the portion of Katella Avenue Smart Street between Jean Street and Humor Drive; and

WHEREAS, the PROJECT will be initially funded from the OCTA's Combined Transportation Funding Program ("CTFP") Katella Avenue Smart Street funds in the maximum amount of Sixteen Million One Hundred Fifty-Seven Thousand Four Hundred Forty-Four Dollars (\$16,157,444); and

WHEREAS, GARDEN GROVE and ANAHEIM wish to specify their respective responsibilities for the construction of the PROJECT; and

WHEREAS, GARDEN GROVE and ANAHEIM desire to enter into this AGREEMENT to cooperate on the construction of the PROJECT; and

WHEREAS, ANAHEIM and GARDEN GROVE possess full authority to enter into this AGREEMENT.

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

A. GARDEN GROVE Shall:

1. Agree that each of the above recitals is incorporated herein and is true and correct.
2. Prior to ANAHEIM advertising PROJECT, review and approve the final plans, special provisions and engineer's estimate for the GARDEN GROVE portion of the PROJECT.
3. Have access to the work area at all times during construction of the PROJECT within GARDEN GROVE city limits for the purpose of inspection and, should GARDEN GROVE deem necessary any remedial measures, GARDEN GROVE shall notify ANAHEIM in writing thereof.
4. Review and approve Contract Change Orders ("CCO") for portions of the PROJECT within GARDEN GROVE city limits. GARDEN GROVE shall provide a project liaison during construction of the Project to coordinate CCO approval.
5. Provide concurrence on CCO's within 48 hours of receipt of ANAHEIM's submittal of CCO's to GARDEN GROVE. If concurrence is not provided within 48 hours, ANAHEIM may proceed with the CCO as originally proposed.
6. Prior to ANAHEIM's acceptance of improvements and filing of a Notice of Completion, GARDEN GROVE City Engineer shall review and approve in writing construction of PROJECT for portions of PROJECT within GARDEN GROVE city limits. Such written approval shall only be withheld for work not completed in accordance with the construction contract documents for the PROJECT.
7. GARDEN GROVE shall reimburse ANAHEIM for any costs of design, construction, and construction ^{management} Engineering, for storm drainage piping, catch basins, sewer manhole adjustments, and all appurtenant work to install catch basins and laterals on the South side of Katella Avenue and Brookhurst Street.

8. Reimburse ANAHEIM for the GARDEN GROVE share for the storm drain project construction cost as estimated by the ANAHEIM prepared on July 16, 2009. Said share is estimated to be \$136,357.00.

B. ANAHEIM Shall:

1. Agree that each of the above recitals is incorporated herein and is true and correct.
2. Be designated as the lead agency for the PROJECT to perform all work involved in construction of the PROJECT (including advertising, bid award and construction).
3. Require that the ~~constructor~~ ^{construction} contractor for the project maintain in effect at all times during the project the following insurance (to be obtained on an occurrence basis):
 - a. Anaheim shall require the construction contractor to provide insurance endorsements on each such policy naming the City of Garden Grove and its officers, officials, employees, agents, and volunteer as additional insureds. Anaheim shall obtain the written concurrence on the policy limits of each required insurance policy in advance of issuance of project bid documents. Anaheim shall provide to Garden Grove a copy of the additional insured endorsement prior to commencement of any Project work.
4. Issue relocation notices to agencies/entities whose improvements/utilities may interfere with the PROJECT.
5. Obtain all necessary regulatory permits.
6. Perform all of the administrative work of advertising for bids and awarding the construction contract to the lowest responsible bidder complying with all applicable provisions of the California Public Contract Code and other applicable state and local laws, including but not limited to any applicable city charters, municipal codes and regulations. Process only CCO's that are necessary for the completion of the PROJECT as shown on the plans and specifications approved by GARDEN GROVE and ANAHEIM. Obtain GARDEN GROVE approval for any CCO in GARDEN GROVE portion of PROJECT, per the terms of Paragraphs A. 6 and 7 set forth above.

7. Prior to acceptance of the improvements, obtain GARDEN GROVE City Engineer's written approval of the construction of the PROJECT for portions of PROJECT within GARDEN GROVE city limits. Such written approval shall only be withheld for work not completed in accordance with the construction contract documents for the PROJECT.
8. File a Notice of Completion after obtaining GARDEN GROVE City Engineer's written approval.
9. Furnish GARDEN GROVE with one set of reproducible drawings for the completed PROJECT and a copy of the filed Notice of Completion.

C. PAYMENTS AND FINAL ACCOUNTING:

1. ANAHEIM, as lead agency for the PROJECT, shall fund all PROJECT costs utilizing funds from OCTA CTFP allocations and Prop 1B allocations.
2. GARDEN GROVE will pay ANAHEIM 100% of the costs for the design, construction and construction management for the installation of storm drain catch basins and laterals on the South side of Katella Avenue and Brookhurst Street as shown on the project plans. Garden Gove shall pay Anaheim for these costs within 30 days of receiving an invoice from Anaheim.
3. ANAHEIM shall invoice OCTA for ninety percent (90%) of the OCTA CTFP allocations after ANAHEIM awards construction contract for the PROJECT.
4. Within one hundred twenty (120) days after the acceptance of the Notice of Completion under the contract by ANAHEIM, ANAHEIM shall submit to GARDEN GROVE for review and approval by GARDEN GROVE, a Final Accounting Report for PROJECT. After GARDEN GROVE and ANAHEIM approve Final Accounting Report, ANAHEIM shall submit Final Accounting Report to OCTA for approval.
5. ANAHEIM shall invoice OCTA for the remaining ten percent (10%) of the OCTA CTFP allocations after OCTA approval of Final Accounting Report.
6. GARDEN GROVE shall bear the cost for construction and construction administration for any PROJECT enhancements and improvements requested by GARDEN GROVE that are not a part of the Katella Smart Street Implementation Plan.

7. GARDEN GROVE shall bear the cost for construction for any ineligible work, as defined by OCTA, constructed in GARDEN GROVE.
8. GARDEN GROVE and ANAHEIM will assist each other, as necessary, in acquiring additional PROJECT funds from OCTA should the PROJECT costs exceed funds allocated as described herein. Further, GARDEN GROVE and ANAHEIM will assist each other, as necessary, in seeking reimbursement from OCTA, for PROJECT eligible work at PROJECT final accounting.

D. It is MUTUALLY UNDERSTOOD BY THE PARTIES HERETO THAT:

1. Upon acceptance of the improvements of the PROJECT by ANAHEIM, and under the terms of this Agreement, GARDEN GROVE shall accept ownership and maintenance responsibility for the portion of PROJECT within GARDEN GROVE city limits.
2. Neither ANAHEIM nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by GARDEN GROVE under or in connection with any work, authority or jurisdiction delegated to GARDEN GROVE under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, GARDEN GROVE shall fully indemnify, defend and hold ANAHEIM harmless from any liability imposed for injury (as defined by Government code Section 810.8), occurring by reason of anything done or omitted to be done by GARDEN GROVE under or in connection with any work authority or jurisdiction delegated to GARDEN GROVE under this Agreement.
3. Neither GARDEN GROVE nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by ANAHEIM under or in connection with any work, authority or jurisdiction delegated to ANAHEIM under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, ANAHEIM shall fully indemnify, defend and hold GARDEN GROVE harmless from any liability imposed for injury (as defined by Government Code Section 810.8), occurring by reason of anything done or omitted to be done by

ANAHEIM under or in connection with any work, authority or jurisdiction delegated to ANAHEIM under this Agreement.

4. GENERAL:

- a. Termination of Agreement. Either party may terminate this Agreement by giving thirty (30) days written notice to the other party of intent to terminate, except that any such termination may not occur subsequent to the award of a construction contract. All Project costs incurred by GARDEN GROVE and ANAHEIM prior to the date of termination shall be reimbursable by the respective parties, less any costs that are eligible for OCTA CTP reimbursement.
- b. Cooperation. GARDEN GROVE and ANAHEIM agree to cooperate with respect to the construction of the PROJECT. GARDEN GROVE and ANAHEIM agree to meet in good faith to resolve any differences on future matters that are not specifically covered by this Agreement.
- c. Coordination. During the course of construction of the PROJECT, ANAHEIM shall coordinate with GARDEN GROVE and its designated representatives when dealing with the community to insure that the community concerns are addressed in a manner acceptable to both GARDEN GROVE and ANAHEIM.
- d. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld, conditioned or delayed, unless such provision expressly incorporates a different standard.
- e. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than GARDEN GROVE and ANAHEIM (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

- f. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing GARDEN GROVE or ANAHEIM from any condition or requirement imposed by any other agreement between GARDEN GROVE and ANAHEIM and, in the event of a conflicting provision, this Agreement shall prevail with respect to the implementation and construction process related to the Project.
- g. Notices. All notices under this Agreement shall be deemed given only when actually received by the party being given notice, and shall be given in writing by personal delivery or United States certified mail addressed to the following representatives of the parties at the address indicated below:

GARDEN GROVE: City of Garden Grove/City Hall
 11222 Acacia Parkway
 Garden Grove, CA 92840
 Attention: City Engineer

ANAHEIM: City of Anaheim
 200 S. Anaheim Blvd, 2nd Floor
 Anaheim, CA 92805
 Attention: City Engineer

Either party may change its address by giving notice in writing to other party.

IN WITNESS WHEREOF, GARDEN GROVE has caused this Agreement to be executed by its mayor and attested by its Clerk, and ANAHEIM has caused this Agreement to be executed by its mayor and attested by its Clerk on the dates written opposite their signatures, all thereunto duly authorized by the respective city councils.

DATE OF EXECUTION:

CITY OF ANAHEIM,
a municipal corporation

By: _____
Mayor of the City of Anaheim

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:
CRISTINA L. TALLEY
CITY ATTORNEY

By: _____
Jorge A. Solis
Deputy City Attorney

Date: _____

DATE OF EXECUTION:

CITY OF GARDEN GROVE,
a municipal corporation

By: _____
Mayor of the City of Garden Grove

APPROVED AS TO FORM:
TOM NIXON, CITY ATTORNEY

By: *Amey Jandora*
Assist. City Atty.

Date: 10-15-09