

KNOTT AVENUE REHABILITATION FROM BALL ROAD TO ORANGE AVENUE

JOINT PARTICIPATION AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of December 2022 by and between the City of Anaheim, a municipal corporation and charter city ("ANAHEIM") and the City of Buena Park, a municipal corporation and charter city ("BUENA PARK").

A. Recitals.

- (i) ANAHEIM desires to construct certain street improvements in and upon Knott Avenue from Ball Road to Orange Avenue ("the PROJECT").
- (ii) A portion of Knott Avenue within the area of the PROJECT is located within the boundaries of BUENA PARK.
- (iii) BUENA PARK desires to have ANAHEIM improve that area of Knott Avenue that is within the limits of BUENA PARK ("the BUENA PARK PORTION") as part of the PROJECT and ANAHEIM is willing to do so.
- (iv) It is the intent of ANAHEIM and BUENA PARK in entering this Agreement to set forth terms and conditions applicable to ANAHEIM'S provision of services necessary to complete the PROJECT, in order to benefit BUENA PARK and ANAHEIM.

B. Agreement.

NOW, THEREFORE, ANAHEIM and BUENA PARK agree as follows:

1. Duties of ANAHEIM:

- A. Prepare or cause to be prepared, all environmental documents, plans and specifications required for the PROJECT, subject to the reimbursement provisions contained herein.
- B. Submit the plans and specifications, including an engineer's cost estimate, for the BUENA PARK PORTION of the PROJECT to BUENA PARK'S City Engineer for approval.
- C. Pay its pro-rata share of PROJECT design, construction and engineering costs, which is approximately \$1,753,559.00 (or approximately 96.5% of the

total PROJECT cost of \$1,816,286.00). PROJECT final costs shall be based on the actual cost of the PROJECT upon completion.

- D. Conduct public bidding for the PROJECT work as may be required by law, award a contract for the PROJECT work in accordance with the approved plans and specifications, and administer the contract through completion of the PROJECT.
- E. Provide one (1) invoice to BUENA PARK for work done on the BUENA PARK PORTION at the completion of the PROJECT.
- F. Prior to commencing construction, obtain or cause to be obtained insurance coverage from contractors performing the PROJECT work, in an amount and in the types approved by the Risk Management Departments of ANAHEIM and BUENA PARK, respectively.

2. Duties of BUENA PARK:

- A. By execution of this Agreement, designate ANAHEIM as the lead agency for the purpose of accomplishing the PROJECT.
- B. Pay its pro-rata share of the actual costs of design, construction and administration for work performed by ANAHEIM in connection with the PROJECT, based on the actual quantities worked within the boundaries of BUENA PARK.
- C. Pay its pro-rata share of the PROJECT's design, construction and construction engineering costs for the BUENA PARK PORTION, which is approximately \$62,727.00 (or approximately 3.5% of the total PROJECT cost of \$1,816,286.00). PROJECT final cost shall be based on the actual cost at completion.
- D. Make final payment to ANAHEIM within forty five (45) days after receiving the invoice.

3. Mutual obligations and general terms:

- A. After ANAHEIM opens bids for the PROJECT, ANAHEIM'S Public Works Design Engineer shall transmit a tabulation of the bids to BUENA PARK'S Public Works Director for review. BUENA PARK shall, within five (5) business days after receipt of the tabulation of bids, approve or disapprove the low bidder and the bid results and notify ANAHEIM of its determination, and ANAHEIM shall thereafter award the contract as required by law. Said contract will require contractor to also name BUENA PARK as an additional insured on required liability insurance policies and also indemnify BUENA PARK for contractor's negligence or willful misconduct. In the event BUENA

PARK and ANAHEIM cannot agree on which bidder shall be awarded the contract within the time provided by law to make the award without rejecting all bids, then ANAHEIM shall be authorized to terminate this Agreement without any further obligations and proceed with the portion of the PROJECT within ANAHEIM. In such case, BUENA PARK shall reimburse ANAHEIM for its proportionate share of ANAHEIM's cost incurred in designing the BUENA PARK PORTION.

- B. Prior to the commencement of construction of the Project, contractor shall secure a Public Works Encroachment Permit from BUENA PARK. There shall be no fee for such permit. ANAHEIM shall not be required to obtain an Encroachment Permit from BUENA PARK.
- C. During construction, ANAHEIM shall provide a resident engineer to perform the usual functions of a resident engineer. BUENA PARK may also, but is not obligated to, provide its own engineer. Said resident engineers shall cooperate and consult with each other, however, decisions of ANAHEIM'S resident engineer shall be final.
- D. Any contract changes deemed necessary or advisable by ANAHEIM may be undertaken by ANAHEIM except that any changes which may affect the BUENA PARK PORTION shall first be approved, in writing, by BUENA PARK. Any changes requested by BUENA PARK may in ANAHEIM'S discretion be approved and included provided that any resulting increase in cost shall first be agreed upon in writing.
- E. Within forty five (45) days after completion of and acceptance of the work by ANAHEIM, its City Engineer shall notify BUENA PARK in writing, of the date thereof and the probable date that a final accounting of BUENA PARK'S share of the cost of the PROJECT will be submitted. If outstanding charges (such as contractor's claims and liens) delay the final accounting, ANAHEIM shall so advise BUENA PARK and a final accounting shall be presented within ninety (90) days from the date of completion of the work.
- F. BUENA PARK shall have the right to review all invoices, warrants and other related documents used in preparing the final accounting.
- G. ANAHEIM and BUENA PARK shall cooperate to the fullest extent possible in seeing the PROJECT to completion.
- H. To the fullest extent permitted by law, ANAHEIM shall defend, indemnify and hold harmless BUENA PARK, its officers, officials, employees, and agents, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged, or threatened, actual attorney's fees incurred by BUENA PARK, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind

whatsoever without restriction or limitation, and to the extent incurred in relation to, as a consequence of, arising out of or in any way attributable, actually, allegedly or impliedly, to the negligence of ANAHEIM in its performance of this Agreement. All obligations under this provision are to be paid by ANAHEIM as they are incurred by BUENA PARK.

- I. To the fullest extent permitted by law, BUENA PARK shall defend, indemnify and hold harmless ANAHEIM, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged, or threatened, actual attorney's fees incurred by ANAHEIM, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation, and to the extent incurred in relation to, as a consequence of, arising out of or in any way attributable actually, allegedly or impliedly, to the negligence of BUENA PARK in its performance of this Agreement. All obligations under this provision are to be paid by BUENA PARK as they are incurred by ANAHEIM.
- J. This Agreement supersedes any and all other agreements, either oral or in writing, between parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement shall be effective unless it is in writing signed by all parties.
- K. The term of this Agreement shall commence upon the date of mutual execution and shall continue thereafter until performance by both parties has been completed in compliance with this Agreement, unless sooner terminated in accordance with this subsection. Unless otherwise agreed upon in writing, either party may immediately terminate for a material breach by the other that remains uncured following service of not less than ten (10) days prior written notice of such breach. In addition, this Agreement may be terminated by either party upon thirty (30) days prior written notice.
- L. Notices permitted or required to be provided pursuant to this Agreement shall be sent to the following addresses:

ANAHEIM:

City of Anaheim
Attention: Director of Public Works
200 S. Anaheim Blvd.
Anaheim, California 92805

BUENA PARK:

City of Buena Park
Attention: Director of Public Works
6650 Beach Blvd.
Buena Park, California 90622

By notice to the other party, either party may, change the address specified above. Service of notice or communication shall be complete, if personally

served, when received at the designated address, or five (5) days after deposit of said notice or communication in the United States mail, postage prepaid, whichever occurs first.

- M. The parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary to this Agreement, or as a result of any duty, covenant, obligation or undertaking established herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized officers this 20th day of December 2022.

CITY OF ANAHEIM,
A Municipal Corporation

Date: 12/23/22

By: [Signature]
Rudy Emami, Director of Public Works



Attest:

Approve as to Form:
ANAHEIM CITY ATTORNEY

By: [Signature]
Bryn M. Morley, Deputy City Attorney

[Signature]
Theresa Bass, City Clerk 12/23/22

CITY OF BUENA PARK
A Municipal Corporation

[Signature]
Aaron France, City Manager



ATTEST:

APPROVED AS TO FORM:

[Signature]
Adria Jimenez, City Clerk

[Signature]
Christopher G. Cardinale, City Attorney

Attachment: Exhibit A - Location Map

