

**EAST STREET/RAYMOND AVENUE REHABILITATION
FROM LA PALMA AVENUE TO BURTON STREET**

JOINT PARTICIPATION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____ 2019 by and between the City of Anaheim, a municipal corporation ("ANAHEIM") and the City of Fullerton, a municipal corporation and general law city ("FULLERTON").

A. Recitals.

(i) ANAHEIM desires to construct certain street improvements in and upon East Street/Raymond Avenue from La Palma Avenue to Burton Street ("the PROJECT").

(ii) Part of East Street/Raymond Avenue within the area of the PROJECT is located within the boundaries of FULLERTON.

(iii) FULLERTON desires to have ANAHEIM improve that area of East Street/Raymond Avenue that is within the limits of FULLERTON ("the FULLERTON PART"), as a portion of the PROJECT and ANAHEIM is willing to do so.

(iv) It is the intent of ANAHEIM and FULLERTON 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 FULLERTON and ANAHEIM.

B. Agreement.

NOW, THEREFORE, ANAHEIM and FULLERTON 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 of FULLERTON'S share of the costs to FULLERTON'S City Engineer for approval.

C. Pay its pro-rata share of PROJECT design, construction and construction engineering costs, which is approximately \$632,000 (or 79.5% of the total

PROJECT cost of \$795,000). PROJECT final cost shall be based on the actual cost at completion.

- D. Conduct public bidding as required by law, award a contract in accordance with the approved plans and specifications, and administer the contract through completion of the PROJECT.
- E. Provide one Invoice to FULLERTON for work done at the completion of the PROJECT.
- F. Prior to commencing construction, obtain or cause to be obtained insurance coverage from ANAHEIM'S contractors, for the benefit of ANAHEIM and FULLERTON, as required by the contract documents.

2. Duties of FULLERTON:

- 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 design and administration based on the actual quantities worked within the boundaries of FULLERTON.
- C. Pay its pro-rata share of PROJECT design, construction and construction engineering costs, which is approximately \$163,000 (or 20.5% of the total Project cost of \$795,000). PROJECT final cost shall be based on the actual cost at completion and not to exceed \$200,000.
- D. Make final payment to ANAHEIM within forty five (45) days after receiving 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 FULLERTON'S Public Works Director for review. FULLERTON 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 FULLERTON as an additional insured on required liability insurance policies and also indemnify FULLERTON for contractor's negligence or willful misconduct. In the event FULLERTON 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 further obligation. In such case, FULLERTON shall

reimburse ANAHEIM for its proportionate share of ANAHEIM's cost of design.

- B. During construction, ANAHEIM shall furnish a resident engineer to perform the usual functions of a resident engineer. FULLERTON may also, but is not obligated to, furnish its own respective engineer. Said resident engineers shall cooperate and consult with each other, but decisions of ANAHEIM'S resident engineer shall be final.
- C. Any contract changes deemed necessary or advisable by ANAHEIM may be undertaken by ANAHEIM except that any changes which may affect the construction in FULLERTON shall first be approved, in writing, by FULLERTON. Any changes requested by FULLERTON in ANAHEIM'S discretion may be approved and included provided that any resulting increase in cost shall first be agreed upon in writing.
- D. Within forty five (45) days after completion of and acceptance of the work by ANAHEIM, its City Engineer shall notify FULLERTON in writing, of the date thereof and the probable date that a final accounting of FULLERTON'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 FULLERTON and a final accounting shall be presented within ninety (90) days from the date of completion of the work.
- E. FULLERTON shall have the right to review all invoices, warrants and other related documents used in preparing the final accounting.
- F. ANAHEIM and FULLERTON shall cooperate to the fullest extent possible in seeing the PROJECT to completion.
- G. To the fullest extent permitted by law, ANAHEIM shall defend, indemnify and hold harmless FULLERTON, 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 FULLERTON, 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 FULLERTON.
- H. To the fullest extent permitted by law, FULLERTON 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 FULLERTON in its performance of this Agreement. All obligations under this provision are to be paid by FULLERTON as they are incurred by ANAHEIM.

- K. 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.
- L. 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.
- M. 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 92805-5009

FULLERTON:

City of Fullerton
Attention: Public Works Director
303 W. Commonwealth Ave
Fullerton, California 92832

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.

- N. 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 ____ day of _____ 2019.

CITY OF ANAHEIM,
A Municipal Corporation

Date: _____

By: _____
Mayor of the City of Anaheim

Attest:

Approve As To Form:
ANAHEIM CITY ATTORNEY

Theresa Bass, City Clerk

By: _____
Bryn M. Morley, Deputy City
Attorney

CITY OF FULLERTON
A Municipal Corporation

Date: _____

By: _____
Meg McWade, Public Works Director

Attest:

Approved As To Form:

Lucinda Williams, City Clerk

By: _____
Richard D. Jones, City Attorney

Attachment: Exhibit A - Location Map

