

**COOPERATIVE AGREEMENT
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE CITY OF COSTA MESA
FOR
IRVINE AVENUE PAVEMENT REHABILITATION**

This Cooperative Agreement (“Agreement”) is made and entered into as of this 8th day of June, 2018, by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city (“NEWPORT BEACH”) and the CITY OF COSTA MESA, a municipal corporation (“COSTA MESA”). NEWPORT BEACH and COSTA MESA are referred to collectively herein as “CITIES”.

RECITALS

A. CITIES desire to rehabilitate Irvine Avenue from 16th Street to Santiago Drive within NEWPORT BEACH and COSTA MESA (the “Project”).

B. CITIES desire to set forth their respective obligations with respect to implementation of the Project.

NOW, THEREFORE, it is mutually understood and agreed to by the CITIES as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date and end upon COSTA MESA’s final payment to NEWPORT BEACH following Project completion, as set forth herein, unless previously terminated as provided herein.

2. SCOPE OF PROJECT

The Project includes the rehabilitation of Irvine Avenue from 16th Street to Santiago Drive within NEWPORT BEACH and COSTA MESA, which includes but is not limited to pavement rehabilitation, drainage and utility improvements, parkway and landscaping improvements, traffic signage and signal improvements, and striping and painted curb improvements.

3. RESPONSIBILITIES OF NEWPORT BEACH

NEWPORT BEACH agrees to the following:

a. NEWPORT BEACH shall be the lead agency.

- b. NEWPORT BEACH will manage the design and construction of the PROJECT to the best of its ability within the established, agreed upon budget and time frame.
- c. NEWPORT BEACH will cause the construction to be completed in accordance with the construction contract documents.
- d. NEWPORT BEACH shall require the contractor to provide the necessary insurance coverage for construction work, as specified in the construction contract documents for the Project. NEWPORT BEACH and COSTA MESA shall be named as additionally insured parties for the Project.
- e. NEWPORT BEACH shall provide COSTA MESA a complete breakdown of the engineer's estimate of probable construction costs for the segment of the PROJECT within COSTA MESA prior to advertising the Project.
- f. NEWPORT BEACH shall provide COSTA MESA with construction change orders affecting COSTA MESA and shall obtain COSTA MESA's written approval prior to granting approval with the contractor.
- g. NEWPORT BEACH shall provide COSTA MESA documentation reflecting any additional consulting services affecting COSTA MESA and shall obtain COSTA MESA's written approval prior to permitting commencement of additional services by the consultant.

4. RESPONSIBILITIES OF COSTA MESA

COSTA MESA agrees to the following:

- a. Prior to the start of construction, COSTA MESA shall issue to the contractor a no-fee permit for PROJECT.
- b. COSTA MESA will advance NEWPORT BEACH one-half of COSTA MESA's estimated share of construction costs as set forth in Exhibit A, attached hereto and incorporated herein by this reference, within thirty (30) days after execution of this Agreement. COSTA MESA shall pay NEWPORT BEACH the remainder of COSTA MESA's share of construction costs, plus any costs associated with change orders approved by COSTA MESA as set forth herein, within thirty (30) days of NEWPORT BEACH providing COSTA MESA written notice of its filing of the Notice of Completion.

- c. Construction change orders affecting COSTA MESA shall be reviewed and shall be subject to written approval by COSTA MESA prior to granting approval with the contractor. Costs related to such change orders and administration will be reimbursed by COSTA MESA concurrently with COSTA MESA's payment of the remainder of its share of construction costs.
- d. Upon completion of the design and COSTA MESA's approval of the construction contract documents for the segment of the Project within its city limits, COSTA MESA shall reimburse NEWPORT BEACH for its share of costs for the design services and design administrative fee as set forth in Exhibit A.
- e. Additional consulting services affecting COSTA MESA shall be reviewed and shall be subject to written approval by COSTA MESA prior to commencement of additional services by the consultant. COSTA MESA shall reimburse costs related to its share of the additional consulting services and administration no later than thirty (30) days of NEWPORT BEACH providing COSTA MESA written notice of its filing of the Notice of Completion.

5. SHARED RESPONSIBILITIES

- a. CITIES agree to coordinate all work involving traffic signals.
- b. Inspectors and/or engineers from NEWPORT BEACH and COSTA MESA will coordinate construction inspections, verification of work, and site walk final inspection at completion of the PROJECT.
- c. Any hazardous material or contamination found within the existing COSTA MESA rights-of-way during construction requiring remedy or remedial action shall be the responsibility of COSTA MESA. Any hazardous material or contamination found within NEWPORT BEACH rights-of-way during construction requiring the same defined remedy or remedial action shall be the responsibility of NEWPORT BEACH. COSTA MESA shall sign the manifest and pay all costs for remedy or remedial action within the existing COSTA MESA rights-of-way. NEWPORT BEACH shall sign the manifest and pay all costs to remedy or for remedial action within the existing NEWPORT BEACH rights-of-way.
- d. The party responsible for funding any hazardous material cleanup shall be responsible for developing, processing and obtaining an appraisal of the necessary remedy and/or remedial action plans and designs in accordance with standards and practices mandated by Federal and State regulatory agencies having jurisdiction.

- e. Existing maintenance agreements for signals, median landscaping and roadway shall remain in full effect and are not modified by this agreement.

Each of the parties agrees to do all things in a timely manner reasonably necessary or convenient to carry out the spirit, intentions and objectives described in this Agreement, whether or not expressly prescribed herein, and no consent, agreement, approval, concurrence, decision, determination, or action shall be unreasonably withheld by either party.

6. INDEMNIFICATION

NEWPORT BEACH shall indemnify, defend, save and hold harmless COSTA MESA, its elected officials, officers, agents, employees, and volunteers, at NEWPORT BEACH's sole expense, from and against any and all loss, damages, liability, claims, suits, actions, or other legal proceedings, including attorneys' fees and reasonable costs incurred in defending any such action, brought against COSTA MESA, its elected officials, officers, agents, employees, and/or volunteers arising out of or relating to the acts or omissions or willful misconduct of NEWPORT BEACH, its elected officials, officers, employees, agents, or volunteers in the performance of its obligations pursuant to this Agreement.

COSTA MESA shall indemnify, defend, save and hold harmless NEWPORT BEACH, its elected officials, officers, agents, employees, and volunteers, at COSTA MESA's sole expense, from and against any and all loss, damages, liability, claims, suits, actions, or other legal proceedings, including attorneys' fees and reasonable costs incurred in defending any such action, brought against NEWPORT BEACH, its elected officials, officers, agents, employees, and/or volunteers arising out of or relating to the acts or omissions or willful misconduct of COSTA MESA, its elected officials, officers, employees, agents, or volunteers in the performance of its obligations pursuant to this Agreement.

7. INSURANCE

- a. NEWPORT BEACH and COSTA MESA shall maintain and keep in full force and effect during the term of this Agreement insurance or a program of self-insurance against claims for injuries to persons or damages to property which may arise in connection with NEWPORT BEACH's or COSTA MESA's performance of its obligations hereunder.
- b. NEWPORT BEACH shall require consultants and contractors performing work in connection with this Agreement to obtain and maintain insurance as described below:
 - i. General Liability Insurance. Consultants and contractors shall

maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of consultants' and contractors' operations related to the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

- ii. Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than \$1,000,000.00, combined single limits, per occurrence for bodily injury and property damage.
 - iii. Workers' Compensation Insurance. In accordance with California law, consultants and contractors, if they have any employees, are required to be insured against liability for workers' compensation or to undertake self-insurance. Prior to commencing the performance of any work related to this Agreement, consultants and contractors shall be required to obtain and maintain any required employer's liability insurance with limits not less than \$1,000,000 per accident.
 - iv. Professional Liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim and \$2,000,000 aggregate.
 - v. The general liability and business automobile liability insurance shall: (a) name NEWPORT BEACH and COSTA MESA, and their elected officials, officers, employees, agents, volunteers and representatives as additional insured(s); and (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by each respective city.
- c. NEWPORT BEACH shall require that consultants and contractors:
- i. State on their insurance policies and certificates that the policies shall not be canceled or reduced in coverage or changed in any material aspect without thirty (30) days prior written notice to the city.
 - ii. Maintain the insurance coverages set forth in this section.
 - iii. Furnish certificates of insurance to the city evidencing the required coverages and endorsements set forth herein.

- d. If a consultant or contractor maintains broader coverage and/or higher limits than the minimums described above, the CITIES shall require and shall be entitled to the broader coverage and/or higher limits maintained by the consultant or contractor.

8. TERMINATION

In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of seven (7) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, or if more than seven (7) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within seven (7) calendar days, the non-defaulting party may terminate the Agreement immediately by giving to the defaulting party written notice thereof.

Notwithstanding the above provisions, NEWPORT BEACH and COSTA MESA shall each have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to the other city. In the event of termination under this Section, COSTA MESA shall pay NEWPORT BEACH for services satisfactorily performed including costs for work deemed necessary by NEWPORT BEACH to secure the PROJECT after termination and costs incurred up to the effective date of termination for which the consultant or contractor has not been previously paid. Within fourteen (14) calendar days from the effective date of termination, NEWPORT BEACH shall deliver to COSTA MESA all reports, documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

9. GENERAL PROVISIONS

- a. Representatives; Notices. The following staff members shall be the selected representatives of each city to act in each respective city's behalf with respect to this Agreement. Any notices, requests, approvals, or communications shall be given to each representative noted below:

To Newport Beach:

David Webb
Public Works Director
P.O. Box 1768
Newport Beach, CA 92623-9575
(949) 644-3311

To Costa Mesa:

Raja Sethuraman
Public Services Director
77 Fair Drive
Costa Mesa, CA 92626
(714) 754-5343

Either party may change the designations set forth herein upon written notice to the other party.

- b. Disputes. In the event of any dispute arising out of this Agreement or an alleged breach thereof, CITIES shall first attempt in good faith to resolve such dispute informally.
- c. 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.
- d. Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- e. Compliance with All Laws. COSTA MESA and NEWPORT BEACH shall comply with all applicable federal, state and local laws, statutes, ordinances and regulations of any governmental agency having jurisdiction over the PROJECT.
- f. Force Majeure. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts include, but are not limited to, any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, national fuel shortage, and any other conditions beyond the reasonable control of a party.
- g. Assignment. Neither this Agreement, nor any of the parties' rights, obligations, or duties hereunder may be assigned in whole or in part by either party without the prior written consent of the other party in its sole and absolute discretion. Any attempted assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

- h. Entire Agreement. This Agreement represents the entire understanding of the parties as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and construed as if drafted jointly by NEWPORT BEACH and COSTA MESA.
- i. Corporate 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 so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.
- j. Amendments. This Agreement may be modified or amended only by a written document executed by both NEWPORT BEACH and COSTA MESA and approved as to form by their respective City Attorneys.
- k. Governing Law. The laws of the State of California shall govern this Agreement and all matters relating to it. Any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.
- l. Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.
- m. Effective Date. This agreement shall take effect immediately upon the last date on which this Agreement is executed by the parties.

[SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

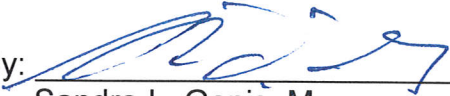
CITY OF NEWPORT BEACH,
a California municipal corporation
and charter city

CITY OF COSTA MESA, a California
municipal corporation

Date: _____

Date: _____

By: 
Marshall "Duffy" Duffield, Mayor

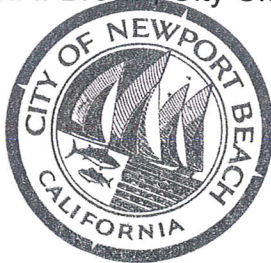
By: 
Sandra L. Genis, Mayor

ATTEST:
Date: 6-28-18

ATTEST:
Date: 7-13-18

By: 
Leilani I. Brown, City Clerk

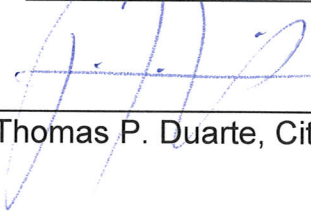
By: 
Brenda Green, City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: JUNE 8, 2018

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: JULY 11, 2018

for By: 
Aaron C. Harp, City Attorney
mm 6-8-18

By:  *ACT*
Thomas P. Duarte, City Attorney

Attachments:
Exhibit A – Design and Construction Costs

EXHIBIT A

DESIGN AND CONSTRUCTION COSTS

Exhibit A

	COSTA MESA	NEWPORT BEACH	TOTAL
Design Phase			
Design Services *	\$ 97,216.43	\$ 100,971.57	\$ 198,188.00
Design Administration (2% of Design Services + Change Orders)	\$ 1,944.33	\$ 2,019.43	\$ 3,963.76
Subtotal	\$ 99,160.76	\$ 102,991.00	\$ 202,151.76
Construction Phase			
Estimated Construction Capital **	\$ 1,066,525.00	\$ 1,614,995.00	\$ 2,681,520.00
Construction Administration (2% of Bid Amount + Change Orders)	\$ 21,330.50	\$ 32,299.90	\$ 53,630.40
Estimated Subtotal	\$ 1,087,855.50	\$ 1,647,294.90	\$ 2,735,150.40
Grand Total	\$ 1,187,016.26	\$ 1,750,285.90	\$ 2,937,302.16

Note

* Design services cost is calculated based on square footage of pavement rehabilitation. Costa Mesa's share is 40.52%.

** This is the estimated construction cost as determined during the design phase. The actual reimbursement amount will be based on the actual constructed amounts plus any change orders.