

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal
Dept.: City Manager
Subject: COOPERATIVE AGREEMENT FOR BROOKHURST STREET MEDIAN REHABILITATION PROJECT WITH ORANGE COUNTY TRANSPORTATION AUTHORITY

From: Keith G. Jones
Dept.: Public Works
Date: November 23, 2010

OBJECTIVE

Request for City Council approval to enter into a Cooperative Agreement with the Orange County Transportation Authority (OCTA) for the Brookhurst Street Median Rehabilitation Project.

BACKGROUND

On May 25, 2010, City Council authorized staff to submit a grant application to the OCTA for funding under the Transportation Enhancement Activities Program for Street Median Rehabilitation Projects on Valley View Street, Brookhurst Street, and Harbor Boulevard. On September 27, 2010, the City was awarded a federal Transportation Enhancement Program Grant in the amount of \$500,000 for the Brookhurst Street Median Rehabilitation Project (Project). The Project covers the medians located between Hazard Street and Katella Avenue and consists of replacing the existing landscape with drought-tolerant plantings and installing a sub-surface drip irrigation system.

DISCUSSION

Total costs are projected to be \$1,492,000. OCTA will award up to \$500,000, or 34% for construction costs. In order to secure its grant award, the City must enter into a Cooperative Agreement with OCTA. Further, this Cooperative Agreement specifies the roles and responsibilities of both parties and defines the specific terms and conditions and funding responsibilities between OCTA and the City.

FINANCIAL IMPACT

There is no financial impact to the General Fund. City matching funds will derive from the Water Enterprise Funds and available Street Funds.

COOPERATIVE AGREEMENT FOR BROOKHURST STREET MEDIAN REHABILITATION
PROJECT WITH ORANGE COUNTY TRANSPORTATION AUTHORITY

November 23, 2010

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RECOMMENDATION

It is recommended that the City Council:

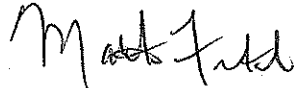
- Approve the attached Cooperative Agreement with the Orange County Transportation Authority for the Brookhurst Street Median Rehabilitation Project; and
- Ratify the Mayor's execution of the Cooperative Agreement.


KEITH G. JONES
Director of Public Works

By: 
William E. Murray, Jr.
City Engineer

Attachment: Cooperative Agreement

Recommended for Approval



Matthew Feral
City Manager

COOPERATIVE AGREEMENT NO. C-0-1807

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF GARDEN GROVE

FOR

FEDERAL TRANSPORTATION ENHANCEMENT PROJECT

BROOKHURST STREET MEDIAN REHABILITATION

THIS AGREEMENT is effective this _____ day of _____ 2010, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and the City of Garden Grove, a municipal corporation duly organized and existing under the constitution and laws of the State of California (hereinafter referred to as "CITY").

RECITALS:

WHEREAS, AUTHORITY and the CITY desire to enter into a Cooperative Agreement to define the roles and responsibilities related to funding between the AUTHORITY and CITY for engineering, right-of-way acquisition, and construction of Brookhurst Street Median Rehabilitation; (hereinafter referred to as "PROJECT"); and

WHEREAS, CITY is an eligible recipient of Federal funding under the 2010 Transportation Enhancement (TE) program and the PROJECT is eligible for TE funding; and

WHEREAS, on September 27, 2010, the AUTHORITY's Board of Directors, approved providing funding of up to Five Hundred Thousand Dollars (\$500,000) or 34% of the total project of TE funds, and identifying Nine Hundred Ninety Two Thousand Dollars (\$992,000) of CITY local match for a total of One Million Four Hundred Ninety Two Thousand Dollars (\$1,492,000); and

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1 **WHEREAS**, CITY and AUTHORITY agree that the total full funding for the PROJECT
2 including engineering, right-of-way acquisition, construction management and construction shall be
3 One Million Four Hundred Ninety Two Thousand Dollars (\$1,492,000) in accordance with Exhibit A
4 titled "TE Funding Plan", which is attached herein and incorporated by reference; and

5 **WHEREAS**, AUTHORITY and CITY agree that Caltrans and Federal Highway Administration
6 (FHWA) authorization is required following the AUTHORITY's amendment to the Federal
7 Transportation Improvement Program (FTIP), and in order to proceed or commence each phase of
8 PROJECT for performance under this Agreement; and

9 **WHEREAS**, AUTHORITY and CITY agree that the Federal Safe, Accountable, Flexible,
10 Efficient Transportation Equity Act - A Legacy for Users (SAFETEA-LU), which provides the TE
11 funding, was passed by the federal government in 2005, expired in September of 2009 and was
12 extended until December of 2010. TE funding for the PROJECT is contingent upon funding being
13 available through SAFETEA-LU or a new transportation act and the PROJECT maintaining its
14 eligibility for this funding; and

15 **WHEREAS**, the California Department of Transportation (Caltrans) administers the
16 Transportation Enhancement (TE) program on behalf of the Federal Highways Administration
17 (FHWA) and the California Transportation Commission (CTC) approves funding for projects through
18 the State Transportation Improvement Program (STIP). AUTHORITY is responsible for programming
19 the funds to specific projects within Orange County. Caltrans is responsible for acquiring federal
20 approvals for the project on behalf of the CITY, determining federal eligibility, compliance with
21 federal requirements, and reimbursement for project activities.

22 **WHEREAS**, CITY agrees to act as lead agency for engineering, right-of-way acquisition,
23 construction management and construction of said PROJECT; and

24 **WHEREAS**, this Cooperative Agreement defines the specific terms and conditions and
25 funding responsibilities between AUTHORITY and CITY (hereinafter referred to as "PARTIES") for
26 completion of the PROJECT.

1 **WHEREAS**, the AUTHORITY's Board of Directors approved the Cooperative Agreement on
2 September 27, 2010; and

3 **WHEREAS**, the CITY's Council approved the Cooperative Agreement on this _____ day of
4 _____ 2010.

5 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CITY as
6 follows:

7 **ARTICLE 1. COMPLETE AGREEMENT**

8 A. This Agreement, including any attachments incorporated herein and made applicable
9 by reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of
10 this agreement between AUTHORITY and CITY and it supersedes all prior representations,
11 understandings, and communications. The invalidity in whole or in part of any term or condition of
12 this Agreement shall not affect the validity of other term(s) or conditions(s) of this Agreement. The
13 above referenced Recitals are true and correct and are incorporated by reference herein.

14 B. AUTHORITY'S failure to insist on any instance(s) of CITY's performance of any
15 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
16 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s),
17 and CITY's obligation in respect thereto shall continue in full force and effect. Changes to any
18 portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed
19 in writing by an authorized representative of AUTHORITY by way of a written amendment to this
20 Agreement and issued in accordance with the provisions of this Agreement.

21 C. CITY's failure to insist on any instance(s) of AUTHORITY's performance of any
22 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
23 CITY's right to such performance or to future performance of such term(s) or condition(s), and
24 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any
25 portion of this Agreement shall not be binding upon CITY except when specifically confirmed in
26 writing by an authorized representative of CITY by way of a written amendment to this Agreement

1 and issued in accordance with the provisions of this Agreement.

2 **ARTICLE 2. SCOPE OF AGREEMENT**

3 This Agreement specifies the roles and responsibilities of the PARTIES as they pertain to the
4 subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate
5 and coordinate with the other in all activities covered by this Agreement and any other supplemental
6 agreements that may be required to facilitate purposes thereof.

7 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

8 AUTHORITY agrees to the following responsibilities for PROJECT:

9 A. AUTHORITY shall formally request on behalf of the CITY that the Southern California
10 Association of Governments (SCAG) amend the FTIP to program up to One Million Four Hundred
11 Ninety Two Thousand Dollars (\$1,492,000) in accordance with the funding plan outlined in Exhibit A,
12 whereby AUTHORITY's performance under this Agreement is contingent upon SCAG and FHWA
13 approval.

14 B. AUTHORITY shall provide assistance to CITY in securing the TE funds.

15 C. AUTHORITY shall not be obligated to program any amount beyond what has been
16 identified in this Article.

17 D. AUTHORITY shall process any required FTIP amendments.

18 E. AUTHORITY shall review and approve the CITY's request for allocation prior to
19 submittal to Caltrans District 12.

20 F. AUTHORITY shall cancel projects for which the CITY has not submitted an E-76 and
21 Allocation Request by February 1 of the fiscal year for which funds are programmed and, or has not
22 advanced the project to ready-to-list stage as determined by Caltrans guidelines.

23 **ARTICLE 4. RESPONSIBILITIES OF CITY**

24 CITY agrees to the following responsibilities for PROJECT:

25 A. CITY will act as the lead agency for the engineering, right-of-way, construction and
26 construction management of the PROJECT.

1 B. CITY is responsible for submitting semi-annual review reports for the PROJECT at
2 the request of the OCTA (EXHIBIT B titled "TE Semi-Annual Report").

3 C. CITY is responsible for submitting a final report upon completion of the project at the
4 request of the OCTA (EXHIBIT C titled "TE Final Project Report Form").

5 D. CITY is responsible for preparing and submitting to AUTHORITY all California
6 Transportation Commission (CTC) documentation needed for Allocation Vote two months prior to
7 CTC meeting and no later than February 1 of the fiscal year for which funds are programmed.

8 E. CITY is responsible for preparing and submitting all necessary Caltrans required
9 documentation including Request for Authorization to Proceed (E-76). CITY cannot proceed with
10 advertisement of project or any work prior to E-76 authorization. CITY agrees to submit E-76 to
11 Caltrans District 12 by February 1 of the year for which funds are programmed. All prior approvals,
12 including but not limited to California Department of Transportation environmental approval and
13 right-of-way certification (if applicable), must be attained prior to February 1 to meet this
14 requirement.

15 F. CITY acknowledges that if the allocation request and E-76 are not submitted to
16 AUTHORITY and Caltrans by February 1, and the CITY has not attained the required approval of
17 environmental and right-of-way certification (if applicable) by this date or has not advanced the
18 project to ready-to-list stage as determined through Caltrans guidelines the proposed funding will be
19 cancelled by AUTHORITY.

20 G. CITY agrees to provide a minimum of 66% of the final project cost in City funds for
21 construction as the required local match. Based on the existing budget, this amount is estimated to
22 be Nine Hundred Ninety Two Thousand Dollars (\$992,000). Actual match will be determined based
23 on construction contract award amount; and

24 H. CITY agrees that the overall budget for this PROJECT is a not-to-exceed amount of
25 One Million Four Hundred Ninety Two Thousand Dollars (\$1,492,000); contingent on TE funding
26 from reauthorization of SAFETEA-LU.

1 I. CITY agrees that any cost overruns shall be the responsibility of the CITY.

2 J. CITY is responsible for completing the PROJECT in accordance with the funding plan
3 (EXHIBIT A), timely use of funds requirements, and to abide by all TE programming guidelines,
4 State Transportation Improvement Program Guidelines, and any and all other requirements of the
5 federal, state, and Caltrans related to the TE.

6 K. CITY agrees that cost savings shall be distributed proportionally with TE and local
7 funding.

8 **ARTICLE 5. DELEGATED AUTHORITY**

9 The actions required to be taken by CITY in the implementation of this Agreement are
10 delegated to its Director of Public Works, or designee, and the actions required to be taken by
11 AUTHORITY in the implementation of this Agreement are delegated to AUTHORITY's Chief
12 Executive Officer, or designee.

13 **ARTICLE 6. AUDIT AND INSPECTION**

14 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
15 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
16 representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts,
17 and other data and records of CITY for a period of four (4) years after final payment, or until any on-
18 going audit is completed. For purposes of audit, the date of completion of this Agreement shall be
19 the date of AUTHORITY's payment of CITY's final billing (so noted on the invoice) under this
20 Agreement. AUTHORITY shall have the right to reproduce any such books, records, and accounts.
21 The above provision with respect to audits shall extend to and/or be included in construction
22 contracts with CITY's contractor.

23 **ARTICLE 7. INDEMNIFICATION**

24 A. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
25 employees and agents from and against any and all claims (including attorney's fees and reasonable
26 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,

1 worker's compensation subrogation claims, damage to or loss of use of property alleged to be
2 caused by the negligent acts, omissions or willful misconduct by CITY, its officers, directors,
3 employees or agents in connection with or arising out of the performance of this Agreement.

4 B. AUTHORITY shall indemnify, defend and hold harmless CITY, its officers, directors,
5 employees and agents from and against any and all claims (including attorney's fees and reasonable
6 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death,
7 worker's compensation subrogation claims, damage to or loss of use of property alleged to be
8 caused by the negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors,
9 employees or agents in connection with or arising out of the performance of this Agreement.

10 C. The indemnification and defense obligations of this Agreement shall survive its
11 expiration or termination.

12 **ARTICLE 8. ADDITIONAL PROVISIONS**

13 The AUTHORITY and CITY agree to the following mutual responsibilities:

14 A. Term of Agreement: This Agreement shall continue in full force and effect through
15 project completion and final acceptance by AUTHORITY, or 42 months from the date of CTC allocation,
16 whichever is earlier. This Agreement may be extended at the mutual consent of both parties.

17 B. Termination: This agreement is null and void if project is not funded. AUTHORITY
18 shall cancel projects for which the CITY has not submitted an E-76 and Allocation Request by
19 February 1 of the fiscal year for which funds are programmed and, or has not advanced the project
20 to ready stage as determined by AUTHORITY. This Agreement may be terminated by either party
21 after giving thirty (30) days written notice. This Agreement shall not be terminated without mutual
22 agreement of both parties.

23 C. This Agreement may be amended in writing at any time by the mutual consent of both
24 parties. No amendment shall have any force or effect unless executed in writing by both parties.

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1 D. AUTHORITY and CITY shall comply with all applicable federal, state, and local laws,
 2 statues, ordinances and regulations of any governmental authority having jurisdiction over the
 3 PROJECT.

4 E. Legal Authority: AUTHORITY and CITY hereto consent that they are authorized to
 5 execute this Agreement on behalf of said parties and that, by so executing this agreement, the
 6 parties hereto are formally bound to the provisions of this Agreement.

7 F. Severability: If any term, provision, covenant or condition of this Agreement is held to
 8 be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the
 9 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or
 10 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11 G. Counterparts of Agreement: This Agreement may be executed and delivered in any
 12 number of counterparts, each of which, when executed and delivered shall be deemed an original
 13 and all of which together shall constitute the same agreement. Facsimile signatures will be
 14 permitted.

15 H. Force Majeure: Either Party shall be excused from performing its obligations under this
 16 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
 17 cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God;
 18 commandeering of material, products, plants or facilities by the federal, state or local government;
 19 national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of
 20 such cause is presented to the other Party, and provided further that such nonperformance is
 21 unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

22 I. Assignment: Neither this Agreement, nor any of the PARTIES rights, obligations, duties,
 23 or authority hereunder may be assigned in whole or in part by either Party without the prior written
 24 consent of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be
 25 deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to
 26 any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

J. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to authorize or require any Party to issue bonds, notes or other evidences of indebtedness under the terms, in amounts, or for purposes other than as authorized by local, state or federal law.

K. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.

L. Litigation fees: Should litigation arise out of this Agreement for the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing party.

M. Notices: Any notices, requests, or demands made between the parties pursuant to this Agreement are to be directed as follows:

To CITY:	To AUTHORITY:
City of Garden Grove	Orange County Transportation Authority
11222 Acacia Parkway Garden Grove, CA 92840	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Mr. Keith G. Jones Public Works Director 714-741-5375 keithj@ci.garden-grove.ca.us	Attention: Ms. Reem Hashem Principal Contract Administrator 714-560-5446 Email: rhashem@octa.net Cc: Ben Ku, Senior Transportation Funding Analyst

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This Agreement shall be effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-0-1807 to be executed on the date first above written.

CITY OF GARDEN GROVE


ORANGE COUNTY TRANSPORTATION AUTHORITY

By: 
William Dalton
Mayor

By: _____
Will Kempton
Chief Executive Officer

ATTEST:

APPROVAL RECOMMENDED:

By: 
Kathy Bailor
City Clerk

By: _____
Kia Mortazavi
Executive Director, Planning

Dated: _____





EXHIBIT A: TE FUNDING PLAN

Project Title: Brookhurst Street Median Rehabilitation
 Agency: Garden Grove Date: October 25, 2010

Schedule	Completion Date
Draft Environmental Document	Q2, 2010
Final Environmental Document	Q4, 2010
Begin Design Engineering	Q2, 2010
Plans, Specifications, and Cost Estimates complete	Q3, 2010
Start Right-of-Way Acquisition	N/A
Right-of-Way Certification	N/A
Submit Request for Authorization for Const (E-76)	Q4, 2010
Ready to Advertise	Q4, 2010
Award Construction	Q1, 2011
Project Completion (open for use)	Q3, 2011

Funding: TE Grant \$500,000 Local Match \$992,000 66%

Preliminary Engineering (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation

Right-of-Way (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation

Construction (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation
STIP-TE	2010-11	\$500
City Water Enterprise Funds	2010-11	\$992

Name/Title: David E. Entsminger, Water Services Manager
 Signature: _____
 Phone: (714) 741-5349 Email: daviden@ci.garden-grove.ca.us



EXHIBIT B: TE SEMI ANNUAL REPORT

Project Title: _____

Agency: _____ Date: _____

Schedule	Original Completion Date	Current Completion Date
Draft Environmental Document		
Final Environmental Document		
Begin Design Engineering		
Plans, Specifications, and Cost Estimates complete		
Start Right-of-Way Acquisition		
Right-of-Way Certification		
Submit Request for Authorization for Const (E-76)		
Ready to Advertise		
Award Construction		
Project Completion (open for use)		

Funding Table:

Preliminary Engineering (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Current Estimates	Actual Expended	Remaining Allocation

Right-of-Way (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Current Estimates	Actual Expended	Remaining Allocation

Construction (\$000's)

Fund Source	Fiscal Year	Original Planned Allocation	Revised Allocation	Actual Expended	Remaining Allocation

Major Activities:

Status:

Issues:

Name/Title:

Signature:

Phone:

Email:



EXHIBIT C: TE FINAL PROJECT REPORT FORM

Date _____

Instructions

The responsible agency should fill out the following: 1) Final Project Form, 2) Final Cost, 3) Certificate of Completion. Page 4, the OCTA Staff Verification will be filled out by OCTA staff. In addition, the agency must attach before (if available) and after **photographs** of the project site and the address or location of the site under the Location and Scope of work section.

Agency

Project

Location and Scope of Work

Verification of Match
(Actual Expenditures)

Phase	Local Match			TE Grant	Other OCTA Funding	Total
	(ENTER SOURCE)	(ENTER SOURCE)	(ENTER SOURCE)			
Engineering	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Right-of-Way	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Match Rate
0%

Project Schedule

Phase	Proposed	Actual
Draft Environmental Document		
Final Environmental Document		
Begin Design Engineering		
Plans, Specifications, and Cost Estimates complete		
Start Right-of-Way Acquisition		
Right-of-Way Certification		
Ready to Advertise		
Award Construction		
Project Completion (open for use)		