

AGREEMENT
BETWEEN CITY OF POMONA AND CITY OF CLAREMONT
FOR STREET IMPROVEMENT
(Towne Avenue Project)

THIS AGREEMENT, made and entered into on this _____ day of _____, 2019 by and between the CITY OF POMONA, a charter city, hereinafter referred to as "POMONA," and the CITY OF CLAREMONT, a municipal corporation, hereinafter referred to as "CLAREMONT."

RECITALS

WHEREAS, POMONA intends to perform street improvement construction to rehabilitate Towne Avenue pavement and ancillary areas (sidewalks, median, etc.) from Foothill Boulevard to Harrison Avenue, or Bonita Avenue - as funds allow (hereinafter the "POMONA PROJECT"); and

WHEREAS, POMONA is coordinating separately with Los Angeles County (hereinafter the "COUNTY") for the COUNTY to pay POMONA for rehabilitation of the portion of the POMONA PROJECT within the COUNTY'S jurisdiction; and

WHEREAS, CLAREMONT is willing to pay POMONA for rehabilitation of the portion of the POMONA PROJECT within CLAREMONT'S jurisdiction; and

WHEREAS, POMONA and CLAREMONT propose to work together to expedite the POMONA PROJECT; and

WHEREAS, POMONA and CLAREMONT desire to coordinate their efforts to ensure that street improvements constructed as part of the POMONA PROJECT will be done for the good of both cities; and

WHEREAS, the POMONA PROJECT is of general interest to POMONA and CLAREMONT; and

WHEREAS, POMONA is willing to perform or cause to perform the engineering, construction inspection and engineering, materials testing, construction survey, and contract administration for the POMONA PROJECT; and

WHEREAS, "COST OF IMPROVEMENTS" includes the costs of engineering, survey, construction contract, construction inspection and construction engineering, materials testing, construction survey, contract administration, signing, and striping for the POMONA PROJECT as more fully set forth herein; and

WHEREAS, POMONA and CLAREMONT are both willing to pay for their respective shares of the COST OF IMPROVEMENTS as more fully set forth herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by CLAREMONT and POMONA and of the promises herein contained, it is hereby agreed as follows:

1. Incorporation of Recitals. The recitals above are true and correct and are hereby incorporated herein by this reference.
2. POMONA AGREES:

- a. To perform or cause to perform the engineering, survey, construction contract, construction inspection and construction engineering, materials testing, construction survey, contract administration, signing, and striping for the POMONA PROJECT.
- b. To pay for the COST OF IMPROVEMENTS pursuant for the POMONA PROJECT, subject to paragraph 3(a) below.
- c. To cooperate with CLAREMONT in conducting negotiations with and, where appropriate, issue notices to public utility organizations and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction of the POMONA PROJECT. Where utilities have been installed in POMONA streets or on POMONA property, POMONA will provide the necessary right of way for the relocation of those utilities and facilities that interfere with the construction of IMPROVEMENTS.
- d. To cooperate with CLAREMONT in providing all information that may be in the possession of POMONA necessary for completion of the POMONA PROJECT.
- e. To require the construction contractor performing work on the POMONA PROJECT and to provide endorsements to add CLAREMONT, its officials, officers, employees and agents as additional insured on any insurance policies obtained for the POMONA PROJECT. POMONA shall also, to the extent practical require the construction contractor to defend, indemnify and hold CLAREMONT, its officials, officers, employees, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of the contractor or sub-contractors arising out of or in connection with the POMONA PROJECT.

3. CLAREMONT AGREES:

- a. To pay POMONA the amount of \$233,675 in two (2) installments, from General Funds or other funds received by CLAREMONT. The first installment payment in the amount of \$179,750 shall be made within 15 days from the date POMONA opens bids for the POMONA PROJECT, projected to occur March 2019. The second installment payment in the amount of \$53,925 shall be made within 15 days from the date POMONA records the notice of completion for the POMONA PROJECT, projected to occur September 2019.
- b. To grant to POMONA any temporary right-of-way or easement, acceptable to POMONA, that may be necessary for the construction of POMONA PROJECT at no cost to POMONA to the extent not already provided by law.
- c. To cooperate with POMONA in conducting negotiations with and, where appropriate, issue notices to public utility organizations and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction of the POMONA PROJECT. Where utilities have been installed in CLAREMONT streets or on CLAREMONT property, CLAREMONT will provide the necessary

right of way for the relocation of those utilities and facilities that interfere with the construction of POMONA PROJECT.

d. To cooperate with POMONA in providing all information that may be in the possession of CLAREMONT necessary for design and construction of the POMONA PROJECT.

4. IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. This AGREEMENT may be amended or modified only by mutual written consent of POMONA and CLAREMONT. Amendments and modifications of a non-material nature may be made by the mutual written consent of the parties' Directors of Public Works, City Engineers or their delegates.
- b. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

POMONA:
Matt Pilarz
Acting City Engineer
City of Pomona
P.O. Box 660
Pomona, CA 91766

CLAREMONT:
Maria Tipping
Interim City Engineer
City of Claremont
P.O. 880
Claremont, CA 91711

- c. Neither POMONA nor any officer or employee of POMONA shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of CLAREMONT under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CLAREMONT under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code, Section 895.4, CLAREMONT shall fully indemnify, defend, and hold POMONA harmless from any liability imposed for injury (as defined by Government Code, Section 810.8) occurring by reason of any acts or omissions on the part of CLAREMONT under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CLAREMONT under this AGREEMENT.
- d. Neither CLAREMONT nor any officer or employee of CLAREMONT shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of POMONA under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of POMONA under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code, Section 895.4, POMONA shall fully indemnify, defend, and hold CLAREMONT harmless from any liability imposed for injury (as defined by Government Code, Section 810.8) occurring by reason of any acts or omissions on the part of POMONA under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of POMONA under this AGREEMENT.
- e. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the parties hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, will assume the full liability

imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this AGREEMENT to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each of the parties indemnifies and holds harmless the other party for any liability, cost, or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized, by the CITY OF POMONA and the CITY OF CLAREMONT on the date above written.

THE CITY OF POMONA

ATTEST:

Linda Lowry, City Manager

City Clerk

Date: _____

APPROVED AS TO FORM:

City Attorney

THE CITY OF CLAREMONT

ATTEST:

Tara Schultz, City Manager

City Clerk

Date: _____

APPROVED AS TO FORM:

City Attorney