

**COOPERATION AGREEMENT**

This Cooperation Agreement (“Agreement”), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the CITY OF MANHATTAN BEACH, a municipal corporation in the County of Los Angeles (hereinafter referred to as “MANHATTAN BEACH”) and the CITY OF HAWTHORNE, a municipal corporation in the County of Los Angeles (hereinafter referred to as “HAWTHORNE”).

**WITNESSETH**

WHEREAS, MANHATTAN BEACH and HAWTHORNE propose to construct roadway improvements on the following segments which are jurisdictionally shared between MANHATTAN BEACH and HAWTHORNE:

| Segment   | Scope of Work                | Thomas Guide | Length (miles) | Jurisdiction Shared                           |
|---|------------------------------|--------------|----------------|---|
| Marine Avenue – Aviation Boulevard to 405 Freeway Underpass | Add additional WB lanes      |              | 0.11           | City of Manhattan Beach and City of Hawthorne |
| Aviation Boulevard – Marine Avenue – Northwest corner       | Add SB to WB right turn lane |              | 0.05           | City of Manhattan Beach and City of Hawthorne |

WHEREAS, the work will consist of excavation and removal of the existing pavement; concrete and asphalt paving; construction of curb and gutter, sidewalks, driveways, retaining walls, storm drains, raised medians and ADA ramps; traffic signal modifications, traffic striping, and adjustment of utilities; and all other work necessary to complete the improvements (hereinafter referred to as “the Project”);

WHEREAS, the Project, which is included in a State of California-administered project named Marine Avenue and Aviation Boulevard Intersection Widening Project # 11-02, includes work on other street segments that are jurisdictionally shared with other agencies not mentioned in this Agreement;

WHEREAS, the Project is within the geographical boundaries of MANHATTAN BEACH and HAWTHORNE;

WHEREAS, the Project is of general interest to the MANHATTAN BEACH and HAWTHORNE;

WHEREAS, HAWTHORNE is willing to perform or cause to be performed the preliminary engineering, including environmental documentation, construction inspection and engineering, materials testing, right-of-way engineering and acquisition, design, construction survey and contract administration for the Project;

WHEREAS, Cost of the Project (as defined herein) is currently estimated in the Cities of Hawthorne and Manhattan Beach to be Four Million Three Hundred Thousand and 00/100 Dollars (\$4,300,000.00) with HAWTHORNE'S estimated share being Two Million Eight Hundred Thousand and 00/100 Dollars (\$2,800,000.00) and MANHATTAN BEACH'S estimated share being One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00);

WHEREAS, MANHATTAN BEACH and HAWTHORNE are willing to finance their respective shares of Cost of the Project within their respective Jurisdictions;

WHEREAS the Project is being funded in part by Measure R funds awarded to HAWTHORNE and MANHATTAN BEACH by the Metropolitan Transportation Authority ("MTA") through the South Bay Council of Governments ("South Bay COG");

WHEREAS, the South Bay Cities Council of Governments has approved the transfer of Measure R funds allocated to MANHATTAN BEACH to HAWTHORNE for the purpose of completing the Project, and has designated HAWTHORNE as the lead agency for the Project; and

WHEREAS, this Agreement is authorized and provided for by the provisions of Sections 1685 and 1803 of the California Streets and Highways Code.

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

1. DEFINITIONS:

- a. "Jurisdiction" as referred to in this Agreement shall be defined as the area within the geographical boundaries of MANHATTAN BEACH and HAWTHORNE, respectively.
- b. "Construction Cost" as referred to in this Agreement shall consist of the Costs of Construction Contract (as defined below), contract administration, construction survey, construction engineering and inspection, final signing and striping, traffic detour, utility engineering and relocation, material testing, changes and modifications of plans and specifications necessitated by unforeseen or unforeseeable field conditions encountered during construction of the Project, and all other work and materials necessary to construct the Project in accordance with the approved plans and specifications and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the above mentioned items.
- c. "Cost of Preliminary Engineering" as referred to in this Agreement shall consist of the costs of environmental documentation and approvals/permits; design survey, traffic report and geometric investigation; right-of-way acquisition and certification; materials reports, preparation of plans,

specifications, and cost estimates; utility engineering; and all other necessary work prior to advertising of the Project for construction bids and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any and all of the above mentioned items.

- d. "Cost of Construction Contract" as referred to in this Agreement shall consist of the total of payments to the construction contractor(s) for the Project and the total of all payments to utility companies or contractor(s) for the relocation of facilities necessary for the construction of the Project.
- e. "Cost of the Project" as referred to in this Agreement shall consist of the Cost of Preliminary Engineering and the Construction Cost, right-of-way acquisition and clearance matters, and all other work necessary to complete the Project in accordance with the approved plans and specifications and shall include currently effective percentages added to the total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the above mentioned items.

2. MANHATTAN BEACH AGREES:

- a. To finance MANHATTAN BEACH'S jurisdictional share of Cost of the Project, the actual amount of which is to be determined by the final accounting, pursuant to paragraph 4.a., below.
- b. To cause to be transferred to HAWTHORNE the full amount of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) in Measure R funds allocated to MANHATTAN BEACH for the Aviation Boulevard/Marine Avenue Dual Left Turn Lanes Project, upon the approval of such transfer by MTA and the preparation and execution of any necessary amendments to Funding Agreement #MOU.MR312.33 between MTA and HAWTHORNE (the "MOU").
- c. To grant to HAWTHORNE, at no cost to HAWTHORNE, rights to enter any temporary right-of-way that MANHATTAN BEACH owns or has an easement for that is necessary for the construction of the Project.
- d. Upon receipt of an Encroachment Permit application from HAWTHORNE and approval of construction plans for the Project, to issue HAWTHORNE a no-fee permit(s) authorizing HAWTHORNE to construct those portions of the Project within MANHATTAN BEACH'S Jurisdiction.
- e. Upon completion of the Project, to accept full and complete ownership responsibility and to maintain in good condition and at MANHATTAN BEACH'S expense all improvements constructed as part of the Project within MANHATTAN BEACH'S Jurisdiction.

- f. To appoint HAWTHORNE as MANHATTAN BEACH'S attorney-in-fact for the purpose of representing MANHATTAN BEACH in all negotiations pertaining to the advertisement of the Project for construction bids, award, and administration of the construction contract, and in all things necessary and proper to complete the Project.
- g. To cooperate with HAWTHORNE 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 that interfere with the proposed construction. Where utilities have been installed in MANHATTAN BEACH streets or on MANHATTAN BEACH property, MANHATTAN BEACH will provide the necessary right-of-way for the relocation of these utilities and facilities that interfere with the construction of the Project.
- h. To be financially responsible for disposal and/or mitigation measures, if necessary, should any hazardous materials, chemicals, or contaminants be encountered within MANHATTAN BEACH'S Jurisdiction during construction of the Project, except as otherwise provided in Section 4.J. HAWTHORNE will order soil testing of affected areas during PS&E stage, and include the soils report in the specifications. If contamination is found, HAWTHORNE will include mitigation recommendations in the specifications.

3. HAWTHORNE AGREES:

- a. To perform or cause to be performed the preliminary engineering, construction contract procurement and administration, right-of-way acquisition and clearance matters, inspection and engineering, materials testing, construction survey, and all other work necessary to complete the Project.
- b. To finance HAWTHORNE'S jurisdictional share of Cost of the Project, the amount of which is to be determined by a final accounting pursuant to paragraph 4.a., below.
- c. To obtain MANHATTAN BEACH'S approval of plans for the Project prior to advertising for construction bids. MANHATTAN BEACH'S approval may not be unreasonably withheld.
- d. To advertise the Project for construction bids, award and administer the construction contract, do all things necessary and proper to complete the Project, and act on behalf of MANHATTAN BEACH in all negotiations pertaining thereto.
- e. To furnish MANHATTAN BEACH, within one hundred eighty (180) calendar days after final payment to contractor a final accounting of the actual

Cost of the Project, pursuant to the MOU with the MTA including an itemization of actual unit costs and actual quantities for the Project.

- f. Upon completion of the Project, to maintain in good condition and at HAWTHORNE'S expense, all improvements constructed as part of the Project within HAWTHORNE'S Jurisdiction.

4. IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. The final accounting of the actual total Cost of the Project shall allocate the total cost between MANHATTAN BEACH and HAWTHORNE based on the location of the improvements and/or work done. Thus, the cost of all work or improvements (including all engineering, administration, and all other costs incidental to any such work or improvement) located within HAWTHORNE'S Jurisdiction shall be borne by HAWTHORNE, and shall constitute HAWTHORNE'S jurisdictional share of the Cost of the Project. The cost of all work or improvements (including all engineering, administration, and all other costs incidental to any such work or improvement) located within MANHATTAN BEACH'S Jurisdiction shall be borne by MANHATTAN BEACH, and shall constitute MANHATTAN BEACH'S jurisdictional share of the Cost of the Project. MANHATTAN BEACH will contribute its share of Measure R fund up to \$1,500,000 towards the completion of the Project. HAWTHORNE will contribute \$2,800,000 (\$2,100,000 from Measure R fund and \$700,000 from other city funds) towards the completion of the Project. Should the total Cost of the Project exceed the available funds then both cities will go back to South Bay COG and MTA to request additional funds to complete the Project.
- b. During construction of the Project, HAWTHORNE shall furnish an inspector or other representative to perform the functions of an inspector. MANHATTAN BEACH may also furnish, at no cost to HAWTHORNE, an inspector or other representative to inspect construction of the Project. MANHATTAN BEACH shall have no obligation to inspect the Project. The inspectors shall cooperate and consult with each other, but the orders of HAWTHORNE inspector to the contractors or any other person in charge of construction shall prevail and be final.
- c. For the portion of the Project in MANHATTAN BEACH'S Jurisdiction, HAWTHORNE hereby assigns all of its right, title, and interest to any unexpired portion of a one-year warranty granted to HAWTHORNE by the construction contractor constructing the Project. MANHATTAN BEACH agrees to accept the assignment as its sole remedy against HAWTHORNE in connection with defects relating to the Project.
- d. This Agreement may be amended or modified only by mutual written consent of MANHATTAN BEACH and HAWTHORNE. Amendments and modifications of a nonmaterial nature may be made by the mutual written consent of the parties' Directors of Public Works or their delegates.

- e. Each party shall have no financial obligation to the other party under this Agreement, except as herein expressly provided.
- f. Any correspondence, communication, or contact concerning this Agreement shall be directed to the following:

City of Hawthorne: Mr. Arnold Shadbeh  
Director of Public Works  
City of Hawthorne  
4455 West 126th Street  
Hawthorne, CA 90250

City of Manhattan Beach: Mr. Tony Olmos  
Director of Public Works  
City of Manhattan Beach  
3621 Bell Avenue  
Manhattan Beach, CA 90266

- g. Other than as provided below, neither HAWTHORNE nor any officer nor employee of HAWTHORNE shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of MANHATTAN BEACH under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of MANHATTAN BEACH under this Agreement. MANHATTAN BEACH shall fully indemnify, defend, and hold HAWTHORNE harmless from any liability imposed for injury occurring by reason of any acts or omissions on the part of MANHATTAN BEACH under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of MANHATTAN BEACH under this Agreement.
- h. Other than as provided below, neither HAWTHORNE nor any officer nor employee of HAWTHORNE shall be responsible, directly or indirectly, for damage or liability arising from or attributable to the presence or alleged presence, transport, arrangement, or release of any hazardous materials, chemicals, or contaminants present at or stemming from the Project within MANHATTAN BEACH'S Jurisdiction or arising from acts or omissions on the part of MANHATTAN BEACH under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of MANHATTAN BEACH under this Agreement, including liability under the Comprehensive Environmental, Response, Compensation and Liability Act of 1980 (CERCLA) and under the California Health and Safety Code. MANHATTAN BEACH shall fully indemnify, defend and hold HAWTHORNE harmless from any such damage, liability or claim. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e) of the amended CERCLA, and California Health and Safety Code Section 25364.

- i. Other than as provided below, neither MANHATTAN BEACH nor any officer nor employee of MANHATTAN BEACH shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of HAWTHORNE under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of HAWTHORNE under this Agreement. HAWTHORNE shall fully indemnify, defend, and hold MANHATTAN BEACH harmless from any liability imposed for injury occurring by reason of any acts or omissions on the part of HAWTHORNE under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of HAWTHORNE under this Agreement.
- j. Neither MANHATTAN BEACH nor any officer nor employee of MANHATTAN BEACH shall be responsible, directly or indirectly, for damage or liability arising from or attributable to the presence or alleged presence, transport, arrangement, or release of any hazardous materials, chemicals, or contaminants present at or stemming from the Project within HAWTHORNE'S Jurisdiction or arising from acts or omissions on the part of HAWTHORNE under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of HAWTHORNE under this Agreement, including liability under the CERCLA and under the California Health and Safety Code. HAWTHORNE shall fully indemnify, defend, and hold MANHATTAN BEACH harmless from any such damage, liability or claim. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e) of the amended CERCLA, and California Health and Safety Code Section 25364.
- k. 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 the Government Code), each of the parties hereto, to the maximum extent permissible by law, 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 the Government 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 Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.
- l. MANHATTAN BEACH and HAWTHORNE shall comply with all applicable laws and regulations in the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, duly authorized, by the CITY OF HAWTHORNE on \_\_\_\_, 2015, and by the CITY OF MANHATTAN BEACH on \_\_\_\_\_, 2015.

CITY OF HAWTHORNE

CITY OF MANHATTAN BEACH

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Mayor

ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
City Attorney