TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Len Gorecki, Assistant City Manager/Public Works Director

SUBJECT: Consideration and possible action to authorize the Mayor to execute Agreement File No. 665.1, in a form approved by the City Attorney, with the City of Downey for Traffic Signal Modification Project at Lakewood Boulevard and Gardendale Street and Lakewood Boulevard and Rosecrans Avenue.

DATE: July 10, 2023

EXECUTIVE SUMMARY

Agreement File No. (AFN) 665.1 represents an agreement between the cities of Bellflower and Downey for the cost-sharing allocation associated with a traffic signal modification project on Lakewood Boulevard and Gardendale Street and Lakewood Boulevard and Rosecrans Avenue. This is a City of Downey project resulting from Caltrans relinquishment of State Highway 19 (Lakewood Boulevard) within the City of Downey. Bellflower has 50% ownership at the Lakewood/Rosecrans intersection and 25% ownership at the Lakewood/Gardendale intersection, and as such, we will be responsible for local contribution amounts at these percentages.

RECOMMENDATION TO CITY COUNCIL

1) Authorize the Mayor to execute Agreement File No. 665.1, in a form approved by the City Attorney; or

2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

The total cost for the City’s proportional share of the project would amount to $331,017; $266,743 for the Lakewood/Rosecrans intersection and $64,274 for the Lakewood/Gardendale intersection. Funds are currently available in either Measure M Account No. 115-47148-9000, Measure R Account No. 125-47148-9000 or Prop C Account No. 135-47148-9000.
DISCUSSION

Bellflower shares several signalized intersections with surrounding cities, including Long Beach, Cerritos, Lakewood and Downey. The City of Downey recently completed their relinquishment process with Caltrans for the portion of State Highway 19 (Lakewood Boulevard) within their boundary. As part of the relinquishment, Downey received $375,000 for traffic signal modifications (i.e., poles, services, controller cabinets, conduits, pull boxes, safety lighting, pedestrian indicators, etc.) at the intersection of Lakewood Boulevard and Gardendale Street and at the Lakewood Boulevard and Rosecrans Avenue intersection. Both intersections are shared between Bellflower and Downey, and Downey serves as the lead agency for routine maintenance and repairs at each location. Bellflower is responsible for 50% of the Lakewood/Rosecrans intersection and 25% of Lakewood/Gardendale intersection as these are the portions within the City boundary.

Downey recently received bids for the Traffic Signal Modification Project at these locations. After the $375,000 from the State is applied to the overall project cost, the remaining local match amount for Downey will be $459,564 and the local match amount for Bellflower will be $331,017. The City of Downey will invoice Bellflower for its portion of the local match following the completion of the project which is expected to be completed in 2024.

ATTACHMENT:

AFN 665.1 – Traffic Signal Modification Project Cooperative Agreement

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CITY OF DOWNEY AGREEMENT NO. ______
CITY OF BELLFLOWER AGREEMENT FILE NO. 665.1

AGREEMENT FOR LAKEWOOD BOULEVARD AT
GARDENDALE STREET AND LAKEWOOD BOULEVARD
AT ROSECRANS AVENUE TRAFFIC SIGNAL
MODIFICATIONS BETWEEN THE CITY OF BELLFLOWER
AND THE CITY OF DOWNEY

THIS AGREEMENT, made and concluded, this 10th day of July 2023, by and between the City of Downey, hereinafter “DOWNEY”, and the City of Bellflower hereinafter “BELLFLOWER” (collectively referred to herein as the “Parties”) for the modification of the traffic signals at the intersections of Lakewood Boulevard at Gardendale Street and Lakewood Boulevard at Rosecrans Avenue to upgrade all existing equipment (i.e., poles, services, controller cabinets, conduits, pull boxes, safety lighting, pedestrian indications, etc.), hereinafter referred to as the “PROJECT.”

WITNESSETH:

WHEREAS, Downey received relinquishment funds from Caltrans in the amount of $375,000.00 toward the cost of the PROJECT; and

WHEREAS, DOWNEY and BELLFLOWER have appropriated sufficient funds in their respective Capital Improvement Programs to cover the local match portion of the total cost associated with the modification of the traffic signals at the intersections of Lakewood Boulevard at Gardendale Street and Lakewood Boulevard at Rosecrans Avenue to upgrade all existing equipment (i.e., poles, services, controller cabinets, conduits, pull boxes, safety lighting, pedestrian indications, etc.) under the PROJECT; and

WHEREAS, the local match portion of the project consists of the difference between the total cost of the PROJECT and the $375,000 in Caltrans relinquishment funds received for the PROJECT; and

WHEREAS, the City boundary between DOWNEY and BELLFLOWER coincides with the Lakewood Boulevard and Gardendale Street centerlines; and

WHEREAS, the PROJECT will be of mutual benefit to both DOWNEY and BELLFLOWER by enhancing traffic safety and minimizing traffic signal maintenance costs at these intersections; and

WHEREAS, DOWNEY and BELLFLOWER desire cooperating in the development and construction of the improvements to be completed under the PROJECT;
NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained, the parties agree as follows:

A. DOWNEY shall be responsible for providing all design and construction engineering necessary to complete the PROJECT. This shall include, without limitation, the following: design and preparation of complete plans, specifications and estimates; advertisement, bidding and award; contract administration, materials testing and inspection for the contemplated improvements, in accordance with the Public Contract Code, the City of Downey Charter, the City of Downey Municipal Code and the most recently adopted City of Downey Purchasing Policy, as applicable.

B. BELLFLOWER will compensate DOWNEY for its share of the local match portion of the total PROJECT cost. The actual BELLFLOWER share is fifty percent (50%) for the Lakewood Boulevard at Rosecrans Avenue Intersection and twenty five percent (25%) for the Lakewood Boulevard at Gardendale Street Intersection, of all costs associated with the local match portion of the PROJECT, including design, construction and construction engineering. Bellflower agrees to reimburse Downey for Bellflower’s Costs within 30 days of receiving an invoice. Any dispute regarding Bellflower’s Costs must be made within 10 business days of receiving an invoice. Upon request, Downey must provide Bellflower with any supporting documentation within 10 business days. All as-built plans must be provided to Bellflower within 30 days after a notice of completion is recorded for the Project and all of Bellflower’s Costs are paid to Downey.

C. DOWNEY and BELLFLOWER hereby approves or shall approve the scope, design and estimated cost of the PROJECT prior to the commencement of the PROJECT.

D. After the PROJECT is completed and accepted by both Parties, DOWNEY and BELLFLOWER agree to be responsible for maintenance of the improvements constructed for the PROJECT, and DOWNEY will continue to bill BELLFLOWER for 50% of the maintenance cost at the Lakewood Boulevard at Rosecrans Avenue Intersection and 25% of the maintenance cost at the Lakewood Boulevard at Gardendale Street Intersection pursuant to the traffic signal maintenance agreement between DOWNEY and its traffic signal maintenance vendor.

E. BELLFLOWER shall pay to DOWNEY an amount equal to fifty percent (50%) for the Lakewood Boulevard at Rosecrans Avenue Intersection and twenty five percent (25%) for the Lakewood Boulevard at Gardendale Street Intersection of the total PROJECT costs upon contract completion, and final acceptance of the PROJECT by DOWNEY. Bellflower agrees to reimburse Downey for Bellflower’s Costs within 30 days of receiving an invoice. Any dispute regarding Bellflower’s Costs must be made within 10 business days of receiving an invoice. Upon request, Downey must provide Bellflower with any supporting documentation within 10 business days. All as-built plans must be provided to Bellflower within 30 days after a notice of completion is recorded for the Project and all of Bellflower’s Costs are paid to Downey.

F. Each Party, as an Indemnitor, agrees to protect, indemnify, and hold the other Party (the “Indemnitee”) and its employees, officers and agents free and harmless from any and all losses, claims, liens, demands and causes of action of every kind including, without limitation,
the amounts of judgment, interests, court costs, legal fees, experts fees, experts costs, and other expenses incurred by the Indemnitee including losses and claims regarding personal injuries, death, or damages to property, and without limitation by enumeration, all other claims or demands of every kind occurring or arising directly out of the negligent acts, errors or omissions of the Indemnitor in the performance of its obligations and duties under this Agreement, except to the extent the injury to persons or damage to property are due or claimed to be due to the Indemnitee’s negligence or willful misconduct. This provision is not intended to create any cause of action in favor of any third party against either Party to this Agreement, but is intended solely to provide for indemnification of a Party for liability for damages and injuries to third persons or property arising from the Indemnitor Party’s negligent performance of this Agreement. Bellflower and Downey waive the pro rata risk allocation contained in Government Code § 895.6. This Section survives termination or expiration of this Agreement.

G. DOWNEY shall require any consultant and contractor to perform work on the PROJECT or to perform maintenance services for the improvements to protect, indemnify and defend BELLFLOWER in the manner that DOWNEY is indemnified in the contract documents. DOWNEY shall require any consultant and contractor to name both DOWNEY and BELLFLOWER as additional insureds on all required insurance under the PROJECT contract documents.

H. The parties of this Agreement are the City of Downey, a municipal corporation and charter city, having its principal office at 11111 Brookshire Avenue, Downey, CA 90241 and the City of Bellflower, a municipal corporation, having its principal office at 16600 Civic Center Drive, Bellflower, CA 90706.

I. The representatives of the respective parties who are primarily responsible for the administration of this Agreement, and to whom formal notices, demands and communications shall be given, are as follows:

The principal representative of the City of Downey is:

Matthew Baumgardner P.E.
Director of Public Works/City Engineer
11111 Brookshire Avenue
Downey, CA 90241
(562) 904-7102

The principal representative of the City of Bellflower is:

Len Gorecki
Director of Public Works
16600 Civic Center Drive
Bellflower, CA 90706
(562) 804-1421 x 2217

J. This Agreement shall be effective upon execution by DOWNEY and
BELLFLOWER and shall continue in full force and effect until June 30, 2024, unless extended by written amendment signed by the parties, including the City Manager of the City of Downey. Notwithstanding this Section J, if the construction is in progress on June 30, 2024, the Agreement shall continue in effect until project completion. Further, the obligations and promises of the parties set forth in Sections D, E, F, and G of this Agreement shall survive the termination of this Agreement.

K. Disputes regarding the interpretation or application of any provisions of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties. If any action at law or in equity is brought to enforce or interpret any provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys’ fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

L. Integration. This instrument and its attachments constitute the sole agreement between Bellflower and Downey respecting the matters above and correctly sets forth the obligations of Bellflower and Downey. Any Agreement or representations respecting the Project not expressly set forth in this instrument are void.

M. This Agreement is covered by the laws of the State of California. Any action must be filed in the Los Angeles Superior Court, Southeast Judicial District, California.

N. Default and Termination.

1. Notice of Default. If for any reason, a Party fails to fulfill in a timely and proper manner its obligation under this Agreement, or a Party has violated any of the terms or conditions of this Agreement, the non-violating Party must provide a Notice of Default to the violating Party setting forth the breached terms or conditions of this Agreement. The violating Party then has 30 days to cure the terms and conditions in the written notice, unless extended by mutual agreement of the Parties in writing. The Notice of Default must refer to this clause, specify the nature of the alleged default, and must specify the effective date of the termination if a breach does lead to termination.

2. Failure to Cure. If the violating Party fails to cure and bring into compliance all terms specified, the non-violating Party then may terminate this Agreement upon thirty (30) days written notice. Downey would then only receive reimbursement for Bellflower’s Costs, if any are due, for the portion of the Project performed in compliance with this Agreement as of the termination date.

O. Compliance with Law. Both Parties will, at their sole cost and expense, comply with all of the requirements of all federal, state, and local authorities now in force, or which may hereafter be in force, pertaining to this Agreement.

P. Waiver of Breach. Any express or implied waiver of a breach of any term of this Agreement will not constitute a waiver of any further breach of the same or other term of this Agreement.
Q. Term. This Agreement becomes effective 10 business days after the date it is fully executed and, unless otherwise terminated, remains effective until Downey is fully reimbursed for Bellflower’s Costs.

R. Cooperation between the Parties. The respective Public Works Director for each party may undertake most decisions regarding the Project. Among other things, the Public Works Directors must agree on the specific design standards and project scope for any work performed within Downey’s jurisdiction that constitutes part of Bellflower’s Costs.

S. Downey as Lead Agency; Selection of Contractors and Consultants. The Parties agree that Downey will be lead agency for all aspects of the Project (including environmental review) and is responsible for Project management. Both Parties will cooperate, in the manner anticipated in Section 4, regarding selection of professional services; contractors will be awarded a contract in accordance with applicable law.

T. Required Contract Clauses. As to any element of the Project affecting Bellflower’s jurisdiction or Bellflower’s Costs, Bellflower will be identified as an intended third-party beneficiary in all contracts executed by Downey. Moreover, Bellflower will be listed as an “additional insured” for any insurance provided by consultants or contractors in accordance with Bellflower’s insurance requirements.

U. Permits. Bellflower agrees to issue a “no fee” permit for any work performed within its jurisdiction as may be required. For example, and not limitation, Bellflower will issue an encroachment permit and grading permit to the contractor constructing the Project.

V. Partial Invalidity. Should any provision of this Agreement be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Agreement will remain in effect, unimpaired by the holding.

W. Construction. The language of each part of this Agreement will be construed simply and according to its fair meaning, and this Agreement will never be construed either for or against either party.

X. Authority/Modification. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment.

Y. Electronic Signatures. This Agreement may be executed by the Parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the Parties notwithstanding that all the Parties are not signatories to the same counterpart. In accordance with Government Code §16.5, the Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by electronic transmission. Such electronic signature will be treated in all respects as having the same effect as an original signature.

[SIGNATURES ON NEXT PAGE]
IN WITNESS THEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

CITY OF DOWNEY

Claudia M. Frometa, Mayor

ATTEST:

Maria Alicia Duarte, CMC, City Clerk

APPROVED AS TO FORM:

Lauren B. Langer, Interim City Attorney

CITY OF BELLFLOWER

Sonny R. Santa Ines, Mayor

ATTEST:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, City Attorney