

12-Ora-405 KP 17.4 (PM 10.8)

Widening of the Fairview Road

Overcrossing and southbound

Fairview Road on ramp

12208 – 0F9301

District Agreement No. 12-540

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_, 2006, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

CITY OF COSTA MESA , a body politic and a municipal corporation (chartered City) of the State of California, referred to herein as CITY.

**RECITALS**

1. STATE and CITY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to State Highways within CITY's jurisdiction.
2. CITY intends to widen Fairview Road overcrossing on Interstate 405 (I-405) and widen the southbound I-405/SR-73 onramp, referred to herein as "PROJECT".
3. CITY is willing to fund one hundred percent (100%) of all construction capital outlay and support costs, except that the costs of STATE's quality assurance will be borne by STATE. The PROJECT cost estimate is shown on Exhibit A, attached hereto and made a part of this Agreement.
4. The parties agree that CITY will prepare the contract documents and advertise, award, and administer the construction contract for PROJECT.
5. Project development responsibilities for PROJECT were covered in a prior Cooperative Agreement executed by STATE and CITY on November 3, 2003 (District Agreement No.12-479, Document No.015715).
6. The parties now define hereinbelow the terms and conditions under which PROJECT is to be owned, constructed, financed, operated, and maintained.

**SECTION I**

**CITY AGREES:**

1. To pay one hundred percent (100%) of the actual construction capital and support costs required for satisfactory completion of PROJECT.
2. To not use STATE's funds for any PROJECT capital and support costs except the costs of STATE's quality assurance which will be borne by STATE.
3. To advertise, award, and administer the construction contract for PROJECT in accordance with requirements of the Local Agency Public Construction Act and the California Labor Code, including its prevailing wage provisions. Workers employed in the performance of work contracted for by CITY, and/or performed under encroachment permit, are covered by provisions of the Labor Code in the same manner as are worker employed by STATE's contractors. CITY shall obtain applicable wage rates from the State Department of Industrial Relations and shall adhere to the applicable provision of the State labor Code. CITY shall report all violations to the State Department of Industrial Relations. The PROJECT construction contract shall also include the Federal DBE requirements as contained in Title 49 CFR, part 26.
4. Construction by CITY of those portions of PROJECT which lie within the State Highway right of way shall not commence until CITY's contract plans involving such work, the utility relocation plans, and the right of way certification have been reviewed and accepted by STATE and encroachment permits have been issued to CITY and CITY's contractor.

5. CITY's construction contractor shall maintain in force, until completion and acceptance of the PROJECT construction contract, a policy of Contractual Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability, that complies with all coverage requirements of Section 7-1.12 of STATE's then effective Standard Specifications. Such policy shall contain an additional insured endorsement naming STATE and its officers, agents, and employees as additional insureds. This insurance coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to STATE which shall be delivered to STATE before the issuance of an encroachment permit to CITY's construction contractor.
6. To require the construction contractor to furnish both a payment and a performance bond, naming CITY as obligee with both bonds complying with the requirements set forth in Section 3-1.02 of STATE's current Standard Specifications prior to performing any PROJECT construction work. CITY shall defend, indemnify, and hold harmless STATE and its officers, agents, and employees from all claims by stop notice claimants related to the construction of PROJECT.
7. To have PROJECT constructed by contract to the satisfaction of and subject to STATE's acceptance in accordance with the STATE accepted PROJECT Plans, Specifications & Estimate (PS&E).
8. Contract administration procedures shall conform to STATE's Construction Manual, Local Assistance Procedures Manual (if Federal funds are used), and the PROJECT encroachment permits.

9. Construction within the existing or ultimate State Highway right of way shall comply with STATE's Standard Specifications, the PROJECT Special Provisions, and STATE's Construction Manual.
  
10. If any existing public and/or private utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, CITY shall make all necessary arrangements with the owners of such facilities for their protection, relocation, or removal in accordance with STATE's policy and procedure for those facilities located within the limits of the State Highway and in accordance with CITY's policy for those facilities located outside the State Highway. The cost of protection, relocation, or removal inside STATE's right of way shall be apportioned between the utility owners and CITY in accordance with STATE's policy and procedure. CITY shall require any utility owner performing relocation work in the State Highway right of way to obtain an encroachment permit from STATE prior to the performance of said relocation work. The requirements of the most current version of STATE's "Policy on High and Low Risk Underground Facilities within Highway Rights of Way" shall be fully complied with. Any relocated or new facilities shall be correctly shown and identified with any unmodified facilities on the "As-Built" plans.
  
11. All survey work shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and STATE's Staking Information Booklet.
  
12. PROJECT material testing and quality control shall conform to STATE's Construction Manual and STATE's California Test Methods, and shall be performed, at CITY's expense, by a material-tester certified by STATE.

13. PROJECT specialty testing, asphalt and concrete plant certifications shall be performed by STATE as part of quality assurance. STATE shall perform source inspection and testing as outlined in the Construction Manual.
14. To furnish, at CITY's expense and subject to the approval of STATE, a field site representative who is a licensed civil engineer in the State of California, to perform the functions of a Resident Engineer. The Resident Engineer shall not be an employee or subcontractor of the company, if any, that prepared the PROJECT PS&E or of the construction contractor.
15. At CITY's expense, to furnish sufficient qualified support staff, subject to the approval of STATE, to assist the Resident Engineer in, but not limited to, construction surveys, soils and foundation tests, measurement and computation of quantities, testing of construction materials, checking shop drawings, preparation of estimates and reports, preparation of "As-Built" drawings, and other inspection and staff services necessary to assure that the construction is being performed in accordance with PROJECT PS&E. Said qualified support staff shall be independent of the design engineering company and construction contractor.
16. Within one hundred eighty (180) days following the completion and acceptance of the PROJECT construction contract, to furnish STATE with a complete set of "As-Built" plans in accordance with STATE's then current CADD Users Manual, Plans Preparation Manual, and STATE practice. The submittal must also include all contract records, including survey documents and Records of Surveys (to include monument perpetuation per the Land Surveyor Act, section 8771). CITY shall also submit corrected full-sized hardcopy structure plans.

17. To retain or cause to be retained for audit by STATE or other government auditors for a period of four (4) years from the date of final payment under the contract, or for local Federal-aid projects for a period of three years from STATE payment of the final voucher, whichever is longer, all records and accounts relating to PROJECT construction. CITY shall retain records and accounts longer if required in writing by STATE.
18. Upon completion of PROJECT construction, CITY will operate and maintain at CITY's cost any part of PROJECT located outside of the existing State Highway right of way (but including CITY underpasses and overcrossings of then existing State Highway right of way), until any subsequent acceptance of any part of PROJECT into the State Highway System by STATE, approval by FHWA, if required, and conveyance of acceptable title to STATE.
19. If CITY cannot complete PROJECT as originally scoped, scheduled, and estimated, CITY will, only with STATE's prior written consent, amend the PROJECT contract plans and specifications for suitable resolution to ensure a form of modified PROJECT that will at all times provide a safe and operable State Highway System.
20. If CITY terminates PROJECT prior to completion of the State Highway construction contract for PROJECT, STATE shall require CITY, at CITY's expense, to return the State Highway right of way to its original condition or to a safe and operable condition. If CITY fails to do so, STATE reserves the right to finish PROJECT or place PROJECT in a safe and operable condition. STATE will bill CITY for all actual expenses incurred and CITY agrees to pay said bill within thirty (30) days.

21. If cultural, archaeological, paleontological or other protected materials are encountered during PROJECT construction, CITY shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material. The costs for any removal or protection of that material shall be covered as a PROJECT cost contemplated by this Agreement.
22. All PROJECT support services are to be performed by CITY. Should CITY request that STATE perform any portion of those support services, CITY shall first agree to reimburse STATE for such work pursuant to a separate executed agreement.
23. To provide a Construction Zone Enhancement Enforcement Program (COZEEP) by contracting directly with the California Highway Patrol (CHP) for all traffic restrictions as outlined in the STATE's Construction Manual.

## **SECTION II**

### **STATE AGREES:**

1. At no cost to CITY, to provide quality assurance to assure that CITY's PROJECT work is performed in full compliance with the approved PROJECT PS&E (contract plans and specifications) and in accordance with STATE's then effective policies, procedures, standards, and practices. This quality assurance oversight function includes both the obligation and the authority to reject noncompliant PROJECT work and materials accepted by CITY, to order any actions needed for public safety or the preservation of property, and to assure compliance with all provisions of the encroachment permit(s) issued to CITY and CITY's contractor.



2. Upon proper application by CITY and by CITY's contractor, to issue, at no cost to CITY and CITY's contractor, the necessary encroachment permits for required work within the State Highway right of way, as more specifically defined elsewhere in this Agreement.

### **SECTION III**

#### **IT IS MUTUALLY AGREED:**

1. STATE's contractual obligations are subject to State Budget Act authority, the appropriation of resources by the Legislature, and the allocation of funds by the California Transportation Commission.
2. During PROJECT construction, representatives of CITY and STATE will cooperate and consult with each other to assure that all PROJECT work is accomplished according to the PROJECT PS&E (contract plans and specifications) and STATE's applicable policies, procedures, standards, and practices. Satisfaction of these requirements shall be verified by STATE's quality assurance representatives who are authorized to enter CITY property during construction for the purpose of monitoring and coordinating construction activities.
3. PROJECT PS&E (contract plans and specifications) changes shall be implemented by contract change orders that have been reviewed and concurred with by STATE's representative. All changes affecting public safety or public convenience, all design and specification changes, and all major changes as defined in STATE's Construction Manual shall be approved by STATE in advance of performing the work. Unless otherwise directed by STATE's representative, change orders authorized as provided herein will not

require an encroachment permit rider. All changes shall be shown on the "As-Built" plans.

4. CITY shall provide a construction contract claims process acceptable to STATE and shall process any and all claims through CITY's claims process. STATE's representative will be made available to CITY to provide advice and technical input in any claims process.
  
5. Any hazardous material or contamination of an HM-1 category found within the existing State Highway right of way during construction requiring remedy or remedial action (as defined in Division 20, Chapter 6.8 et seq. of the Health and Safety Code) shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within the local road right of way during construction requiring the same defined remedy or remedial action shall be the responsibility of CITY. For the purpose of the Agreement, hazardous material of HM-1 category is defined as that level or type of contamination which State or Federal regulatory control agencies having jurisdiction have determined must be remediated by reason of its mere discovery regardless of whether it is disturbed by PROJECT or not. STATE shall sign the HM-1 manifest and pay all costs for remedy or remedial action within the existing State Highway right of way, except that if STATE determines, in its sole judgment, that STATE's cost for remedy or remedial action is increased as a result of proceeding with construction of PROJECT, that additional cost identified by STATE shall be borne by CITY. As between CITY and STATE, CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action outside of State Highway right of way. While STATE will exert every reasonable effort to fund the remedy or remedial action for which STATE is responsible, in the event STATE is unable to provide funding, CITY will have

the option to either delay further construction of PROJECT until STATE is able to provide funding, or CITY may proceed with the remedy or remedial action as a PROJECT expense without any subsequent reimbursement by STATE.

6. Any remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found both within and outside the existing State Highway right of way during construction shall be the responsibility of CITY, at CITY's expense, as a consequence of proceeding with PROJECT construction. For the purpose of this Agreement any hazardous material or contamination of HM-2 category is defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed or otherwise protected in place had PROJECT not proceeded. CITY shall sign any HM-2 manifest if construction of PROJECT proceeds and HM-2 material is removed in lieu of being treated in place.
7. If hazardous material or contamination of either HM-1 or HM-2 category is found during construction on new right of way acquired by or on account of CITY for PROJECT, CITY shall be responsible, at CITY's expense, for all required remedy or remedial action and/or protection in the absence of a generator or prior property owner willing and prepared to perform that corrective work. Nothing herein shall preclude CITY from seeking contribution, indemnification, participation or other remedy from any generator, prior property owner or other potentially responsible party for such corrective work.
8. The party responsible for funding any hazardous material cleanup shall be responsible for the development of the necessary remedy and/or remedial action plans and designs. Remedial actions proposed by CITY on the State Highway right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and

practices and those standards and practices mandated by those Federal and State regulatory agencies.

9. STATE, in exercising its authority under section 591 of the Vehicle Code, has included any and all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code to the PROJECT areas open to public traffic. CITY shall take all necessary precautions for safe operation of CITY's vehicles, the construction contractor's equipment and vehicles and/or vehicles of personnel retained by CITY, and for the protection of the traveling public from injury and damage from such vehicles or equipment.
10. Upon PROJECT completion and acceptance, subject to the approval of STATE, STATE will operate and maintain those PROJECT facilities constructed within STATE's right of way (excepting identified CITY encroachments) at STATE's cost.
11. Upon satisfactory completion of all PROJECT work under this Agreement, as determined by STATE, actual ownership and title to materials, equipment, and appurtenances installed within the State Highway right of way will automatically be vested in STATE, and materials, equipment, and appurtenances installed outside of the State Highway right of way will automatically be deemed to be under the control of CITY or an appropriate third party as determined by CITY. No further agreement will be necessary to transfer ownership as hereinbefore stated.
12. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to

the development, design, construction, operation, or maintenance of State Highways and public facilities different from the standard of care imposed by law.

13. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done CITY under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
14. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
15. Prior to the commencement of any construction activity within the State Highway right of way, either STATE or CITY may terminate this Agreement by written notice to the other party.

16. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
  
17. Those portions of this Agreement pertaining to the completion of PROJECT shall terminate upon completion and acceptance of the construction contract for PROJECT by CITY, the satisfactory completion of all post-construction obligations of CITY, and delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2008, whichever is earlier in time. However, the ownership, operation, maintenance, indemnification, and claims clauses shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction-related or other claims arising out of PROJECT be asserted against one of the parties, the parties agrees to extend the termination date of this Agreement, as may be necessary.

**STATE OF CALIFORNIA**

**CITY of COSTA MESA**

DEPARTMENT OF TRANSPORTATION

WILL KEMPTON

Director of Transportation

Mayor

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

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

JIM BEIL

Deputy District Director

Capital Outlay Program

APPROVED AS TO FORM AND PROCEDURE:

ATTESTED:

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

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

Attorney

JULIE FOLCIK

Department of Transportation

City Clerk

CERTIFIED AS TO FINANCIAL TERMS

AND CONDITIONS

APPROVED AS TO FORM

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

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

Accounting Administrator

KIMBERLY HALL BARLOW

City Attorney

CERTIFIED AS TO FUNDS

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

NEDA SABER

District Budget Manager

**EXHIBIT A**

<b>Phase of Work</b>	<b>Total Estimate</b>	<b>CITY</b>
CON Support	\$500,000	\$500,000 (100%)
RW Capital	\$0	\$0 (100%)
CON Capital	\$3,524,256	\$3,524,256 (100%)
State Furnished Materials (SFM)	\$0	\$0
<b>TOTAL</b>	<b>\$4,024,256</b>	<b>\$4,024,256</b>

**COST ESTIMATE BREAKDOWN**