

12-ORA-55 KP 2.32/3.29
Newport Blvd between 19th St. and 17th St.
12209-098401
District Agreement No. 12-554

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 2008, 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 the State Highway System (SHS) within CITY's jurisdiction.
2. CITY intends to construct an additional northbound lane on State Route 55 (SR55) in Costa Mesa between 19th street and 17th street, referred to herein as "PROJECT".
3. CITY is willing to fund one hundred percent (100%) of all capital outlay and support costs, except that the costs of STATE's Independent Quality Assurance (IQA) 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 July 1, 2002 District Agreement No. 12-457, Document No. 015360).
6. Pavement, curb and gutter repair within the project limits will be the subject of a separate contribution agreement, 12-553 (EA 0H7300).
7. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
8. The parties now define herein below the terms and conditions under which PROJECT is to be owned, constructed, financed, operated, and maintained.

SECTION I

CITY AGREES:

1. All PROJECT work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of development.
2. To permit STATE to monitor, participate, and oversee the selection of personnel who will provide construction engineering services for PROJECT. CITY agrees to consider any request by STATE to avoid a contract award or discontinue the contracted services of

any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.

3. To fund one hundred percent (100%) of all PROJECT construction capital and support costs required for satisfactory completion of PROJECT, including, but not limited to, "State-furnished material", and source inspection, except for costs of STATE's IQA.
4. To not use STATE's funds for any PROJECT capital and support costs.
5. To submit a written request for any "State-furnished material" identified in the PROJECT plans, specifications, and estimates (PS&E) a minimum of forty-five (45) days in advance of the need for such materials. To then pay STATE, within fifteen (15) days of receipt of STATE's billing, the actual cost invoiced for the requested "State-furnished material". CITY may take delivery of the "State-furnished material" after STATE's receipt of CITY's payment and at the location directed by STATE.
6. STATE shall perform source inspection as outlined in STATE's Construction Manual, Construction Manual Supplement for Local Agency Resident Engineer, and Local Agency Structure Representative Guideline. CITY shall reimburse STATE for all direct and indirect costs incurred for any source inspection performed by STATE.
7. To deposit with STATE within twenty-five (25) days of receipt of STATE's billing thereof the amount of said bill, which amount represents the estimated cost of source inspection, as referred to in Article 6 of this Section I.
8. To pay STATE upon completion of all work on PROJECT and within twenty-five (25) days of receipt of a detailed statement made upon final accounting of costs therefore, any amount, over and above the aforesaid deposits for State-furnished materials and source inspection, required to complete CITY's financial obligations assumed pursuant to this Agreement.
9. 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 California Labor Code in the same manner as are workers employed by STATE's contractors. The use of any Federal funds towards PROJECT construction will mandate the inclusion and enforcement of all applicable Federal labor mandates.
10. Construction by CITY of those portions of PROJECT which lie within the SHS 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.
11. CITY's construction contractor shall maintain in force, until completion and acceptance of the PROJECT construction contract, a policy of General Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability, that complies with all

coverage requirements with 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.

12. 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 and suits by stop notice claimants related to the construction of PROJECT.
13. To have PROJECT constructed by contract to the satisfaction of and subject to STATE's acceptance in accordance with the STATE accepted PROJECT PS&E.
14. Contract administration procedures shall conform to STATE's Construction Manual, Local Assistance Procedures Manual (if Federal funds are used), and the PROJECT encroachment permits.
15. Construction within the existing or ultimate SHS right of way shall comply with STATE's Standard Specifications, the PROJECT Special Provisions, and STATE's Construction Manual.
16. All survey work shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and STATE's Staking Information Booklet.
17. PROJECT material testing and Quality Control/Assurance shall conform to STATE's Construction Manual, Construction Manual Supplement for Local Agency Resident Engineer, Local Agency Structure Representative Guideline and STATE's California Test Methods, and shall be performed by a material-tester certified by STATE, at CITY's expense.
18. All PROJECT work, except as set forth in this Agreement, is to be performed by CITY. Should CITY request that STATE perform any portion of PROJECT work not set forth in this Agreement, CITY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
19. 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 entity, if any, that prepared the PROJECT PS&E or an employee of the construction contractor.
20. If the Resident Engineer is not also a registered Landscape Architect, CITY will furnish, at CITY expense and subject to approval of STATE, a Landscape Architect to perform the function of an Assistant Resident Engineer/Inspector who is responsible for both daily

on-site inspections and final decisions including, but not limited to, any highway planting and the irrigations systems that comprise a portion of the PROJECT work. Final decisions shall continue to be subject to the satisfaction and approval of STATE.

21. At PROJECT's expense, to furnish sufficient qualified support staff, subject to the approval of STATE, to assist the Resident Engineer in, but not limited to, structure representative, 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 the mandated "As-Built" drawings, and other inspection and staff services necessary to assure that the construction is being performed in accordance with the PROJECT PS&E. Said qualified support staff shall be independent of the design engineering company and construction contractor, except that the PROJECT designer may be retained to check shop drawings, do soils foundation tests, test construction materials, and perform construction surveys.
22. 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 STATE requested 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.
23. 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 PROJECT contract, or four (4) years from STATE payment of the final voucher, whichever is longer, all records and accounts relating to PROJECT construction. CITY shall retain said records and accounts longer for such periods as are required in writing by STATE.
24. Upon completion of PROJECT construction, CITY will operate and maintain, at CITY's cost, any part of PROJECT located outside of the existing SHS right of way as shown on Exhibit 1, attached to and made a part of this Agreement, until any subsequent acceptance of any part of PROJECT into the SHS by STATE, approval by FHWA, if required, and conveyance of acceptable title to STATE.
25. If CITY cannot complete PROJECT as originally scoped, scheduled, and estimated, CITY will, only with STATE's prior written consent, amend the PROJECT PS&E for a suitable resolution to ensure an alternate form of modified PROJECT that will, at all times, provide a safe and operable SHS.
26. If CITY terminates the PROJECT prior to completion, STATE shall require CITY, at CITY's expense, to return the SHS right of way to its original condition or to a safe and operable condition acceptable to STATE. If CITY fails to do so, STATE reserves the right to finish PROJECT or place PROJECT in a safe and operable condition and STATE will bill CITY for all actual expenses incurred and CITY agrees to pay said bill within thirty (30) days of receipt.

27. 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.
28. 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 STATE's Construction Manual.

SECTION II

STATE AGREES:

1. At no cost to CITY, to provide IQA to assure that CITY's PROJECT work is performed in full compliance with the approved PROJECT PS&E and in accordance with STATE's then effective policies, procedures, standards, and practices. This IQA 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 on the SHS, and to assure compliance with all provisions of the encroachment permit(s) issued by STATE 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 SHS right of way as more specifically defined elsewhere in this Agreement.
3. To provide, at CITY's cost, any "State-furnished material" as shown on the PROJECT PS&E as determined by STATE to be appropriate and available during construction of PROJECT. Upon receipt of CITY's request for any such "State-furnished materials", STATE will order those materials and STATE's Project Manager will have an invoice submitted to CITY for the costs of those materials. Upon receipt of those materials and CITY's payment, STATE will make those "State-furnished materials" available to CITY at a STATE designated site.
4. Independent assurance testing, specialty testing, and approval of the type of asphalt and concrete plants shall be by STATE, at STATE's expense.
5. To submit an invoice to CITY for the estimated direct and indirect cost of source inspection, pursuant to Article 6 of Section I, prior to start of PROJECT construction and upon receipt of said estimate from State's representative.
6. Upon completion of PROJECT and all work incidental thereto, to furnish CITY with a detailed statement of the State-furnished materials and source inspection costs to be borne by CITY. To thereafter refund to CITY, promptly after completion of STATE's final accounting of said PROJECT costs, any amount of CITY's deposits, required in Articles 5 & 7 of Section I, remaining after actual State-furnished materials and source inspection

costs to be borne by CITY have been deducted or to bill CITY for any additional amount required to complete CITY's financial obligations assumed pursuant to this Agreement.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT construction phase administered by CITY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by CITY conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by CITY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by CITY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and CITY will pay or authorize STATE to reimburse itself from then available PROJECT funds.
3. CITY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be paid for by CITY, as a PROJECT cost.
4. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or environmental approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
5. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
6. If, during performance of PROJECT construction, new information is obtained which requires additional environmental documentation to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks.

7. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
8. If any existing 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 timely accommodation, protection, relocation, or removal.

The costs for the PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside STATE's right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies, procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.
9. 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 and STATE's then applicable policies, procedures, standards, and practices. Satisfaction of these requirements shall be verified by STATE's IQA representatives who are authorized to enter CITY's property during construction for the purpose of monitoring and coordinating construction activities.
10. PROJECT PS&E changes shall only be implemented by contract change orders that have been reviewed and concurred with by STATE's representative(s). 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 that 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.
11. 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.
12. In the event that STATE proposes and/or requires a change in design standards, implementation of those new or revised design standards shall be done in accordance with STATE's Highway Design Manual, Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with CITY in a timely manner regarding the effect of proposed and/or required PROJECT changes.
13. The party that discovers HM will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous waste (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

14. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

CITY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. CITY will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

15. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost related to HM-2 is a PROJECT construction cost.

16. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.

17. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.

18. STATE, in exercising its authority under section 591 of the Vehicle Code, has included all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code as applicable 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 to assure the protection of the traveling public and STATE employees from injury and damage from such vehicles or equipment.

19. Upon PROJECT completion and acceptance, subject to the approval of STATE, CITY will operate and maintain all PROJECT facilities at its own cost until a Maintenance Agreement is executed or an existing agreement, if any, is amended to incorporate the maintenance of these new PROJECT facilities located on the SHS.

20. Upon PROJECT completion, subject to the approval of STATE, STATE will operate and maintain traffic signals, signs and safety lighting (collectively "Electrical Facilities"), as defined by existing Agreement #_____, entered into effective on ___(date)_____, that details the shared funding responsibilities of the parties for operation, maintenance and energy costs related to said Electrical Facilities. Maintenance is broadly deemed to include all necessary routine maintenance, repairs, modifications and replacements.

21. 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 operating SHS right of way for SHS operations will be vested in STATE, and materials, equipment, and appurtenances installed for non-SHS operations both inside (overcrossings and underpasses for local traffic) and outside of the SHS right of way will automatically be deemed to be under the control of CITY or an appropriate third party as determined by CITY.
22. 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 the SHS and public facilities different from the standard of care imposed by law.
23. 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 by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY or arising under this Agreement. It is understood and agreed that CITY will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
24. 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 or arising under this Agreement. It is understood and agreed that STATE will fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
25. Prior to the commencement of any construction activity within the SHS right of way, either STATE or CITY may terminate this Agreement by written notice to the other party.
26. 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.
27. Those portions of this Agreement pertaining to the completion of PROJECT shall terminate upon the satisfactory completion of all post-construction obligations of CITY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2010, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal

challenges, and claims articles 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 agree to extend the fixed termination date of this Agreement, until such time as the construction related claims are settled, dismissed or paid.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY of Costa Mesa__

[Name in Capitals]

Director of Transportation

By: _____
Mayor

By: _____
Jim Beil
Deputy District Director, Capital Outlay Programs

Attest: _____
City Clerk

Approved as to form and procedure:

Approved as to form and procedure:

Attorney
Department of Transportation

Attorney

Certified as to available funds:

District Budget Manager

EXHIBIT A
COST ESTIMATE

Item	STATE	CITY
Construction Capital	\$0	\$6,581,000 (100%)
Construction Support	\$0	\$228,000 (100%)
Right of Way Capital	\$0	\$100,000 (100%)
Right of Way Support	\$0	\$25,000 (100%)
State-Furnished Materials	Actual Cost	0\$
Source Inspection	\$0	\$50,000 (100%)
Total	\$0+SFM	\$6,984,000 (100%)