

Attachment 1

Agreement No. MA-080-19011889

COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF ORANGE AND THE CITY OF COSTA MESA FOR FUNDING, DESIGN, CONSTRUCTION, AND MAINTENANCE OF THE SANTA ANA AVENUE AND UNIVERSITY DRIVE DRAINAGE AND PAVEMENT IMPROVEMENTS

This Cooperative Agreement is made and entered into this _____ day of _____ 2019 (“**Agreement**”), by and between the **COUNTY OF ORANGE** (“**County**”), a political subdivision of the State of California, and the **CITY OF COSTA MESA** (“**City**”), a municipal corporation in the State of California. The County and City shall sometimes be referred to separately as a “**Party**” or collectively as the “**Parties**”.

RECITALS

- A. County and City desire to construct certain drainage and pavement improvements at Santa Ana Avenue and University Drive (the “**Project**”), as more fully described herein.
- B. The Project is within the municipal jurisdictions of the County and the City, located on University Drive between Santa Ana Avenue and Willo Lane, on Santa Ana Avenue between Salt Pond and Canoe Pond, and on the County owned and maintained unused lot (University Dr. on Parcel Map No. 95-170) by the intersection of Del Mar Avenue/University Drive and Santa Ana Avenue. Project location and extents are depicted in Attachment A.
- C. The existing catch basin for the Costa Mesa Storm Drain Facility (G03P01) centered on the northeast corner curb return at the intersection of Del Mar Avenue/University Drive and Santa Ana Avenue will be modified in order to provide opportunities to divert, capture, and infiltrate or treat low-flow stormwater runoff.
- D. The Parties agree that utilization of the unused lot for an infill park in conjunction with improvements to divert low-flow stormwater runoff from the street in order to capture at the park, (hereafter referred to as “**Park**”), would be a multi-use benefit project that serves the community and the environment.
- E. Project improvements will include reconstructing portions of the roadway intersection of Del Mar Avenue/University Drive and Santa Ana Avenue and improving the storm drain to divert and capture low-flow stormwater runoff, constructing drainage basin for captured stormwater runoff, installing park amenities, planting drought tolerant landscaping, and reconstructing pavement along University Drive.
- F. Upon filing Notice of Completion, the County will pursue granting an easement over the improved park to adjacent jurisdictions.
- G. County is fully responsible for the design phase of the Project. This includes CEQA approval, design, right-of-way engineering, utility coordination, financial coordination and any other Project design phase work. The design phase shall end with completion of final Plans, Specifications, and Estimates (PS&Es) for bidding and construction of the Project, provided herein as Attachment C.

H. City confirms that, pursuant to Government Code Section 65402, the Project conforms to the City's General Plan.

I. For the purpose of this Agreement, the Project shall encompass the construction phase and post-construction phase. The construction phase shall begin with advertising the Project for bids and end with Project close out when the County completes construction of the Project and files a Notice of Completion. The post-construction phase shall begin after the 90-day plant establishment period and upon County filing the Notice of Completion.

J. The County and the City wish to specify their respective roles and responsibilities for specific aspects, phases, and funding obligations of the Project and the completed Project, post-construction, so thus enter into this Agreement set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals of fact, the mutual covenants and conditions contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the PARTIES agree as follows:

1. Construction Phase Obligations

1.1. Project Advertisement. Upon written approval of the final Project plans, specifications and engineer's estimate by the City, the County shall perform all of the administrative work required for advertising for bids, dealing with bid disputes, and awarding the construction contract to the lowest responsible bidder. The County may in its discretion reject all bids. If, after all bids are opened, there are insufficient funds available to construct the Project, the County and the City shall meet and confer to determine a course of action for the Project. County shall fund one hundred percent (100%) of the costs related to Project advertisement.

1.2. County Highways Declaration. In accordance with Streets & Highways Code sections 1700-1704, County shall pass a resolution declaring the City's roadways within the Project to be a County highway for construction purposes only. Upon receipt of County's resolution, City shall consent by resolution to said County highway status. Upon County filing a Notice of Completion and City's acceptance of improvements, City's roadways shall no longer be designated a County highway. County and its contractor, subcontractors and agents shall not be required to obtain an encroachment permit from the City or other City permit or pay any City fee for any purpose covered by this Agreement.

1.3. Project Construction. County shall be responsible for funding one hundred percent (100%) of the construction of all Project-related funding obligations to construct the Project in accordance with the construction contract documents – plans, specifications, and estimates – within both the County's and City's jurisdictions.

1.4. Project Inspection. County shall perform all construction inspection for the Project. City shall have access to the Project at all times during construction for the purpose of inspection.

City shall inspect work within City's jurisdiction regularly. Should City deem any remedial work to be necessary, the City shall notify the County in writing thereof within three (3) business days of inspection, specifically describing the needed corrections and proposed remedial work.

1.5. Change Orders. County shall process any contract change orders ("CCOs") that are necessary for construction of the Project. City shall approve CCOs related to Park amenities within three (3) business days of receipt from County. County shall be responsible for funding one hundred percent (100%) of the costs associated with any CCOs. However, should City request additional work beyond the scope included in the schedule of work items shown in Attachment B, and the additional work results in a CCO, City shall be responsible for funding one hundred percent (100%) of costs associated with the City-initiated CCO.

1.6. Project Acceptance. Prior to the County filing a Notice of Completion, the City Engineer shall review and provide written approval of all Project work in accordance with the construction contract documents for the Project, which will include substantial completion of the 90-day plant establishment period, in accordance with Plans and Special Provisions, Section 74 – 90 Calendar Plant Establishment Period Summary. The City Engineer's written approval shall only be withheld for work not completed in accordance with the construction contract documents for the Project, which uncompleted work shall be proactively identified and remediated during the City's regular inspections in accordance with Agreement Article 1.4 – Project Inspection. County shall furnish the City with one set of record drawings for the completed Project and a copy of the filed Notice of Completion, at which point, the City shall assume ownership of the completed Project within City right-of-way and operation and maintenance responsibilities of the Park. The County will provide the City electronic copies of the final Record Drawings for the Park.

Commented [BER1]: This has not yet been clarified.
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1.7. Warranties. County shall require its contractor to pass through and assign all warranties, maintenance manuals, and material safety data sheets (MSDS) related to the Park amenities to the City.

2. Post-Construction Phase Obligations

2.1. When the County completes the Project and issues a copy of the Notice of Completion to the City, the City's post-construction funding obligations shall begin, at which point the City shall assume ownership of the completed Project within City right-of-way and begin its funding obligations for operating and maintaining the Park.

2.2. In recognition of the County's contribution toward Park construction, the City assumes all responsibilities and financial liabilities related to operating and maintaining the Park, which includes maintaining insurance requirements, performing inspections, conducting operations, and routine maintenance of all Park amenities and features.

2.3. Post-construction operations and routine maintenance of the Park includes, but is not limited to: implementation of appropriate signage, maintaining playground equipment, cleaning/managing stormwater drainage features, landscaping, cleaning/managing waste, performing preventative and remedial repairs, fielding calls and complaints, and making improvements within the Park.

2.4. The City shall promote and maintain order and security of the Park. Usage and accessibility of the Park shall be subject to the Costa Mesa Municipal Code.

2.5. County shall be responsible for all completed Project, post-construction phase related funding obligations within County right-of-way, excluding the Park. This corresponds to all financial liabilities related to owning, operating, and maintaining the roadway along University Drive from Santa Ana Avenue to Willo Lane within County right-of-way.

2.6. Park drains shall be the responsibility of both the City and the County in accordance with right-of-way delineations. The County will operate and maintain the drainage basin until such time as either the fee title for the County parcel is transferred to the City or an easement for the County parcel is granted to the City.

3. Miscellaneous Obligations

3.1. Term of Agreement. The term of this Agreement is for fifty (50) years, commencing upon City Council and Board of Supervisors approval, with the option to renew for one (1) additional forty-nine (49) year period.

3.2. County Aid to City. County's obligations discussed herein are made in accordance with Streets & Highways Code sections 1680 to 1686 allowing County contributions toward City streets.

3.3. Insurance. County shall require its contractor to identify the City as an additional insured with insurance coverage satisfactory to the Parties.

3.4. Indemnification & Hold Harmless.

3.4.1. City agrees to indemnify, defend, with counsel approved by County in writing, save and hold County and each of its elected officials, officers, directors, agents and employees harmless from any and all claims, injuries, liabilities, actions, damages, losses or expenses, of every type and description arising out of any act or omission of City, its employees, representatives, agents and independent contractors in connection with the implementation of the actions described in this Agreement.

3.4.2. County agrees to indemnify, defend, with counsel approved by City in writing, save and hold City and each of its elected officials, officers, directors, agents and employees harmless from any and all claims, injuries, liabilities, actions, damages, losses or expenses, of every type and description arising out of any act or omission of County, its employees, representatives, agents and independent contractors in connection with the implementation of the actions described in this Agreement. County shall require its contractor on the Project to indemnify the City to the same extent contractor is required to indemnify County in connection with the Project.

3.5. Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. No assignment of either Party's interest in this Agreement shall be made without the written consent of the other Party.

3.6. Entirety & Amendments. This Agreement contains the entire agreement between the Parties with respect to the matters provided for herein. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties; and no oral understanding or agreement not incorporated herein shall be binding on either of the Parties.

3.7. Severability. If any part of this Agreement is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

3.8. Notices. Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

CITY OF COSTA MESA
Public Services
77 Fair Drive
Costa Mesa, CA 92626
Attn: City Engineer

COUNTY OF ORANGE
OC Public Works
300 N. Flower St.
PO Box 4048
Santa Ana, CA 92703
Attn: Director/Chief Engineer, OC Engineering

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the foregoing, the Parties may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business hours, on the following business day. Any notices, correspondence, reports and/or statements authorized or required by this Agreement, addressed in any other fashion shall be deemed not given.

3.9. Governing Law Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

3.10. Litigation Fees. Should litigation arise out of this Agreement, each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorneys' fees.

3.11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

3.12. Termination. In the event County or City defaults in the performance of any of their obligations under this Agreement or materially breaches any of the provisions of this Agreement, City and County shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. In the event City or County cures such default within such thirty (30) day period, City and County's election to terminate shall be deemed revoked and of no further force and effect as to that particular default.

3.12.1. Termination by City. Although City does not anticipate exercising such right, City shall have the right to terminate this Agreement upon six (6) months written notice to the County if City determines, in its sole discretion, that this Agreement is not in City's best interests. In the event of such termination by City, City shall be responsible for the costs of removal of park-related improvements. In the event of any termination of this Agreement, each party shall be responsible for the drainage and pavement improvements within that party's jurisdiction.

3.12.2. Termination by County. Although County does not anticipate exercising such right, County shall have the right to terminate this Agreement upon six (6) months written notice to the City if County determines, in its sole discretion, that this Agreement is not in County's best interests. In the event of such termination by County, County shall have the option to assume full responsibility for the operation and maintenance of the park-related improvements, or to cause removal of such improvements. In the event County elects to cause removal of the park-related improvements, County shall be responsible for the costs of such removal, unless termination is related to City's breach of this Agreement, in which case City shall be responsible for the costs of removal of park-related improvements. In the event of any termination of this Agreement, each Party shall be responsible for the drainage and pavement improvements within that Party's jurisdiction.

3.13. Consent to Breach Not Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

[SIGNATURE PAGE FOLLOWS]

Agreement No. MA-080-19011889

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Mayor and attested by its Clerk, and County has caused this Agreement to be executed by the Chairman of the Board of Supervisors and attested by its Clerk, on the dates written opposite their signatures, all thereunto duly authorized by the City Council and the Board of Supervisors, respectively.

CITY OF COSTA MESA,
a municipal corporation

Date: _____

By: _____
Katrina Foley, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

By: _____
Kimberly Hall Barlow, City Attorney

COUNTY OF ORANGE,
a political subdivision of the State of
California

Date: _____

By: _____
Chairman of the Board of Supervisors
County of Orange, California

SIGNED AND CERTIFIED THAT A COPY OF
THIS AGREEMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD PER G.C.
Sec 25103, Reso 79-1535

ATTEST:

APPROVED AS TO FORM:
County Counsel

Robin Stieler
Clerk of the Board
County of Orange, California

By: _____
Deputy