

Attachment 1

12-ORA-405-PM 9.0/9.7
Route 405 at Bristol St. and Ave of the Arts
12-216-0H251K
District Agreement No. 12-529

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

CITY OF COSTA MESA, a body politic and a municipal corporation (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 desires State Highway improvement consisting of replacement planting on Route 405 at Bristol Avenue and Avenue of the Arts, referred to herein as "PROJECT", and is willing to fund one hundred percent (100%) of all capital outlay and support costs for PROJECT. The total PROJECT cost is estimated to be \$537,200 as shown on Exhibit A, attached hereto and made a part of this Agreement.
3. CITY desires and has requested STATE to perform all necessary preliminary engineering, including environmental documentation (PA&ED), Plans, Specifications, and Estimates (PS&E), referred to herein as "SERVICES."
4. Construction and Construction Administration for PROJECT will be the subject of separate future Agreements.
5. The parties now define hereinbelow the terms and conditions, under which PROJECT is to be developed, designed and financed.

SECTION I

STATE AGREES:

1. To provide SERVICES at CITY's expense.
2. To submit a billing in the amount of \$80,000 to CITY immediately following execution of this Agreement. Said billing shall represent the total estimated cost of preparation of the PROJECT PA&ED and PS&E.
3. Upon completion of SERVICES and acceptance by CITY, to furnish CITY with a detailed statement of the costs to be borne by CITY. STATE thereafter shall refund to CITY, promptly after completion of STATE's final accounting of SERVICES costs, any amount of CITY's deposits required in Article 2 of Section II, remaining after actual costs to be borne by CITY have been deducted.
4. If any existing public and/or private utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, STATE will make all necessary arrangements with the owners of such facilities for their protection, relocation or removal. STATE shall inspect the protection, relocation or removal. If there are costs of such protection, relocation, or removal, STATE will bill CITY upon receipt of bill from utility companies and CITY shall bear all the cost of said protection, relocation, or removal, plus cost of engineering overhead and inspection. If any protection, relocation, or removal of utility facilities is required, such work shall be performed in accordance with STATE policy and procedure for those facilities located within the limits of work providing for the improvement to the State highway and in accordance

with CITY policy for those facilities located outside of the limits of work providing for the improvement to the State highway.

SECTION II

CITY AGREES:

1. To have SERVICES for PROJECT prepared by STATE and to reimburse STATE for said SERVICES.
2. To bear one hundred percent (100%) of the actual SERVICES costs, estimated to be \$80,000. Said PROJECT support costs shall include costs of providing personnel resources and their equipment and all direct and indirect costs (functional and administrative overhead assessment) attributable to PROJECT support applied in accordance with STATE's standard accounting practices and procedures,. The actual cost of SERVICES shall be determined only after completion of all work, the closure of all claims, and upon final accounting of all costs for PROJECT.
3. To deposit with STATE within twenty-five (25) days of receipt of billing therefore, the amount of \$80,000, which figure represents CITY's share of the total estimated cost of the PROJECT PA&ED and PS&E.
4. Upon execution of this Agreement, to certify that funds are budgeted for the total PROJECT cost.

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. For the purpose of this Agreement, any hazardous material or contamination found within the area of PROJECT shall be classified in two categories, HM-1 and HM-2. Hazardous material or contamination of an HM-1 category shall be defined as that level or type of contamination which State or Federal regulatory control agencies having jurisdiction have determined must be cleaned up by reason of its mere discovery, regardless of whether it is disturbed by PROJECT or not. Hazardous material or contamination of an HM-2 category shall be 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 should PROJECT not proceed.
3. STATE shall perform, or cause to be performed, all required cleanup of any hazardous material or contamination of an HM-1 category found within the existing State

Highway right of way during investigative studies. CITY shall perform, or cause to be performed, all required cleanup of any hazardous material or contamination of an HM-1 category found outside of State Highway right of way during investigative studies. Whether CITY decides to proceed with PROJECT or not, STATE shall sign the HM-1 manifest and pay all costs for required cleanup within the existing State Highway right of way and CITY shall sign the HM-1 manifest and pay all costs for required cleanup outside of State Highway right of way. If STATE determines, in its sole judgment, that costs for cleanup within the existing State Highway right of way and/or outside of State Highway right of way are increased as a result of CITY's decision to proceed with PROJECT, these additional costs identified by STATE shall be deemed a part of the costs of PROJECT and CITY shall pay these costs.

4. CITY shall perform, or cause to be performed, the cleanup of any hazardous material or contamination of an HM-2 category found within and outside the existing State Highway right of way during investigative studies at CITY's expense if CITY decides to proceed with PROJECT. CITY shall sign any HM-2 manifest if PROJECT proceeds and HM-2 material must be removed in lieu of being treated in place. If CITY decides to not proceed with PROJECT, there will be no obligation to either CITY or STATE other than CITY's duty to cover and protect HM-2 material left in place.
5. If hazardous material or contamination of either HM-1 or HM-2 category is found on new right of way to be acquired by CITY for PROJECT, CITY, as between CITY and STATE only, shall perform, or cause to be performed, all required cleanup and/or protection at CITY's expense and shall guarantee STATE that said new right of way is clean prior to transfer of title to STATE. The generator of the hazardous material or, if none can be identified or found, the present property owner, whether a private entity or a local public agency, or CITY, as a last resort, shall sign the manifest.
6. STATE will exert every effort to fund the cleanup for which STATE is responsible. In the event STATE is unable to provide funding, CITY will have the option to either delay PROJECT until STATE is able to provide funding or proceed with the cleanup at CITY's expense without any subsequent reimbursement by STATE.
7. Locations subject to cleanup and/or protection include utility relocation work required for PROJECT. Costs for cleanup and/or protection shall include, but not be limited to, the identification, treatment, protection, removal, packaging, transportation, storage, and disposal of such material.
8. The party performing the hazardous material cleanup shall be responsible for the development of the necessary cleanup plans and designs. Cleanups 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 mandated by the Federal and State regulatory agencies.
9. It is understood that a separate Cooperative Agreement will be required to cover responsibilities and funding for the PROJECT construction phase.

10. If termination of this Agreement is by mutual consent, CITY will bear one hundred percent (100%) of all PROJECT-related costs incurred by STATE pursuant to this Agreement.
11. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties 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, and maintenance of State highways and public facilities different from the standard of care imposed by law
12. 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 arising under this Agreement. It is understood and agreed that CITY shall 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, 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.
13. Neither CITY nor any officer, employee, agents or contractors 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 arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save CITY and all its officer, employee, agents or contractors 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.
14. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
15. 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 and the satisfactory completion of all post-construction obligations of CITY, with concurrence of STATE, or on __ (date) __, 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.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF SANTA ANA

WILL KEMPTON
Director of Transportation

By: _____
City Manager

By: _____
Deputy District Director

Attest: _____
Deputy City Clerk

Approved as to form and procedure:

Approved as to form and procedure:

Attorney
Department of Transportation

City Attorney

Certified as to available funds:

I hereby certify upon my own personal
Knowledge that budgeted funds are
available for the period and the purpose
of payments to STATE stated in this
Agreement.

District Budget Manager

Public Services Director

Certified as to financial terms and Conditions:

District Budget Manager

EXHIBIT A**COST ESTIMATE BREAKDOWN**

Phase of Work	STATE	CITY	TOTAL
Capital Support			
PA & ED	\$0	\$20,000	\$20,000
PS&E	\$0	\$60,000	\$60,000
Construction Capital	\$0	\$457,200	\$457,200
TOTAL	\$0	\$537,200	\$537,200