

Attachment 1

12-ORA-55 KP 2.32/3.29
Newport Blvd. rehabilitation
From 17th to 19th St.
12209-0H7300
District Agreement No: 12-553

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON _____ 2007 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 of the State of California, referred to herein as CITY.

RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code section 130 are authorized to enter into a Cooperative Agreement for improvements to State Highways within City of Costa Mesa .
2. CITY contemplates the construction of widening of State Route 55 (SR-55) from 17th Street to 19th Street in City of Costa Mesa, referred to herein as "PROJECT".
3. STATE desires improvements consisting of:
 - A. Removing and replacing existing pavement on northbound and southbound lane #3 and parking lane from 17th Street (Sta. 23+20) to approximately 143 meters north of 17th street (Sta 33+83).
 - B. Repairing three (3) cross gutters along northbound SR- 55 at 18th Street, Flower Street and Broadway Street.
 - C. Repairing of approximately 50 linear meters of curb and gutter along northbound SR- 55 between Sta. 27+80 to Sta. 28+30 (south of 18th Street).Collectively referred to herein as "IMPROVEMENTS" and has requested CITY to install IMPROVEMENTS as part of CITY's PROJECT.
4. The parties hereto intend to define herein the terms and conditions under which IMPROVEMENTS are to be constructed, financed, and maintained.

SECTION I

CITY AGREES:

1. To advertise, award, and administer the construction contract for PROJECT and include IMPROVEMENTS as part of PROJECT construction.
2. To apply for necessary encroachment permits for required work within State Highway right of way, in accordance with STATE's standard permit procedures, as more specifically defined in Articles (2), (3), and (4) of Section III of this Agreement.
3. To construct PROJECT and IMPROVEMENTS in accordance with plans and specifications of CITY, to the satisfaction of and subject to the approval of STATE.
4. Within sixty (60) days following the completion and acceptance of the PROJECT construction contract by CITY, to furnish STATE with a complete set of the entire As-built plans on a CD-ROM (MicroStation .dgn file, version 5.0 or later up through version 7.0) compliance with STATE's current CADD Users Manual and Plans Preparation Manual. The submittal must also include, if applicable, all contract records, survey documents and Records of Survey (to include monument perpetuation per Land Survey Act, Section 8771).
5. Upon completion of PROJECT and all work incidental thereto, to furnish STATE with a detailed statement of the direct costs to be borne by STATE. CITY thereafter shall refund to STATE, promptly after completion of CITY's final accounting of IMPROVEMENTS costs, any amount of STATE's deposit required in Section II, Article 3 remaining after actual direct costs to be borne by STATE have been deducted.
6. The estimated construction cost of IMPROVEMENTS is \$330,000, and such cost shall not be exceeded unless additional funds are provided by STATE.
7. To retain or cause to be retained for audit by STATE or other government auditors for a period of three (3) years from date of final payment, all records and accounts relating to construction of PROJECT.

8. To submit an invoice to STATE fifteen (15) days prior to CITY's bid advertising date of a PROJECT construction contract in the amount of \$330,000 which figure represents the lump sum total amount of STATE's agree to share of the cost of work to performed by CITY on STATE's behalf pursuant to this Agreement.

SECTION II

STATE AGREES:

1. 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 in Articles (2), (3), and (4), of Section III of this Agreement.
2. To provide, at no cost to CITY, a qualified STATE Representative who shall have authority to accept or reject work and materials or 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.
3. To deposit with CITY within twenty five (25) days of receipt of billing therefore (which billing will be forwarded 15 days prior to CITY's bid advertising date of a PROJECT construction contract), the amount of \$330,000, which figure represents the lump sum total amount of STATE's agreed to share of the cost of work to be performed by CITY on STATE's behalf 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 in the annual State Budget Act and the action of the California Transportation Commission (CTC) allocating resources to STATE for the purposes of fulfilling STATE's obligations herein.
2. Construction by CITY of IMPROVEMENTS referred to herein which lie within STATE's right of way or affect STATE facilities, shall not be commenced until an encroachment permit to CITY authorizing such work has been issued by STATE.
3. CITY shall obtain aforesaid encroachment permit through the office of State District Permit Engineer. Receipt by CITY of the approved encroachment permit shall constitute CITY authorization from STATE to proceed with work to be performed by CITY or CITY representatives within STATE right of way or which affects STATE facilities, pursuant to work covered by this Agreement. CITY's authorization to proceed with said work shall be contingent upon CITY's compliance with all provisions set forth in said encroachment permit.
4. CITY's construction contractor shall also be required to obtain an encroachment permit from STATE prior to commencing any work within STATE's right of way or which affects STATE facilities. The application by CITY's contractor for said encroachment permit shall be made through the office of State District Permit Engineer and shall include proof said contractor has payment and performance surety bonds covering construction of PROJECT.

5. In the construction of said work, said representatives of CITY and STATE will cooperate and consult with each other, and all work within STATE's right of way shall be accomplished to the satisfaction of STATE's representative.
6. If existing public and/or private utilities conflict with the construction of IMPROVEMENTS, CITY will make all necessary arrangements with the owners of such utilities for their protection, relocation or removal. CITY will inspect the protection, relocation or removal of such facilities. If there are costs of such protection, relocation, or removal which STATE and CITY must legally pay, total cost will be borne by STATE. If any protection, relocation, or removal of utilities is required, such work shall be performed in accordance with STATE policy and procedure. CITY shall require any utility owner performing relocation work in STATE's right of way to obtain a STATE encroachment permit prior to the performance of said relocation work.
7. Upon completion of construction of IMPROVEMENTS to the satisfaction of the STATE representative, STATE will accept control of and maintain, at its own costs and expense, those portions of IMPROVEMENTS lying within STATE's right of way.
8. Upon completion of all work under this Agreement, ownership and title to all materials, equipment and appurtenances installed within STATE's right of way, and any and all liabilities associated therewith, will automatically be vested in STATE. No further agreement will be necessary to transfer ownership to STATE.
9. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of State Highways different from the standard of care imposed by law.
10. 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 and 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, tortious, 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.
11. 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 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 and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
12. 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.
13. This Agreement shall terminate upon completion of construction of IMPROVEMENTS and upon final payment to CITY by STATE, pursuant to Section II, Article (3) of this Agreement, or on 12/31/08, whichever is earlier in time, except that the indemnification obligations of each party as set forth in paragraphs 11 and 12 hereinabove shall continue in full force and effect.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY of COSTA MESA

WILL KEMPTON
Director of Transportation

By: _____
Mayor

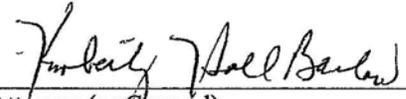
By: _____
JIM BEIL
Deputy District Director
Capital Outlay Program

Attest: _____
City Clerk

APPROVED AS TO FORM AND PROCEDURE:

APPROVED AS TO FORM:

Attorney
Department of Transportation



Attorney (or Counsel)

CERTIFIED AS TO FUNDS:

District Budget Manager
CERTIFIED AS TO FINANCIAL TERMS
AND CONDITIONS:

Accounting Administrator

APPROVED AS TO CONTENT:



Project Manager:

