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4-CC-4 0.2/1.6  
Willow Avenue O/C  
4274-228041  
Dist. Agmt. No. 4-1572-C  
Document No. CC-7-

COOPERATIVE AGREEMENT

This AGREEMENT, entered into on March 14, 1995, is  
between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as STATE, and

CITY OF HERCULES,  
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.

(2) CITY desires to construct State highway improvements consisting of constructing the Willow Avenue Overcrossing, constructing the entrance ramp from Bayberry Avenue to Route 4 and modifying the Route 4/Sycamore intersection, referred to herein as PROJECT, and is willing to fund one hundred percent (100%) of all capital outlay and staffing costs, except that costs of STATE's oversight of construction activities will be borne by STATE.

9880

DUPLICATE ORIGINAL

(3) CITY desires to prepare the contract documents and advertise, award and administer the construction contract for PROJECT in order to bring about the earliest possible completion of PROJECT.

(4) STATE is agreeable to CITY's proposal to prepare the contract documents and advertise, award and administer the construction contract for PROJECT.

(5) The parties hereto intend to define herein the terms and conditions under which PROJECT is to be constructed, financed and maintained.

(6) Project development responsibilities for PROJECT were covered in a prior Cooperative Agreement executed by STATE with the Contra Costa Transportation Authority by a Scope of Work on June 14, 1994 made part of District Agreement No. 4-1376-C, Document No. CC-7-8026.

#### SECTION I

##### CITY AGREES:

(1) 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 workers employed by STATE's Contractors. CITY shall obtain applicable wage rates from the State

Department of Industrial Relations and shall adhere to the applicable provisions of the State Labor Code. Violations shall be reported to the State Department of Industrial Relations.

(2) To identify and locate all high and low risk underground facilities within the project areas, and protect or otherwise provide for such facilities, all in accordance with State's "Manual on High and Low Risk Underground Facilities Within Highway Rights of Way".

(3) To apply for necessary encroachment permits for required work within State highway rights of way, in accordance with STATE's standard permit procedures, as more specifically defined in Articles (2), (3), (4), (5) and (6) of Section III of this Agreement.

(4) To require that the construction contractor furnish both a payment and performance bond in CITY's name, with both bonds complying with the requirements set forth in Section 3-1.02 of STATE's current Standard Specifications.

(5) To construct PROJECT in accordance with plans and specifications of CITY to the satisfaction of and subject to the approval of STATE, which approval shall not be unreasonably be withheld.

(6) Contract Administration procedures shall conform to the requirements set forth in STATE's Construction Manual, Local Programs Manual and the Encroachment Permit for construction of PROJECT.

(7) Construction within the existing or ultimate STATE right of way shall comply with the requirements in STATE's Standard Specifications and PROJECT Special Provisions, and in conformance with methods and practices specified in STATE's Construction Manual.

(8) Surveys performed by CITY or its contractors shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and Staking Information pamphlet.

(9) Material testing and quality control shall conform to the State Construction Manual and the State Material Testing Manual, and be performed, at CITY expense, by a certified material tester acceptable to STATE. Independent assurance testing, specialty testing, and off-site source inspection and testing shall be performed by STATE, at no cost to CITY except as noted herein. CITY shall reimburse STATE for any additional travel expenses incurred by STATE for off-site inspection and testing performed by STATE which is more than 300 airline miles from both Sacramento and Los Angeles. Approval of the type of asphalt concrete and portland cement concrete mix design and plants shall be by STATE, at STATE expense.

(10) To furnish, at CITY expense and subject to 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. If the PROJECT plans and specifications were prepared by a private engineering company, the Resident Engineer shall not be an employee of that company. The

9880

Resident Engineer shall also be independent of the construction contractor.

(11) To pay one hundred percent (100%) of the actual costs of construction required for satisfactory completion of PROJECT, including reasonable changes pursuant to contract change orders required by the STATE representative and to complete the work within the original intent and scope of the contract.

(12) At CITY expense, to furnish qualified support staff, subject to 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, preparation of falsework design and drawings to conform to Standard Specifications Section 51-1.06A, preparation of Trench Excavation Safety Plans to conform to Standard Specifications Section 5-1.02A, 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 the plans and specifications. Said qualified support staff shall be independent of the design engineering company and construction contractor, except that the PROJECT designer may check the shop drawings, do soils foundation tests, test construction materials, and perform or check construction surveys.

(13) To provide to STATE's representative copies of the work schedule developed by the contractor.

9880

(14) To make progress payments to the contractor using CITY funds and pay all costs for required staff services as described in Articles (9) and (12) of this Section I. The STATE representative shall review all contract progress payment schedules. STATE does not assume responsibility for accuracy of itemization on progress payment schedules.

(15) Within sixty (60) days following the completion and acceptance of the PROJECT construction contract, to furnish STATE a complete set of acceptable full-sized film positive reproducible As-Built plans and all contract records, including survey documents, Record of Surveys and microfilm copy of all structure plans.

(16) Upon completion of work under this Agreement, CITY will assume maintenance and the expense thereof for any part of PROJECT located outside of current STATE right of way until acceptance of any such part of PROJECT into the State highway system by STATE, approval by the Federal Highway Administration, if required, and conveyance of acceptable title to STATE.

(17) If CITY terminates PROJECT prior to completion of the construction contract for PROJECT, STATE may require CITY, at CITY expense, to return right of way to its original condition or to a condition of acceptable permanent operation. If CITY fails to do so, STATE reserves the right to finish PROJECT or place PROJECT in satisfactory permanent operation condition. STATE will bill CITY for all actual expenses incurred and CITY agrees to pay said expenses within thirty (30) days or STATE, acting

through the State Controller, may withhold an equal amount from future apportionments due CITY from the Highway User Tax Fund.

SECTION II

STATE AGREES:

(1) To issue at no cost to CITY and CITY's contractor, upon proper application by CITY and by CITY's contractor, the necessary encroachment permits for required work within State highway right of way, as more specifically defined in Articles (2), (3), (4) and (5) of Section III of this Agreement.

(2) To provide, at no cost to CITY, a qualified STATE representative who will perform oversight of construction administration in accordance with Section 8 of the Procedures Manual for Special Funded State Highway Projects. STATE representative 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. If, in the event of an emergency or other circumstance agreed to by CITY and STATE representative, the services of additional STATE personnel are required to ensure public safety or the preservation of property, the cost of the additional STATE personnel shall be reimbursed by CITY.

(3) To provide, at CITY expense, any "State-furnished material" as shown on the plans for PROJECT and as provided in the Special Provisions for PROJECT.

SECTION III

IT IS MUTUALLY AGREED:

(1) All obligations of STATE under the terms of this Agreement are subject to the appropriation of funds by the Legislature and the allocation of funds by the California Transportation Commission.

(2) Construction by CITY of improvements referred to herein which lie within STATE highway rights of way or affect STATE facilities, shall not be commenced until CITY's original contract plans involving such work and plan for utility relocations have been reviewed and accepted by signature of STATE's District Director of Transportation, or the District Director's delegated agent, and 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 and CITY's application shall be accompanied by seven (7) sets of reduced construction plans of aforesaid STATE approved contract plans. Receipt by CITY of the approved encroachment permit shall constitute CITY's authorization from STATE to proceed with work to be performed by CITY or CITY's representative within proposed STATE rights 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 this Agreement and said encroachment permit. 9880

(4) CITY's construction contractor shall also be required to obtain an encroachment permit from STATE prior to commencing any work within STATE rights 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) CITY shall provide a right of way certification prior to the granting of said encroachment permit by STATE, to certify that legal and physical control of rights of way were acquired in accordance with applicable State and Federal laws and regulations.

(6) CITY shall not award contract to construct any portion of PROJECT within STATE rights of way until after an encroachment permit has been issued to CITY by STATE.

(7) 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 in accordance with Section 7-1.12 of State Standard Specifications. Such policy shall contain an additional insured endorsement naming STATE, its officers, agents and employees as additional insureds. Coverage shall be evidenced by a Certif-

icate of Insurance in a form satisfactory to STATE which shall be delivered to STATE before the issuance of an encroachment permit to CITY's contractor.

(8) Prior to award of the construction contract for PROJECT, CITY may terminate this Agreement by written notice.

(9) In construction of said PROJECT, representatives of CITY and STATE will cooperate and consult, and all work pursuant to PROJECT shall be accomplished according to approved plans, specifications and applicable STATE standards. Satisfaction of these requirements shall be verified by the STATE representative. The STATE representative is authorized to enter CITY's property during construction for the purpose of monitoring and coordinating construction activities.

(10) Changes to PROJECT plans and specifications shall be implemented by contract change orders reviewed and concurred with by the STATE 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 the STATE representative, changes authorized as provided herein will not require an encroachment permit rider. All changes shall be shown on the As-Built plans referred to in Section I, Article (15) of this Agreement.

(11) CITY shall provide a claims process acceptable to STATE and shall process any and all claims through CITY's claim

process. The STATE representative will be made available to CITY to provide advice and technical input in any claim process.

(12) If any existing public and/or private utility facilities conflict with PROJECT construction 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 policy and procedure for those facilities located within the limits of work providing for the improvement of the State highway and in accordance with CITY policy for those facilities located outside of the limits of work for the State highway. Total costs of such protection, relocation or removal shall be determined in accordance with STATE policy and procedure. CITY shall require any utility owner and/or its contractors performing relocation work in STATE's right of way to obtain a STATE encroachment permit prior to the performance of said relocation work. Any relocated or new facilities shall be correctly shown and identified on the As-Built plans referred to in Section I, Article (15) of this Agreement.

(13) If any unforeseen potential hazardous materials are encountered during construction of PROJECT, STATE and CITY shall meet and confer on a course of action. The responsibilities and costs for any action shall be covered by amendment to this Agreement.

(14) Pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas as are within the limits of PROJECT and are open to public traf-

fic, CITY shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. 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.

(15) Upon completion and acceptance of the PROJECT construction contract by CITY to the satisfaction of the STATE representative and subsequent to the execution of a maintenance agreement, STATE will accept control and maintain, at its own cost and expense, those portions of PROJECT lying within STATE's right of way, except local roads delegated to CITY for maintenance. STATE will maintain at STATE expense the entire structure below the deck surface of any CITY local road overcrossings.

(16). CITY will accept control and maintain, at its own cost and expense, the portions of PROJECT lying outside STATE's right of way. Also, CITY will maintain at CITY expense, local roads within STATE's right of way delegated to CITY for maintenance and remaining portions of any local road overcrossing structures, including the deck surface and above, as well as all traffic service facilities that may be required for the benefit or control of CITY local road traffic.

(17) CITY will maintain the lighting system within the STATE's right of way at the intersections of the entrance and exit ramps with Willow Avenue. The cost of maintenance will be

equally shared, 50% by CITY and 50% by STATE, including electrical energy costs.

(18) Upon completion of all work under this Agreement, ownership and title to materials, equipment and appurtenances installed within STATE's right of way will automatically be vested in STATE, and materials, equipment and appurtenances installed outside of STATE's right of way will automatically be vested in (CITY/COUNTY). No further agreement will be necessary to transfer ownership as hereinabove stated..

(19) 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 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.

(20) Neither STATE nor any officer or employee thereof is responsible for any 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 delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless the State of California, all officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in con-

9880

nection with any work, authority or jurisdiction delegated to CITY under this Agreement.

(21) Neither CITY nor any officer or employee thereof is responsible for any 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 delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall defend, indemnify and save harmless CITY from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

(22) 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.

(23) Those portions of this Agreement pertaining to the construction of PROJECT shall terminate upon completion and acceptance of the construction contract for PROJECT by CITY with

concurrence of STATE, or on September 30, 1999, whichever is ear-  
lier in time; however, the ownership, operation, maintenance, li-  
ability, and claims clauses shall remain in effect until  
terminated or modified in writing by mutual agreement.

9880

STATE OF CALIFORNIA  
Department of Transportation  
JAMES W. VAN LOBEN SELS  
Director of Transportation

CITY OF HERCULES

By *[Signature]*  
District Division Chief

By *Marip E. Leuch*  
~~Mayor~~  
City Manager

Attest: *Kay Hordson*  
City Clerk

Approved as form and procedure

*[Signature]*  
Attorney  
Department of Transportation

Approved as to form and legality

*Craig Labadie*  
Attorney

Certified as to funds

*[Signature]*  
District Resource Manager

In accordance with the attached  
Resolution, No. 95-25

I hereby certify upon my own  
personal knowledge that budgeted  
funds are available for the  
period and purpose of payment to  
the construction contractor and  
to qualified support staff  
pursuant to this Agreement.

Certified as to form and  
procedure

*Marian Rehs*  
District Accounting Administrator

*Maie Simons*  
Fiscal Officer

RESOLUTION NO. 95-25

9840

**Authorizing the City Manager to Execute a Cooperative Agreement with the State of California for the Purposes of Constructing Improvements to State Route 4 at Bayberry Avenue, Willow Avenue and Sycamore Avenue.**

WHEREAS the City of Hercules has prepared plans, specifications and estimates to construct improvements to State Route 4 between Bayberry Avenue and Sycamore Avenue in Hercules including construction of a highway bridge and ramps at Willow Avenue; and

WHEREAS the State of California has reviewed and approved the City's plans and specifications and prepared a cooperative agreement which authorizes the City to construct the proposed improvements; and

WHEREAS the Contra Costa Transportation Authority has committed to fund its share of proposed improvements; and

WHEREAS the City Council deems it necessary and appropriate to enter into a Cooperative Agreement with the State of California for the purpose of constructing improvements to State Route 4 in Hercules.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hercules that the City Manager is authorized to Execute a Cooperative Agreement with the State of California for the Purposes of Constructing Improvements to State Route 4 at Bayberry Avenue, Willow Avenue and Sycamore Avenue.

AYES: Manuel, Segerberg, Tucker, Wagstaff, Bartke

NOES: None

ABSENT: None

*Beth Bartke*

Beth Bartke, Mayor

ATTEST:

*Kay Woodson*  
Kay Woodson, City Clerk

resol:copegma

