

07-LA-101 KP55.4/56.8 (PM34.4/35.3)  
Kanan Road Interchange in the City of  
Agoura Hills  
07274-1965U1

**District Agreement No. 07-4711**

**COOPERATIVE AGREEMENT**

THIS AGREEMENT, ENTERED EFFECTIVE INTO ON \_\_\_\_\_, 20\_\_\_\_, is between the STATE OF CALIFORNIA, acting by and through its DEPARTMENT OF TRANSPORTATION, referred to herein as "STATE", and the

CITY OF AGOURA HILLS, a body politic and 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 the City of Agoura Hills.
2. CITY desires to construct State highway improvements consisting of the replacement of the existing diamond configuration with a partial cloverleaf configuration for the southbound on and off-ramps and northbound on and off-ramps on State Route 101 at Kanan Road Interchange, referred to herein as "PROJECT", and is willing to fund one hundred percent (100%) of all capital outlay and staffing costs through MTA's 1999/2000 TIP Call For Projects (45%) and CITY's funds (55%), except that costs of STATE's quality assurance of construction activities will be borne by STATE.
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 and CITY on June 9, 2004 (District Agreement No. 07-4563, Document No. 015866).

**SECTION I**

**CITY AGREES:**

1. To advertise, award, and administer the construction contract for PROJECT in accordance with requirements of the State Contract 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 apply for necessary encroachment permits for required work within the State highway right 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.
3. In recognition that construction work for PROJECT done on STATE's property will not be directly funded and paid by STATE, for the purpose of protecting stop notice claimants and the interests of STATE relative to the successful completion of PROJECT, CITY agrees 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 construction work for PROJECT.

**District Agreement No. 07-4711**

CITY shall defend, indemnify, and hold harmless STATE and all its officers and employees from all claims by stop notice claimants related to the construction of PROJECT under the payment bond.

4. To construct PROJECT in accordance with plans and specifications of CITY, to the satisfaction of and subject to the approval of STATE.
5. Contract Administration procedures shall conform to the requirements set forth in STATE's Construction Manual, Local Assistance Procedures Manual, and in the encroachment permit for the construction of PROJECT.
6. Construction within the existing or ultimate State highway right of way shall comply with the requirements in STATE's Standard Specifications and the Special Provisions for PROJECT and in conformance with methods and practices specified in STATE's Construction Manual.
7. All survey work shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and STATE's Staking Information Booklet.
8. Material testing and quality control shall conform to STATE's Construction Manual and STATE's Material Testing Manual, and shall be performed, at CITY's 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 and concrete plants shall be by STATE, at STATE's expense.
9. 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. If the plans and specifications for PROJECT were prepared by a private engineering company, the Resident Engineer shall not be an employee of that company. The Resident Engineer shall also be independent of the construction contractor.
10. To comply with the requirements of the National Pollution Discharge Elimination System (NPDES) Permit for General Construction Activities No. CAS000002, Order No. 99-08-DWQ including State Water Resources Control Board (SWRCB) Resolution No. 2001-046, which added sampling and analysis requirements, and the NPDES Permit for the State of California Department of Transportation Properties, Facilities and Activities, No. CAS000003, Order No. 99-06-DWQ issued by the State Water Resources Control Board and any applicable future permits and orders.
11. To pay one hundred percent (100%) of the actual cost of construction required for satisfactory completion of PROJECT, including changes pursuant to contract change orders concurred with by STATE's representative and any "State-furnished materials".
12. To provide written notice to STATE requesting any "State-furnished materials" as shown on the plans for PROJECT and as provided in the Special Provisions for PROJECT. CITY shall deposit with STATE an amount representing the actual costs of said "State-furnished materials" within twenty (20) days of receipt of STATE's billing. Upon receipt by STATE of CITY's payment for said requested "State-furnished materials", those materials will be made available to CITY.

**District Agreement No. 07-4711**

13. At CITY's expense, to furnish qualified support staff, subject to the 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, 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 designer of PROJECT may check the shop drawings, do soils foundation tests, test construction materials, and do construction surveys.
14. To make progress payments to the contractor and pay all costs for required staff services as described in Articles 9 and 12 of this Section I. STATE's representative shall review all contract progress pay schedules. STATE does not assume responsibility for accuracy of itemization on progress pay schedules.
15. Within sixty (60) days following the completion and acceptance of the construction contract for PROJECT, to furnish STATE with a complete set of "As-Built" plans, including the Engineer's electronic signature and seal, on CD-ROM using MicroStation Release 5.0 or higher .dgn file format and all contract records, including survey documents, Records of Surveys, and microfilm copy of all "As-Built" plans. STATE reserves the right to modify the CD-ROM requirements and STATE shall provide CITY advance notice of any such modifications.
16. Upon completion of work under this Agreement, CITY will assume maintenance and the expense thereof for any part of PROJECT located outside of the current State highway 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's expense, to return the 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 a condition of satisfactory permanent operation. 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 apportionment due CITY from the Highway User Tax Fund.
18. If cultural, archaeological, paleontological or other protected materials are encountered during construction of PROJECT, CITY shall stop work in that area until a qualified professional employed by STATE 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 cost of PROJECT contemplated by this Agreement.
19. STATE's quality assurance activities referred to in Article 2 of Section II of this Agreement do not include performance of any engineering services required for PROJECT. These services are to be performed by CITY. If CITY requests STATE to perform any of these services, CITY shall reimburse STATE for such services. An amendment to this Agreement authorizing STATE's performance of such services will be required prior to performance of any engineering work by STATE.

**SECTION II**

**STATE AGREES:**

1. 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 State highway right of way, as more specifically defined in Articles 2, 3, 4, 5, and 6 of Section III of this Agreement.
2. At no cost to CITY, to provide quality assurance activities, including a qualified representative of STATE 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 provide, at CITY's expense, any "State-furnished materials" as shown on the plans for PROJECT and as provided in the Special Provisions for PROJECT. Within forty-five (45) days of receipt of CITY's request for "State-furnished materials" pursuant to Section I, Article 12, STATE will submit an invoice for the actual cost of said requested "State-furnished materials". Upon subsequent receipt by STATE of CITY's payment for said requested "State-furnished materials", those materials will be made available to CITY.

**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 Authority, and the allocation of resources by the California Transportation Commission.
2. Construction by CITY of improvements referred to herein which lie within the State highway right of way or which affect STATE's 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 07 Director of Transportation, or the District 07 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's District Permit Engineer and CITY's application shall be accompanied by five (5) sets of reduced construction plans of aforesaid STATE-accepted contract plans, and five (5) sets of specifications for PROJECT. 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 representatives within the District proposed State highway right of way or which affects STATE's 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.
4. CITY's construction contractor shall also be required to obtain an encroachment permit from STATE prior to commencing any work within the State highway right of way or which affects STATE's facilities. The application by CITY's construction contractor for said encroachment permit shall be made through the office of STATE's District Permit Engineer and shall include proof said contractor has payment and performance surety bonds covering construction of PROJECT.

**District Agreement No. 07-4711**

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 advertise for bids for the contract to construct PROJECT 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 construction contract for PROJECT, 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's Standard Specifications. Such policy shall contain an additional insured endorsement naming the State of California, its officers, agents, and employees as additional insureds. 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.
8. Prior to award of the construction contract for PROJECT, CITY may terminate this Agreement by written notice.
9. During the construction of PROJECT, representatives of CITY and STATE will cooperate and consult with each other, and all work pursuant to PROJECT shall be accomplished according to the approved plans, specifications, and STATE's applicable standards and practices. Satisfaction of these requirements shall be verified by STATE's representative. STATE's representative is authorized to enter CITY's property during construction for the purpose of monitoring and coordinating construction activities.
10. Changes to the plans and specifications for PROJECT shall be implemented by contract change orders reviewed and concurred with by STATE's 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 STATE's 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 Article 15 of Section I of this Agreement.
11. CITY shall provide a construction contract claims process acceptable to STATE and shall process any and all claims through CITY's claim process. STATE's 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 the construction of PROJECT 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's 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's policy for those facilities located outside of the limits of work for the improvement to the State highway. The cost of the protection, relocation, or removal shall be apportioned between the owner of the utility facility and CITY in accordance with STATE's policy and procedure. CITY shall require any utility owner performing relocation work in the State highway right of way to obtain an encroachment permit from STATE prior to the performance of said relocation work. The requirements of the most current version of STATE's "Policy on High and Low

Risk Underground Facilities Within Highway Rights of Way" shall be fully complied with. Any relocated or new facilities shall be correctly shown and identified on the "As-Built" plans referred to in Article 14 of Section I of this Agreement.

13. Any hazardous material or contamination of an HM-1 category found within the existing State highway right of way during construction requiring remedy or remedial action, as defined in Division 20, Chapter 6.8 et seq. of the Health and Safety Code, shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within the local road right of way during construction requiring the same defined remedy or remedial action shall be the responsibility of CITY. For the purpose of the Agreement, hazardous material of HM-1 category is defined as that level or type of contamination which State or Federal regulatory control agencies having jurisdiction have determined must be remediated by reason of its mere discovery regardless of whether it is disturbed by PROJECT or not. STATE shall sign the HM-1 manifest and pay all costs for remedy or remedial action within the existing State highway right of way, except that if STATE determines, in its sole judgment, that STATE's cost for remedy or remedial action is increased as a result of proceeding with construction of PROJECT, that additional cost identified by STATE shall be borne by CITY. CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the local road right of way. STATE will exert every effort to fund the remedy or remedial action for which STATE is responsible. In the event STATE is unable to provide funding, CITY will have the option to either delay further construction of PROJECT until STATE is able to provide funding or CITY may proceed with the remedy or remedial action at CITY's expense without any subsequent reimbursement by STATE.
14. The remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within and outside the existing State highway right of way during construction shall be the responsibility of CITY, at CITY's expense, as a result of proceeding with construction of PROJECT. For the purposes of this Agreement any hazardous material or contamination of HM-2 category is 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 had not proceeded. CITY shall sign any HM-2 manifest if construction of PROJECT proceeds and HM-2 material must be removed in lieu of being treated in place.
15. If hazardous material or contamination of either HM-1 or HM-2 category is found during construction on new right of way acquired by or on account of CITY for PROJECT, CITY shall be responsible, at CITY's expense, for all required remedy or remedial action and/or protection in the absence of a generator or prior property owner willing and prepared to perform that corrective work.
16. Locations subject to remedy or remedial action and/or protection include utility relocation work required for PROJECT. Costs for remedy and remedial action and/or protection shall include but not be limited to, the identification, treatment, protection, removal, packaging, transportation, storage, and disposal of such material.
17. The party responsible for funding any hazardous material cleanup shall be responsible for the development of the necessary remedy and/or remedial action plans and designs. Remedial actions 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.

**District Agreement No. 07-4711**

18. 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 traffic, CITY shall comply with all of the requirements set for 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.
19. Upon completion and acceptance of the construction contract for PROJECT by CITY to the satisfaction of STATE 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 the State highway right of way, except local roads delegated to CITY for maintenance. STATE will maintain the entire structure below the deck surface of local road overcrossings at STATE's expense.
20. CITY will accept control and maintain, at its own cost and expense, the portions of PROJECT lying outside the State highway right of way. Also, CITY will maintain, at CITY's expense, local roads within the State highway 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 exclusive benefit or control of CITY's local road traffic.
21. Upon completion of all work under this Agreement, ownership and title to materials, equipment, and appurtenances installed within the State highway right of way will automatically be vested in STATE, and materials, equipment, and appurtenances installed outside of the State highway right of way will automatically be vested in CITY. No further agreement will be necessary to transfer ownership as hereinbefore stated.
22. 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 development, design, construction, operation, or maintenance of State highways 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 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 STATE and all its 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 connection with any work, authority or jurisdiction delegated to CITY under this Agreement.
24. 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 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 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



**District Agreement No. 07-4711**

under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

25. 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.
26. 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 June 30, 2007, 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.

**District Agreement No. 07-4711**

STATE OF CALIFORNIA  
Department of Transportation

CITY OF AGOURA HILLS

WILL KEMPTON  
Director

By: \_\_\_\_\_  
Douglas R. Failing  
District 07 Director

By: \_\_\_\_\_  
City Manager

Approved as to Form and Procedure:

Attest:

By: \_\_\_\_\_  
Attorney

By: \_\_\_\_\_  
City Clerk

Certified as to Funds:

Approved as to Form:

By: \_\_\_\_\_  
District Budget Manager

By: \_\_\_\_\_  
City Attorney

Certified as to Financial Terms and Conditions:

By: \_\_\_\_\_  
Accounting Administrator

Certified as to Funds:

By: \_\_\_\_\_  
City Accountant