

06-TUL-198/65-KP R30.2/63.6  
(PM 18.8/39.5)  
Intersection of State Routes 198 and 65  
and County Road 196  
EA 06-471600  
District Agreement No. 06-1264

### **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

COUNTY OF TULARE, a political  
subdivision of the State of California,  
referred to herein as "COUNTY".

### **RECITALS**

1. STATE and COUNTY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to State highways within the County of Tulare.
2. STATE and COUNTY contemplate the installation of traffic control signals, safety lighting and the construction of roadway improvements at the intersection of State Route 198 (SR 198), State Route 65 (SR 65) and County Road 196 in Tulare County, near the City of Exeter, referred to herein as "PROJECT", and desire to specify the terms and conditions under which PROJECT is to be engineered, constructed, financed, and maintained. The estimated construction capital cost of PROJECT is \$1,305,000 as shown on Exhibit A, attached to and made a part of this Agreement.
3. It is anticipated that \$140,000 in Federal-aid funds will be allocated for COUNTY's shared costs of PROJECT, which are eligible for Federal-aid participation, and STATE and COUNTY will bear the remainder of those costs as set forth herein.

## **SECTION I**

### **STATE AGREES:**

1. To provide all necessary preliminary engineering, including, but not limited to, environmental compliance and approval of PROJECT, investigation of potential cultural resources and hazardous material sites, plans, specifications, and estimates (PS&E), and complete utility identification and location; to provide all necessary construction engineering services needed to complete PROJECT; and to bear STATE's share of the actual costs thereof. Estimates of such costs are shown on Exhibit A.
2. To construct PROJECT by contract in accordance with PS&E of STATE.
3. To pay an amount equal to sixty-eight and fifty-one hundredths percent (68.51%) of the actual construction cost of PROJECT, which said percentage amount is estimated to be \$894,000.
4. To pay an amount equal to one-hundred percent (100%) of the actual right of way capital and support costs of PROJECT, which said percentage amount is estimated to be \$49,000.
5. To pay an amount equal to one-hundred percent (100%) of the actual construction engineering cost of PROJECT, which said percentage amount is estimated to be \$140,000.
6. STATE's total obligation for the costs of PROJECT under this Agreement, excluding costs referred to in Article 17 of Section III of this Agreement, is estimated to be \$1,083,000, and any expenditures by STATE beyond that estimate is subject to an encumbrance of additional contract funds to accomplish that extra work on PROJECT.
7. To process STATE allocation of STIP-RIP funds on behalf of COUNTY for COUNTY's share of all construction costs in excess of the designated federal fund allocated for said costs, shown on Exhibit A. The total actual construction capital costs includes materials, supplemental work, change orders, contract claims paid to the construction contractor, and the cost of STATE's defense of all claims which may be filed by said contractor. The actual construction capital costs shall be based upon final quantities, which will be determined after completion of all work and upon final accounting of costs. The actual costs of construction engineering for PROJECT will be determined after completion of all work and upon final accounting of costs.
8. To submit a final report of expenditures to COUNTY within one hundred twenty (120) days after completion and acceptance of the construction contract for PROJECT by STATE.
9. To operate and maintain the entire traffic control signals and safety lighting as installed and pay an amount equal to seventy-five percent (75%) of the total operation and maintenance costs, including electrical energy costs.
10. To furnish the traffic signal control equipment for PROJECT. This equipment shall consist of signal controller unit and signal control cabinet. The estimated cost of this equipment is \$25,700, and the actual cost to STATE shall be credited to STATE's share of the of PROJECT.

## **SECTION II**

### **COUNTY AGREES:**

1. Within fifteen (15) days of STATE's bid advertising date of a construction contract for PROJECT, to designate and to authorize STATE to transfer the amount of \$140,000 in Federal-aid funds and \$271,000 in RIP-STIP to be applied toward COUNTY's obligation for estimated costs of construction for PROJECT as shown on Exhibit A.
2. To program all PROJECT funding in Federal Transportation Improvement Program (FTIP) documents and process all amendments thereto for any funding changes to PROJECT.
3. To pay an amount equal to thirty-one and forty-nine hundredths percent (31.49%) of the actual construction cost of PROJECT, which said percentage amount is estimated to be \$411,000 .
4. COUNTY's total obligation for said anticipated costs of PROJECT, excluding costs referred to in Article 17 of Section III of this Agreement, is estimated to be \$411,000, and any expenditures by COUNTY beyond that estimate is subject to an encumbrance of additional contract funds to accomplish that extra work on PROJECT.
5. To reimburse STATE for COUNTY's proportionate share of the cost of operation and maintenance of the traffic control signals and safety lighting, such share to be an amount equal to twenty-five percent (25%) of the total operation and maintenance costs, including electrical energy costs.
6. At no cost to STATE, to provide prompt review and approvals, as appropriate, of submittals by STATE, and to coordinate in timely processing of PROJECT.

## **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, the State Budget Act authority, and the allocation of funds by the California Transportation Commission to STATE for the purposes of fulfilling STATE's obligations herein.
2. Should any portion of PROJECT be financed with Federal funds or State gas tax funds, all applicable laws, regulations, and policies relating to the use of such funds shall apply, notwithstanding other provisions of this Agreement.
3. After opening bids for the construction contract for PROJECT, COUNTY's estimate of cost will be revised based on actual bid prices. COUNTY's required deposit under Article 1 of Section II of this Agreement will be increased or decreased to match said revised estimate. If the estimated deposit increase or decrease is less than \$1,000, no refund or demand for additional deposit will be made until final accounting of costs for PROJECT.
4. After opening bids for the construction contract for PROJECT, and if bids indicate a cost overrun of no more than ten percent (10%) of the Engineer's Estimate, STATE may award the contract.
5. If, upon opening bids, it is found that a cost overrun exceeds ten percent (10%) of the Engineer's Estimate for PROJECT, or should COUNTY's percentage share of the total

PROJECT cost exceed the combined total of its HES program grant and its RIP-STIP funding, STATE and COUNTY shall endeavor to agree upon an alternative course of action. If, after twenty-five (25) days, an alternative course of action is not agreed upon, this Agreement shall be deemed to be terminated by mutual consent pursuant to Article 7 of this Section III.

6. Prior to award of the construction contract for PROJECT, COUNTY may terminate this Agreement by written notice, provided COUNTY pays STATE for all costs related to PROJECT incurred by STATE prior to termination.
7. If termination of this Agreement is by mutual consent, STATE will bear sixty-eight and fifty-one one-hundredths percent (68.51%) and COUNTY will bear thirty-one and forty-nine hundredths percent (31.49%) of all costs related to PROJECT incurred by STATE prior to termination, except that any utility relocation costs shall be prorated in accordance with STATE's/COUNTY's responsibility for utility relocation costs.
8. As part of its design responsibility, STATE will identify and locate all utility facilities within the area of PROJECT. Existing public and/or private utility facilities that conflict with the construction of PROJECT or will violate STATE's encroachment policy will be protected, relocated, or removed. STATE will make all necessary arrangements with the owners of such facilities for said 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. The costs of the protection, relocation, or removal shall be apportioned between the owner of the utility facility and STATE/COUNTY in accordance with STATE's policy and procedure. The share of the costs of protection, relocation, or removal to be borne by STATE and COUNTY shall be in the same proportionate manner as construction costs of PROJECT are shared as stipulated in Article 3 of Section I and Article 3 of Section II of this Agreement.
9. If any unforeseen existing public and/or private utility facilities conflict with the construction of PROJECT or will violate STATE's encroachment policy, STATE will make all necessary arrangements with the owners of such facilities for any required protection, relocation or removal. Relocation, protection, or removal performed under this Article shall meet all of the requirements of Article 10 of this Section III.
10. If cultural, archaeological, paleontological, or other protected resources are encountered during construction of PROJECT, STATE shall stop work in that area until a qualified professional can evaluate the nature and significance of the find; until a plan is approved for the removal or protection of that resource; and until responsibilities for costs thereof are determined.
11. Any hazardous material or contamination of an HM-1 category found within the existing State Highway right of way during investigative studies 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 investigative studies requiring the same defined remedy or remedial action shall be the responsibility of COUNTY. For the purpose of this Agreement, hazardous material or contamination 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. If it is decided by STATE and COUNTY to not proceed with PROJECT, STATE shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the existing State Highway right of way and COUNTY shall

sign the HM-1 manifest and pay all costs for required remedy or remedial action within the local road right of way. If it is decided by said parties to proceed with PROJECT, STATE shall sign the HM-1 manifest for required remedy or remedial action within the existing State Highway right of way and COUNTY shall sign the HM-1 manifest for required remedy or remedial action within the local road right of way. STATE and COUNTY shall share all costs for required remedy or remedial action in the same proportionate ratio as costs for construction of PROJECT are shared as specified in Sections I and II of this Agreement.

12. If hazardous material or contamination of an HM-1 category is not found within the existing State Highway right of way until after construction of PROJECT has commenced, STATE shall sign the HM-1 manifest and if hazardous material or contamination of an HM-1 category is not found within the local road right of way until after construction of PROJECT has commenced, COUNTY shall sign the HM-1 manifest. STATE and COUNTY shall share the costs for required remedy or remedial action in the same proportionate ratios as stated above in Article 11 above of this Section III when it was decided to proceed with PROJECT but prior to construction. If STATE determines, in its sole judgment, that costs for remedy or remedial action within and outside the existing State Highway right of way are increased due to construction of PROJECT, all additional costs identified by STATE shall be considered part of PROJECT cost.
13. 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 investigative studies shall be the responsibility of STATE if PROJECT proceeds. 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 had PROJECT not proceeded. STATE and COUNTY shall jointly sign the HM-2 manifest if PROJECT proceeds and HM-2 material must be removed in lieu of being treated in place. STATE and COUNTY shall share all costs for required remedy or remedial action in the same proportionate ratio as costs for construction of PROJECT are shared as specified in Sections I and II of this Agreement.
14. If hazardous material or contamination of an HM-2 category is not found within and outside the existing State Highway right of way until after construction of PROJECT has commenced, STATE and COUNTY shall jointly sign the HM-2 manifest and share all costs for required remedy or remedial action in the same proportionate ratio as costs for construction of PROJECT are shared as specified in Sections I and II of this Agreement.
15. 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.
16. The party responsible for the hazardous material cleanup shall be responsible for the development of the necessary remedy and/or remedial action plans and designs. Remedial actions proposed by COUNTY 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.
17. The total obligations of the parties to this Agreement as specified in Article 6 of Section I and Article 4 of Section II do not include costs of claims related to the construction contract allowed, the costs of defense of those claims, and the costs of any unforeseen encounters of

the type described in Articles 8 through 15 of this Section III. Additional costs and responsibilities for any required actions that exceed the budgeted costs of PROJECT shall be covered by amendment to this Agreement. STATE may be required to stop work on PROJECT until additional funding is secured and/or restore the site of PROJECT to a condition of safe operation, using any then unexpended funds for PROJECT, if those additional funds are not made available for PROJECT.

18. Upon completion of all work on PROJECT under this Agreement, ownership and title to materials, equipment and appurtenances (other than utilities) 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 COUNTY or another responsible third party unless this Agreement expressly provides to the contrary. No further agreement will be necessary to transfer ownership as hereinbefore stated.
19. The cost of any engineering; any protection, removal, preservation, and curation of protected resources; and any identification, treatment, removal, packaging, transportation, and storage of any hazardous materials encountered on PROJECT shall include all direct and indirect costs (functional and administrative overhead assessment) attributable to all such work, applied in accordance with STATE's standard accounting procedures.
20. Nothing within 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, or maintenance of State highways and public facilities different from the standard of care imposed by law.
21. 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 COUNTY in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that COUNTY 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 COUNTY under this Agreement.
22. Neither COUNTY 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 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 harmless COUNTY 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.
23. During the construction of PROJECT, STATE will furnish a representative to perform the functions of a Resident Engineer, and COUNTY may, at no cost to STATE, furnish a representative, if it so desires. While said representative and Resident Engineer will cooperate and consult with each other, the decisions of STATE's Resident Engineer shall prevail.
24. Execution of this Agreement by COUNTY grants to STATE the right to enter upon COUNTY-owned lands to construct PROJECT.

25. In the event actual costs of PROJECT are anticipated to exceed the cost estimates for PROJECT, the parties hereto agree to each exert its best efforts to proportionately increase its funding contributions by amendment to this Agreement to provide for those required costs.
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 STATE, or on June 30, 2011, 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 claim related to the construction contract arising out of PROJECT be asserted against STATE, COUNTY agrees to extend the termination date of this Agreement and provide additional funding as required to cover COUNTY's proportionate share of costs or execute a subsequent Agreement to cover those eventualities.

**STATE OF CALIFORNIA**  
**Department of Transportation**

WILL KEMPTON  
Director

By: \_\_\_\_\_  
D. ALAN McCUEN  
Acting District 6 Director

Approved as to form and procedure:

By: \_\_\_\_\_  
Attorney  
Department of Transportation

Certified as to procedure:

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

Certified as to funds:

By: \_\_\_\_\_  
ROBERT J. JOHNSON  
District 6 Office of Budgets

**COUNTY OF TULARE**

By: \_\_\_\_\_  
J. STEVEN WORTHLEY  
Chairman, Board of Supervisors

Attest: \_\_\_\_\_  
Clerk of the Board of Supervisors

Approved as to Legal form and procedure:

By: *Christa C. [Signature]*  
County Counsel 5-29-06

06-Tul-198/65-R18.8/39.5, 0.0/0.0  
 State Route 198 at State Route 65 and Road 196  
 EA 06-471600  
 District Agreement No. 06-1264

# Exhibit A

DESCRIPTION	TOTAL COST	COUNTY'S Share			STATE'S Share
		FEDERAL	RIP-STIP	COUNTY's Estimated Total Cost	
<b>Capital Costs (County% /State%)</b>					
Construction (31.49/68.51)	\$ 1,305,000	\$ 140,000	\$ 271,000	\$ 411,000	\$ 894,000 *
Right of Way (0/100)	\$ 13,000	\$ -	\$ -	\$ -	\$ 13,000
				\$ -	
<b>Subtotal</b>	\$ 1,318,000	\$ 140,000	\$ 271,000	\$ 411,000	\$ 907,000
<b>Support Costs</b>					
Construction Engineering (0/100)	\$ 140,000			\$ -	\$ 140,000
Right of Way (0/100)	\$ 36,000	\$ -	\$ -	\$ -	\$ 36,000
<b>Subtotal</b>	\$ 176,000	\$ -	\$ -	\$ -	\$ 176,000
<b>PROJECT TOTAL COST (PTC)</b>	\$ 1,494,000	\$ 140,000	\$ 271,000	\$ 411,000	\$ 1,083,000

Right of Way Capital + Support \$ 49,000 \$ - \$ - \$ - \$ 49,000  
 Construction Capital + Construction Support Cost \$ 1,445,000 \$ 140,000 \$ 271,000 \$ 411,000 \$ 1,034,000

\* Includes \$25,700 for State furnished materials and expenses.

Total cost, deducting the equipment cost is \$ 894,000 - \$25,700 = \$ 868,300