

Council/Agency Meeting Held: _____	City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 10/17/2005	Department ID Number: PW 05-066

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

PREPARED BY: *R. F. Beardsley*
ROBERT F. BEARDSLEY, PE, DIRECTOR OF PUBLIC WORKS

SUBJECT: Approve OCFCD Cooperative Agreement D05-040 for Newland Street Widening Project, CC-1095

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)
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Statement of Issue: The Orange County Flood Control District (OCFCD) is requiring the City enter into Cooperative Agreement D05-040 as a condition for granting a construction easement for the Newland Street Widening Project, CC-1095, at the Huntington Beach Channel, an OCFCD facility.

Funding Source: No funding is required for this action.

Recommended Action: Motion to: Approve and authorize the Mayor and City Clerk to execute the Cooperative Agreement D05-040 with the City of Huntington Beach and the Orange County Flood Control District for the Newland Street Widening at the Huntington Beach Channel.

Alternative Action(s): Do not approve the Cooperative Agreement and provide staff with alternative direction. This action will delay and alter the proposed project.

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2005 OCT -5 PM 5:05
CITY CLERK
CITY OF
HUNTINGTON BEACH

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REQUEST FOR ACTION

MEETING DATE: 10/17/2005

DEPARTMENT ID NUMBER: PW 05-066

Analysis: As part of the Newland Street widening project, the City is proposing to enlarge the reinforced concrete box bridge within the Huntington Beach Channel to accommodate the ultimate design width of Newland Street. Since the bridge is within the OCFCD right-of-way, Public Works staff met with OCFCD to obtain a construction easement for the project. The executed agreement is a requirement for granting that easement.

All of the construction within the flood control channel will be performed under City contract. Ongoing maintenance of the facility will be divided, with the City maintaining the road surface on the bridge and OCFCD maintaining the physical structure within the channel. This arrangement is consistent with current practice.

Public Works Commission Action: Not required.

Environmental Status: Not applicable for this action.

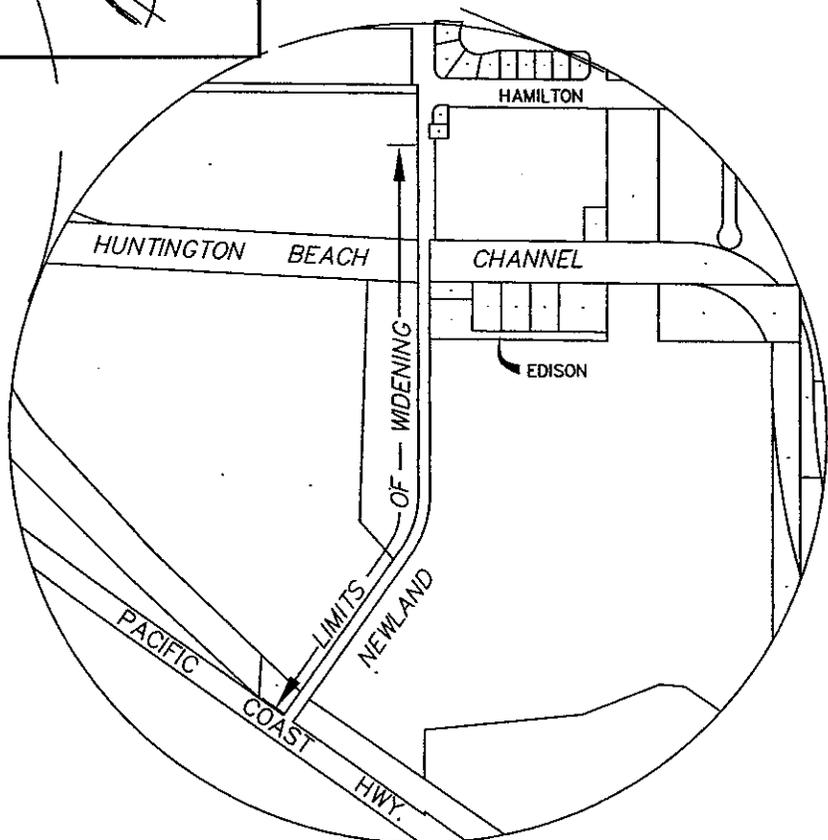
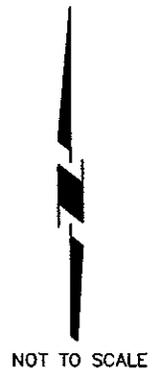
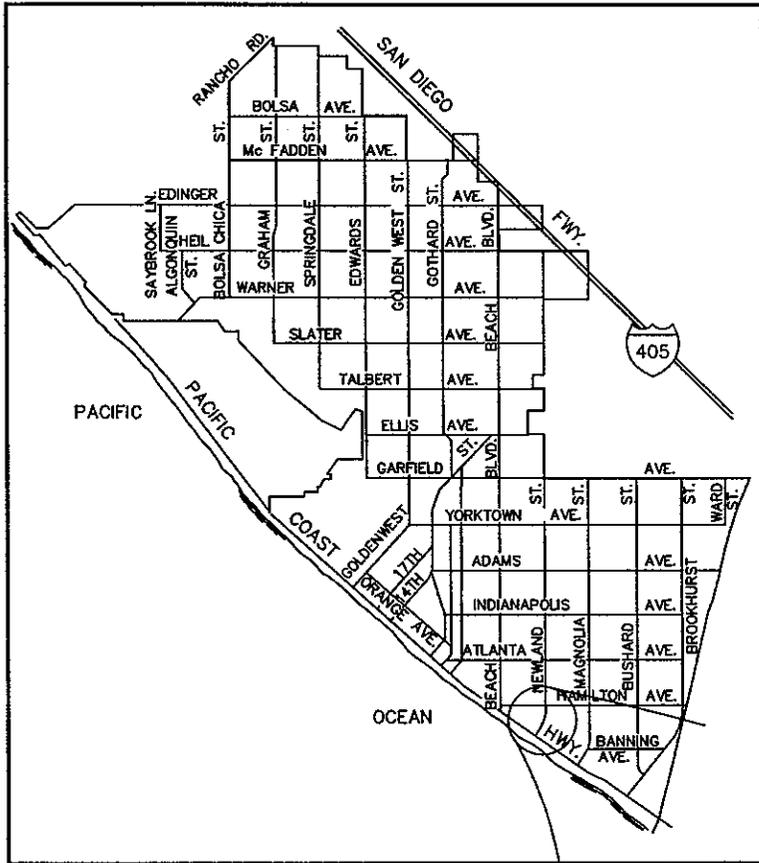
Attachment(s):

City Clerk's Page Number	No.	Description
35	1.	Location Map
	2.	Cooperative Agreement D05-040 (4 Originals and 1 copy)

E-2.2

E-2.3

ATTACHMENT #1



E-2.4

NEWLAND STREET WIDENING
IMPROVEMENT PROJECT, CC#1095

CITY OF HUNTINGTON BEACH
DEPARTMENT OF PUBLIC WORKS



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ATTACHMENT #2

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AGREEMENT

THIS AGREEMENT, hereinafter referred to as "**AGREEMENT**," for purposes of identification hereby numbered D05-040, and dated _____ day of _____, 2005 _____ is

BY AND BETWEEN

CITY OF HUNTINGTON BEACH, a municipal Corporation of the State of California hereinafter referred to as "**CITY**"

AND

ORANGE COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic hereinafter referred to as "**DISTRICT**"

WHEREAS, CITY proposes to improve and widen Newland Street including the bridge culvert across Huntington Beach Channel (DISTRICT Facility D01), extending 20 feet easterly and 20 feet westerly from the existing six-barrel reinforced concrete box, between the limits beginning at channel station 63+05 and ending at channel station 65+47 per DISTRICT Drawing Number D01-101-11, page 7 of 41, and across the channel right-of-way, and to reconstruct and improve the street bridge approach and associated surface improvements above the existing and proposed bridge reinforced concrete box structure as shown on Exhibit A attached hereto and made a part hereof, hereinafter referred to as "**PROJECT IMPROVEMENT**"; and

WHEREAS, CITY proposes to finance the construction of the **PROJECT IMPROVEMENT** at no cost to the DISTRICT ; and

WHEREAS, DISTRICT maintains the channel facility and the existing bridge reinforced concrete box structure and owns the right-of-way in fee simple hereinafter referred to as "**DISTRICT FACILITY**", and desires to collaborate with CITY in the construction of the **PROJECT IMPROVEMENT** in accordance with the terms and conditions of this **AGREEMENT**.

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2 **NOW, THEREFORE, IT IS AGREED** by and between the parties hereto as follows:
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4 **SECTION I**

5 **I. CITY SHALL:**

6 **A.** Prepare the necessary design plans and specifications for the PROJECT IMPROVEMENT
7 compatible with the ultimate improvements within DISTRICT FACILITY as identified in writing by
8 the Director, Public Works/Chief Engineer, Resources Development and Management Department
9 (“RDMD”) or his designee, hereinafter referred to as “DIRECTOR”.

10 **B.** Include standards within its plans and specifications for PROJECT IMPROVEMENT work, per
11 CITY standards within CITY right-of-way and per DISTRICT standards within the DISTRICT right-
12 of-way.

13 **C.** Submit plans and specifications to DIRECTOR for review and written approval of improvements
14 within DISTRICT right-of-way, included within its specifications for PROJECT IMPROVEMENT.

15 **D.** In accordance with applicable laws, advertise for bids and award a construction contract for
16 PROJECT IMPROVEMENT to the lowest responsive responsible bidder, hereinafter referred to as
17 “CONTRACTOR”.

18 **E.** Furnish a representative to perform the usual functions of a Construction Engineer, hereinafter
19 referred to as “CITY’S ENGINEER” who shall be responsible for monitoring the CONTRACTOR’S
20 performance, and DISTRICT may, at no cost to CITY, furnish a representative if DISTRICT desires.
21 CITY’S ENGINEER and DISTRICT representative shall cooperate and consult with each other. In
22 cases of conflicts during the course of construction, all requests for alteration or modification to the
23 construction plans shall be made to the CITY’S ENGINEER. The decision of the DISTRICT’S
24 representative shall be final on issues relating to the DISTRICT FACILITY while decision of the
25 CITY’S ENGINEER shall be made final on matters that have no impact to the DISTRICT
26 FACILITY.

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- 1 F. Obtain any required environmental documents including but not limited to, California Environment
 2 Quality Act (CEQA), California Development Permit of the California Coastal Commission, Section
 3 404 of the Federal Clean Water Act with the U.S. Army Corps of Engineers, Section 1602 of the
 4 State of California Department of Fish and Game Code, and Section 401 of the Federal Clean Water
 5 Act with the State Regional Water Quality Control Board. Such environmental permits shall not
 6 require DISTRICT, its agents and contractors to mitigate, monitor, maintain, or report on the
 7 proposed PROJECT IMPROVEMENT without DISTRICT'S expressed written consent to do so.
 8 CITY may not utilize DISTRICT'S right-of-way to mitigate its project or use DISTRICT'S banked
 9 mitigation credits within the watershed without DISTRICT'S expressed written consent.
- 10 G. Be solely responsible for administration and construction inspection of contract awarded to
 11 CONTRACTOR for the PROJECT IMPROVEMENT.
- 12 H. Incorporate within the contract documents for the project a requirement for the CONTRACTOR to
 13 obtain and keep in full force and effect throughout the life of the project, for the mutual benefit of the
 14 CITY and DISTRICT, a policy or policies of comprehensive, broad form, general liability which
 15 shall include contractual liability and automobile insurance for activities of the CONTRACTOR in
 16 the amount of five million dollars (\$5,000,000) (combined single limit per occurrence). Said policies
 17 shall name CITY, DISTRICT, County of Orange ("COUNTY") and their respective and elected and
 18 appointed officials, officers, agents and employees as additional insureds and shall additionally,
 19 contain language providing for waiver of subrogation, that the policies are primary and non-
 20 contributing with any insurance that may be carried by the parties hereto and that said insurance
 21 may not be cancelled or materially changed except upon thirty (30) days written notice to CITY by
 22 CITY'S CONTRACTOR'S INSURANCE BROKER. CITY will forward a copy to DISTRICT
 23 within ten (10) working days after receiving such notice. In addition, all subcontractors
 24 performing work on behalf of CONTRACTOR pursuant to this contract shall obtain
 25 insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.
 26 CONTRACTOR shall not allow subcontractors to work if subcontractors have less than the

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1 level of coverage required by the CITY from the CONTRACTOR under this contract. It is
 2 the obligation of the CONTRACTOR to provide notice of the insurance requirements to
 3 every subcontractor and to receive proof of insurance prior to allowing any subcontractor to
 4 begin work. Such proof of insurance must be maintained by CONTRACTOR through the
 5 entirety of the project for inspection by CITY representative at any reasonable time. CITY
 6 shall also require that its CONTRACTOR and all subcontractors as required by law to secure
 7 worker's compensation benefits.

8 I. Issue Change Orders that are initiated due to unforeseen conditions in the field for the PROJECT
 9 IMPROVEMENT work after approval by the CITY'S ENGINEER and DISTRICT representative.

10 J. Not accept the PROJECT IMPROVEMENT work from the CONTRACTOR until CITY and
 11 DISTRICT concur that CITY and DISTRICT'S facilities have been constructed in accordance with
 12 CITY'S approved plans and specifications and any authorized contract Change Orders per Section I
 13 Item I above.

14 K. Require that any and all labor, materials, performance bonds required to be supplied by the
 15 CONTRACTOR for the PROJECT IMPROVEMENT shall include DISTRICT as an additional
 16 beneficiary on said bonds.

17 L. CITY shall be responsible for the future maintenance, repair, reconstruction and installation of
 18 surface and above surface improvements across DISTRICT'S FACILITY. In the event DISTRICT
 19 finds it necessary in the future to enter on and disturb the surface or subsurface within the DISTRICT
 20 FACILITY in order to maintain, repair, reconstruct, improve or enlarge the flood control facility,
 21 except in emergency situations as determined by DIRECTOR, DISTRICT shall give CITY a thirty
 22 (30) calendar days written notification of the above activities. CITY shall as its own cost and
 23 expense, repair, replace, reconstruct and install surface and above surface improvements that may
 24 have been damaged or removed by DISTRICT as a result of DISTRICT performed maintenance,
 25 repair, reconstruction, improvement or enlargement of its facility, and DISTRICT'S only
 26 responsibilities, following an emergency or non-emergency situation, shall be to restore any

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1 section(s) of the DISTRICT FACILITY to the same load specifications as originally constructed and
 2 to backfill with compacted earth to the grade of the surrounding property, following completion of
 3 the DISTRICT'S activity. In the event portions of the flood control facility are damaged by CITY'S
 4 action or omission, DISTRICT shall, where reasonable and when no emergency exists, give the
 5 CITY sixty (60) calendar days written notice of the need to repair or restore such damage. If CITY
 6 fails to maintain or make repairs or replacements as required herein, DISTRICT staff shall notify
 7 CITY in writing of said failure. Should CITY fail to correct the situation within ten (10) calendar
 8 days after receipt of written notice, DISTRICT staff may make the necessary correction or cause it to
 9 be made and the cost thereof, including but not limited to the cost of labor, materials, equipment,
 10 administration and other overhead costs, shall be billed to CITY for payment within thirty (30)
 11 calendar days of receipt of said bill from DISTRICT staff.

12 M. No building, structure, additional earth fill, or other improvement, with the exception of asphalt
 13 paving, slurry seal, and repairs to the pavement, shall be constructed, placed or permitted within,
 14 upon, under or above the DISTRICT FACILITY until such plans have first been approved in writing
 15 by the DIRECTOR and a County Property Permit for such construction has been obtained from the
 16 DISTRICT. DISTRICT agrees that such plans shall be approved or disapproved within a reasonable
 17 time following receipt thereof, and that approval will not be withheld without good cause.
 18 DIRECTOR'S approval of such plans shall not be deemed as approval from the standpoint of
 19 structural safety, suitability for purpose or conformance with building or other codes or other
 20 governmental requirements.

21 N. Pursuant to Section 895.4 of the Government Code, defend, indemnify and save harmless
 22 DISTRICT, its elected and appointed officials, officers, agents and employees, from all liability from
 23 loss, damage or injury to persons or property, including any and all legal costs and attorney's fees, in
 24 any manner arising out of the performance of this AGREEMENT, by CITY, its elected and
 25 appointed officials, officers, agents and employees.

26 O. CITY shall upon completion and acceptance of the PROJECT furnish DISTRICT a complete final

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 rev. 08/30/05

1 set of reproducible photo mylar (As-Built) Record Drawings of the PROJECT IMPROVEMENT
2 suitable for filing.

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4 SECTION II

5 II. DISTRICT SHALL

6 A. Review and approve design plans and specifications for the PROJECT IMPROVEMENT prepared
7 by CITY in accordance with DISTRICT standards and requirements, and will not unreasonably
8 withhold approval.

9 B. Coordinate with CITY in the installation, relocation, rerouting and placement of non DISTRICT-
10 owned utility lines that are located within the DISTRICT right-of-way as a result of the construction
11 of the above PROJECT IMPROVEMENT.

12 C. Grant CITY and CONTRACTOR a No Fee Public Property Encroachment Permit and authority to
13 enter upon DISTRICT property for the purpose of constructing and inspecting the PROJECT
14 IMPROVEMENT provided that proper documentation and insurance is provided by CITY and
15 CONTRACTOR.

16 D. Furnish a representative to perform the usual functions of a construction inspector hereinafter
17 referred to as "DISTRICT REPRESENTATIVE", if the DISTRICT desires, at no cost to the CITY.
18 Said DISTRICT REPRESENTATIVE and CITY'S ENGINEER shall cooperate and consult with
19 each other and any conflicts arising during the course of construction shall be resolved per Section I,
20 Item E of this AGREEMENT.

21 E. Upon completion of construction of PROJECT IMPROVEMENT and final acceptance by
22 DISTRICT, DISTRICT accepts ownership, operation and maintenance of PROJECT
23 IMPROVEMENT except as stipulated in Section I Item L of this AGREEMENT.

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25 SECTION III

26 III. IT IS MUTUALLY UNDERSTOOD AND AGREED THAT:

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1 A. The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the
2 parties hereto and their successors and assigns.

3 B. Nothing in this AGREEMENT is intended nor shall anything in this AGREEMENT be construed to
4 transfer to DISTRICT, or its successors or assigns, or to relieve CITY, or its successors or assigns or
5 predecessors in title of any responsibility or liability that CITY, now has, has had, or comes to have
6 with respect to human health or environment, including, but not limited to responsibility or liability
7 relating to hazardous or toxic substances, materials or constituents (as such terms as those used in
8 this sentence are defined by statute, ordinance, case law, governmental regulation or other provision
9 of the law). Furthermore, DISTRICT may exercise its rights under law to bring action, if necessary,
10 to recover clean-up costs and penalties paid, if any, from CITY or any others who are ultimately
11 determined by a court of competent jurisdiction and/or a Federal, State or local regulatory or
12 administrative governmental agency or body having jurisdiction, to have responsibility for said
13 hazardous or toxic substances or materials upon, or under the real property pursuant to this
14 AGREEMENT. Notwithstanding the foregoing, DISTRICT shall remain liable for any hazardous or
15 toxic substances or materials, which become located, because of DISTRICT'S operations, upon,
16 within, or under the DISTRICT FACILITY pursuant to this AGREEMENT.

17 C. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing
18 and signed by the parties hereto, and no oral understanding or agreement not incorporated herein
19 shall be binding on any of the parties hereto.

20 D. TERM

21 The term of this AGREEMENT shall be in full force and effect until the specified obligations of both
22 parties have been fulfilled or rescinded by both parties in writing.

23 E. GOVERNING LAW AND VENUE

24 The parties hereto acknowledge that this AGREEMENT has been negotiated and executed in the
25 State of California and shall be governed by and construed under the law of California. In the event
26 of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be

1 court of competent jurisdiction located in Orange County, California, and the parties hereto agree to
2 and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure
3 Section 394. Furthermore, the parties hereto specifically agree to waive any and all right to request
4 that an action be transferred for trial to another county.

5 F. WAIVER

6 A waiver of a breach of the covenants, conditions, or obligations under this AGREEMENT by either
7 party shall not be construed as a waiver of any succeeding breach of the same or other covenants,
8 conditions, or obligations of this AGREEMENT.

9 G. If any part of this AGREEMENT is held, determined or adjudicated to be illegal, void or
10 unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be
11 given effect to the fullest extent reasonably possible.

12 H. Pursuant to Government Code Section 895.4, DISTRICT and CITY shall fully indemnify and save
13 each other, their respective elected officials, officers, agents and employees harmless from all
14 liability from losses, damage, to person or property, including any and all legal costs and attorney's
15 fees, arising in any manner by reason of anything done or omitted to be done by the other under or in
16 connection with any work or obligation performed under this AGREEMENT.

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1 **IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed by their
2 officers thereunto duly authorized on the date written above.

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CITY OF HUNTINGTON BEACH, a municipal
corporation of the State of California

Date: _____

By _____
Mayor

ATTEST:

Date: _____

By _____
City Clerk

APPROVED AS TO FORM:

Date: _____

By Jennifer Margolin
City Attorney 9/21/05 p.e.
9/21/05

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ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic

Date: _____

By _____
Chairman of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS
AGREEMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD.

Date: _____

By _____
Darlene J. Bloom
Clerk of the Board of Supervisors of
Orange County Flood Control District
of Orange County, California

APPROVED AS TO FORM:
COUNTY COUNSEL

Date: 8/30/05

By *Daniel P. Jones*
Deputy

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