

ATTACHMENT J
COOPERATIVE AGREEMENTS

06-Ker-58-PM 31.7/55.92
06-48460
Centennial Corridor
District Agreement No. 06-1386

COOPERATIVE AGREEMENT 08 - 055

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON MAR 26 2008, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

CITY OF BAKERSFIELD, 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 the State Highway System (SHS) within CITY's jurisdiction.
2. STATE and CITY plan to construct a new freeway between (SR) 58 and Interstate 5, referred to herein as "PROJECT".
3. CITY intends to prepare Project Approval and Environmental Document (PA&ED), referred to herein as "PROJECT DEVELOPMENT", and is willing to fund one hundred percent (100%) of all capital outlay and staffing costs, except for the costs of STATE's independent quality assurance (IQA) of PROJECT DEVELOPMENT, and STATE's costs incurred as the California Environmental Quality Act (CEQA) Lead Agency and National Environmental Policy Act (NEPA) Lead Agency, if applicable, in the review and approval, if appropriate, of the PROJECT environmental documentation prepared entirely by CITY, which will be borne by STATE. PROJECT will be funded from CITY'S federal demonstration earmarks and the required match will be funded by CITY.
4. STATE funds will not be used to finance any of the PROJECT DEVELOPMENT capital and support costs except as set forth in this Agreement.
5. This Agreement will define roles and responsibilities of the CEQA Lead Agency and CEQA Responsible Agency regarding environmental documentation, studies, and reports

necessary for compliance with CEQA. This Agreement will also define roles and responsibilities for compliance with the NEPA, if applicable.

6. This Agreement supersedes any prior Memorandum of Understanding (MOU) relating to PROJECT.
7. Plans, Specifications and Estimates (PS&E), Right of Way (ROW) and Construction of PROJECT will be the subject of a separate future Agreement.
8. The parties hereto intend to define herein the terms and conditions under which PROJECT is to be developed and financed.

SECTION I

CITY AGREES:

1. To fund one hundred percent (100%) of all PROJECT DEVELOPMENT capital and support costs for PROJECT, except for costs of STATE's IQA, STATE's review, comment, and approval if appropriate, of the PROJECT environmental documentation, and STATE's participation in the public hearing and meetings to satisfy the requirements of CEQA and if applicable, NEPA.
2. To not use STATE funds for any PROJECT capital and support costs except as set forth in this Agreement.
3. To have a Project Report (PR), including all necessary environmental documentation, prepared, at no cost to STATE, and to submit each to STATE for STATE's review, comment, and approval at appropriate stages of development. The PROJECT PR, shall be signed on behalf of CITY by a Civil Engineer registered in the State of California.
4. All PROJECT work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, concurrence, and/or approval at appropriate stages of development.
5. To permit STATE to monitor, participate in, and oversee selection of personnel who will prepare the PR, conduct environmental studies and prepare environmental documentation for PROJECT. CITY agrees to consider any request by STATE to avoid a contract award or to discontinue services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, and failure to perform in accordance with the scope of work and/or other pertinent criteria.
6. Personnel who prepare the environmental documentation, including investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems

which may arise during PS&E, right of way acquisition, construction, and/or to make design revisions for contract change orders.

7. All PROJECT work, except as set forth herein this Agreement, is to be performed by CITY. Should CITY request that STATE perform any portion of PROJECT work except as otherwise set forth in this Agreement, CITY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement.
8. To make written application to STATE for necessary encroachment permits authorizing entry of CITY onto the SHS right of way to perform required PROJECT DEVELOPMENT work as more specifically defined elsewhere in this Agreement. CITY shall also require CITY's consultants and contractors to make written application to STATE for the same necessary encroachment permits.
9. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside existing SHS right of way that could impact PROJECT as part of work pursuant to this Agreement. If CITY discovers hazardous material or contamination within the PROJECT study area during said investigation, CITY shall immediately notify STATE.
10. All environmental documentation and supporting investigative studies and technical reports must be in compliance with the STATE's current content and format guidance including all guidance found at [<http://www.dot.ca.gov/ser/>], the STATE's Standard Environmental Reference website. Formal submittals will include three hard copies, and electronic copies in Adobe Acrobat pdf files and Microsoft Word format.
11. All aerial photography and photogrammetric mapping shall conform to STATE's latest standards. For aerial mapping, survey documents to be furnished are three sets of contract prints, with one set showing control, a complete photo index - two prints and a copy of the negative, and the original aerial photography negative.
12. Since the PROJECT construction phase is the subject of a future agreement, CITY in administering and contracting to perform PROJECT DEVELOPMENT, agrees to include a "conflict of interest" requirement in the PROJECT design consultant contracts that prohibits that design consultant from being employed or under contract to the future PROJECT construction contractor.

SECTION II

STATE AGREES:

1. At no cost to CITY, to complete STATE's review as CEQA Lead Agency and NEPA Lead Agency, if applicable, of the environmental documentation prepared and submitted by CITY and to provide IQA of all CITY PROJECT DEVELOPMENT work necessary for completion of the environmental document for PROJECT done by

CITY, including, but not limited to, investigation of potential hazardous material sites and provide prompt reviews, comments, concurrence, and/or approvals as appropriate, of submittals by CITY, while cooperating in timely processing of documents necessary for completion of the environmental documentation for PROJECT.

2. 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 SHS right of way as more specifically defined elsewhere in 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, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of PROJECT DEVELOPMENT administered by CITY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by CITY conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck of any work performed by CITY and/or its consultants and no liability will be assignable to STATE, its officers and employees by CITY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and CITY will pay or authorize STATE to reimburse itself from then available PROJECT funds pursuant to an amendment to this agreement authorizing such services to be performed by STATE.
3. STATE will be the CEQA Lead Agency and CITY will be a CEQA Responsible Agency. STATE will be the NEPA Lead Agency, if applicable. CITY will assess impacts of PROJECT on the environment and CITY will prepare the appropriate level of environmental documentation and necessary associated supporting investigative studies and technical environmental reports in order to meet the requirements of CEQA and if applicable, NEPA. CITY will submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. The environmental document and/or categorical exemption/exclusion determination, including, the administrative draft, draft, administrative final, and final environmental documentation, as applicable, will require STATE's review, comment, and approval prior to public availability.

If, during preparation of preliminary engineering, preparation of the PS&E, performance of right of way activities, or PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and if applicable NEPA, this Agreement will be amended to include completion of these additional tasks by CITY.

5. CITY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from the appropriate regulatory agencies for PROJECT, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said permits and/or agreements for PROJECT, those said costs shall be paid for by CITY, as a PROJECT cost.
6. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation(s), permit(s), agreement(s), and/or environmental approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
7. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
8. CITY, subject to STATE's prior review and approval, as a PROJECT cost, shall be responsible for preparing, submitting, publicizing and circulating all public notices related to the CEQA environmental process and the NEPA environmental process, including, but not limited to, notice(s) of availability of the environmental document and/or determinations and notices of public hearings. Public notices shall comply with all State and Federal laws, regulations, policies and procedures. STATE will work with the appropriate Federal agency to publish notices in the Federal Register, if applicable.

STATE, as a PROJECT cost, shall be responsible for overseeing the planning, scheduling and holding of all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. CITY, to the satisfaction of STATE and subject to all of STATE's and FHWA's policies and procedures, as a project cost, shall be responsible for performing the planning, scheduling and details of holding all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. STATE will participate as CEQA lead agency and if applicable, the NEPA Lead Agency in all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process for PROJECT. CITY shall provide the STATE opportunity to provide comments on any meeting exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE maintain(s) final editorial control of exhibits, handouts or other material to be used at the public meetings/hearings.

9. In the event CITY would like to hold separate and/or additional public meetings/hearings regarding the PROJECT, CITY must clarify in any meeting/hearing notices, exhibits, handouts or other materials that STATE is the CEQA Lead Agency and if applicable, the NEPA Lead Agency, and CITY is the CEQA Responsible Agency. Such notices, handouts and other materials shall also specify that public comments gathered at such meetings/hearings are not part of the CEQA and if applicable NEPA, public review process. CITY shall provide STATE the opportunity to provide comments on any meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings solely with respect to text or graphics that could lead to public confusion over CEQA and if applicable NEPA, related roles and responsibilities.
10. All administrative reports, studies, materials, documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
11. PROJECT DEVELOPMENT for PROJECT shall be performed in accordance with STATE's Highway Design Manual, Project Development Procedures Manual, and Federal and STATE standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be approved by STATE via the processes outlined in STATE's Highway Design Manual and appropriate memorandums and design bulletins published by STATE. In the event that STATE proposes and /or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on PROJECT in accordance with STATE's current Highway Design Manual Section 82.5, "Effective Date for Implementing Revisions to Design Standards". STATE shall consult with CITY in a timely manner regarding effect of proposed and/or required changes on PROJECT.
12. The party that discovers Hazardous materials (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

13. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

CITY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. CITY will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

14. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost related to HM-2 is a PROJECT construction cost.

15. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.

16. A separate Cooperative Agreement will be required to cover responsibilities and funding for the PS&E, ROW and construction phases of PROJECT.

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 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 SHS and public facilities different from the standard of care imposed by law.

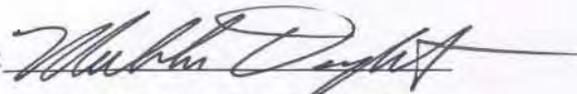
20. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction conferred upon CITY or arising under this agreement. It is understood and agreed that, CITY will fully defend, indemnify, and save harmless STATE and all of 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, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this agreement.

21. 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 or arising under this agreement. It is understood and agreed that, STATE will fully defend, indemnify, and save harmless CITY and all of 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, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this agreement.

22. Prior to the commencement of any work pursuant to this Agreement, either STATE or CITY may terminate this Agreement by written notice to the other party
23. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
24. This Agreement shall terminate upon the satisfactory completion of all post-PROJECT construction obligations of CITY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on June 30, 2018 whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid.

STATE OF CALIFORNIA
Department of Transportation

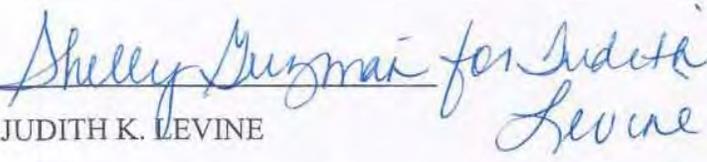
WILL KEMPTON
Director

By: 
MALCOLM X. DOUGHERTY
District 6 Director

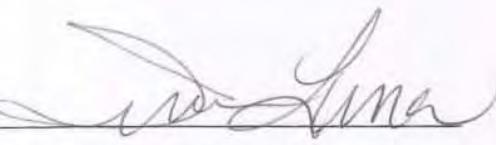
Approved as to form and procedure:

By: 
MEERA DANDAY, Attorney
Department of Transportation

Certified as to procedure:

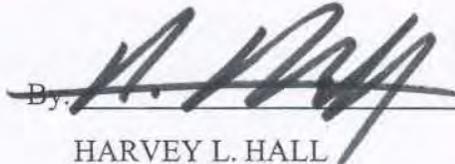
By: 
JUDITH K. LEVINE
Accounting Administrator

Certified as to funds:

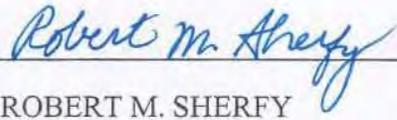
By: 
WADE A. TANKSLEY
District 6 Office of Budgets

CITY OF BAKERSFIELD

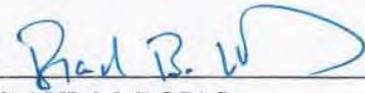
A municipal corporation

By: 
HARVEY L. HALL
Mayor

Approved as to form:

By: 
ROBERT M. SHERFY
Deputy City Attorney

Approved as to content:

By: 
RAUL M. ROJAS
Public Works Director

COUNTERSIGNED:

By: 
NELSON K. SMITH
Finance Director



Mayor and Vice-Mayor of Council

Section 20. (a) Notwithstanding any other provision of this Charter to the contrary, the provisions of this section shall govern as to the office of Mayor. The Mayor shall be elected by the qualified electors of the City and shall hold his office four years from and after the first Monday of January subsequent to his election, and until his successor is elected and qualified, unless sooner removed from office by recall or otherwise. Except as otherwise provided by this Charter or by ordinance hereafter enacted, the mode of nomination and election of the Mayor shall be the same as set forth in the Elections Code and Government Code of the State of California for nomination and election of Councilmembers.

(b) The Mayor shall be the official head of the City for all legislative policy and ceremonial purposes, and shall execute all legal instruments and documents, and shall preside at all meetings of the Council. The Mayor shall not be vested with administrative authority and shall not in any way interfere with the activities and authority of the City Manager, nor shall the Mayor use the authority of that office to direct the activities of any department head or any employee of any department of the City. As one of the duties, the Mayor shall promote and increase the economic and industrial base of the City, in cooperation with any existing economic development agencies or organizations. The Mayor shall not receive additional compensation, from the City or from others, for the performance of the duties outlined above, except for the regular salary paid to the Mayor by the City.

STATE OF CALIFORNIA)
County of Kern)
I, PAMELA A. McCARTHY, City Clerk of the City of Bakersfield, State of California, hereby certify the foregoing and annexed to be a full, true and correct copy of the original City of Bakersfield Charter on file in this office and that I have compared the same with the original.
WITNESS my hand and seal this 28th day of March 2 008

PAMELA A. McCARTHY, CMC, City Clerk

By: Pamela Lawrence
By: Pamela Lawrence Deputy City Clerk

13-006
COOPERATIVE AGREEMENT
State Independent Quality Assurance (IQA)

This Agreement, effective on FEB - 8, 2013, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Bakersfield, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

RECITALS

1. PARTNERS are authorized to enter into a cooperative agreement for improvements to the state highway system (SHS) per the California Streets and Highways Code sections 114 and 130.
2. For the purpose of this Agreement, construct a new freeway and operational improvements on State Route (SR) 58, Westside Parkway and SR-99 between Interstate 5 and Cottonwood Road between T31.7/55.6, in the City of Bakersfield, will be referred to hereinafter as PROJECT.
3. All responsibilities assigned in this Agreement will be referred to hereinafter as OBLIGATIONS.
4. This Agreement includes the following PROJECT COMPONENTS:
 - Plans, Specifications, and Estimate (PS&E)
 - Right of Way Support (R/W SUPPORT)
 - Right of Way Capital (R/W CAPITAL)
5. This Agreement is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTNERS regarding the PROJECT.
6. Prior to this Agreement:
 - CITY developed the Environmental Document (Cooperative Agreement No. 06-1386).
7. In this Agreement capitalized words represent defined terms and acronyms.
8. PARTNERS hereby set forth the terms, covenants, and conditions of this Agreement, under which they will accomplish OBLIGATIONS.

RESPONSIBILITIES

9. CITY is SPONSOR for 100% of PROJECT.
10. CITY is the only FUNDING PARTNER for this Agreement.

11. CITY is the IMPLEMENTING AGENCY for:
 - Plans, Specifications, and Estimate (PS&E)
 - Right of Way Support (R/W SUPPORT)
 - Right of Way Capital (R/W CAPITAL)
12. CALTRANS is the CEQA lead agency for PROJECT.
13. CALTRANS is the NEPA lead agency for PROJECT.
14. CALTRANS will provide Independent Quality Assurance (IQA) for the portions of WORK within existing and proposed SHS right of way. CALTRANS will perform its QC/QAP process review for environmental documentation.

SCOPE

Scope: General

15. CITY will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
16. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
17. CITY will ensure that personnel participating in OBLIGATIONS are appropriately qualified or licensed to perform the tasks assigned to them.
18. PARTNERS will invite each other to participate in the selection of any consultants who participate in OBLIGATIONS.
19. If WORK is done under contract (not completed by CITY's own employees) and is governed by the California Labor Code's definition of "public works" (section 1720(a)), CITY will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations.
20. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right of way.

Contractors and/or agents, and utility owners will not perform activities within the SHS right of way without an encroachment permit issued in their name.
21. If CITY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and CITY will notify CALTRANS within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
22. PARTNERS will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in

confidence to the extent permitted by law and where applicable, the provisions of California Government Code section 6254.5(e) shall protect the confidentiality of such documents in the event that said documents are shared between PARTNERS.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.

23. If a PARTNER receives a public records request pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public documents. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
24. If HM-1 or HM-2 is found during any PROJECT COMPONENT, CITY will immediately notify CALTRANS.
25. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
26. CITY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside the existing SHS right of way. CITY will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
27. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
28. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.
29. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTNER's responsibilities in this Agreement.
30. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right of way as part of WORK become the property of CALTRANS.

CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right of way.
31. CITY will accept, reject, compromise, settle, or litigate claims of any non-Agreement parties hired to do WORK in that component.

32. If CITY funds any part of OBLIGATIONS with state or federal funds administered by CALTRANS then the following will apply to all funding types included in this Agreement:

CITY will maintain, and will ensure that any party hired by CITY to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.

CITY will comply and will ensure that any party hired to participate in OBLIGATIONS will comply with the federal cost principles of 2 CFR Part 225 and federal administrative requirements outlined in 49 CFR Part 18.

PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this Agreement.

PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA, (if PROJECT utilizes federal funds) and CITY will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within 30 calendar days of receipt.

Upon completion of the final audit, PARTNERS have 30 days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to mediation. Mediation will follow the process described in the General Conditions section of this Agreement.

CITY will undergo an annual audit in accordance with the Single Audit Act of OMB Circular A-133.

Any other party hired to participate in OBLIGATIONS will conduct a pre-award audit of that party in accordance with the *Local Assistance Procedures Manual*.

33. If WORK stops for any reason, CITY will place PROJECT right of way in a safe and operable condition acceptable to CALTRANS.
34. If WORK stops for any reason, CITY will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation,

permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to CITY's responsibilities in this Agreement, in order to keep PROJECT in environmental compliance until WORK resumes.

- 35. CITY will furnish CALTRANS with all relevant deliverables and history files within one hundred eighty (180) days following the completion of each PROJECT COMPONENT.

Scope: Environmental Permits, Approvals and Agreements

- 36. Each PARTNER identified in the Environmental Permits table below accepts the responsibility to complete the assigned activities. If PARTNERS later determine that an environmental permit, approval or agreement is necessary PARTNERS will amend this Agreement to ensure completion and implementation of all environmental permits, approvals, and agreements.

ENVIRONMENTAL PERMITS						
PERMIT	COORD.	PREPARE	OBTAIN	IMPLEMENT	RENEW	AMEND
404 USACOE	CITY	CITY	CITY	CITY	CITY	CITY
401 RWQCB	CITY	CITY	CITY	CITY	CITY	CITY
RWQCB State Waste Discharge Rqmts (Porter Cologne)	CITY	CITY	CITY	CITY	CITY	CITY
1602 DFG	CITY	CITY	CITY	CITY	CITY	CITY
Air Quality Permits	CITY	CITY	CITY	CITY	CITY	CITY

Scope: Plans, Specifications, and Estimate (PS&E)

There are no applicable articles in this section.

Scope: Right of Way (R/W)

- 37. CITY will provide a land surveyor licensed in the State of California to be responsible for surveying and right of way engineering. All survey and right of way engineering documents will bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.
- 38. CITY will provide CALTRANS a copy of conflict maps, Relocation Plan, proposed Notices to Owner, Report of Investigation, and Utility Agreement (if applicable) for CALTRANS' concurrence prior to issuing the Notices to Owner and executing the Utility Agreement. All utility conflicts will be fully addressed prior to R/W Certification and all arrangements for the protection, relocation, or removal of all conflicting facilities will be completed prior to construction contract award and included in the PROJECT plans, specifications, and estimate.

39. CITY will utilize a public agency currently qualified by CALTRANS or a properly licensed consultant for all right of way activities. A qualified right of way agent will administer all right of way consultant contracts.

CITY will submit a draft Right of Way Certification document to CALTRANS six weeks prior to the scheduled milestone date for review.

CITY will submit a final Right of Way certification document to CALTRANS prior to PROJECT advertisement for approval.

40. All right of way conveyances must be completed prior to construction advertisement, unless PARTNERS mutually agree to other arrangements in writing.
41. CALTRANS' acceptance of right of way title is subject to review of an Updated Preliminary Title Report provided by CITY verifying that the title is free of all encumbrances and liens. Upon acceptance, CITY will provide CALTRANS with a Policy of Title Insurance in CALTRANS' name.
42. The CITY will hear Resolutions of Necessity.

COST

Cost: General

43. All costs associated with completing the PROJECT, except where otherwise noted in this agreement, are the responsibility of CITY including, but not limited to:
- Legal challenges, awards, judgments, settlements, fines, interest, and penalties.
 - Public meetings.
 - Environmental commitments and compliance.
 - Obtaining, implementing and renewing resource agency permits.
44. CALTRANS, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
45. CITY, independent of PROJECT, will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside of the existing SHS right of way.
46. Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.
- Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its QC/QAP process review for environmental documentation.
47. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.

Cost: Plans, Specifications, and Estimate (PS&E)

There are no applicable articles in this section.

Cost: Right of Way (R/W) Support

48. The cost to perform R/W activities, whether inside or outside SHS right of way, will be determined in accordance with federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements.

Cost: Right of Way (R/W) Capital

49. CITY will determine the cost to positively identify and locate, protect, relocate, or remove any utility facilities whether inside or outside SHS right of way in accordance with federal and California laws and regulations, and the applicable CALTRANS' policies, procedures, standards, practices, and applicable agreements, including, but not limited to, Freeway Master Contracts.

BILLING AND PAYMENT

50. If the PROJECT uses CALTRANS administered funds then the following will apply:

CITY will abide by the billing and payment conditions detailed in the latest Program Supplement Agreement (PSA) document signed by PARTNERS for the PROJECT.

All fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.

Any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.

After PARTNERS agree that all WORK is complete for a PROJECT COMPONENT, CITY will submit a final accounting for all OBLIGATION costs. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this Agreement.

If CALTRANS reimburses CITY for any costs later determined to be unallowable, CITY will reimburse those funds.

SCHEDULE

51. CITY will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

GENERAL CONDITIONS

52. PARTNERS understand that this Agreement is in accordance with and governed by the Constitution and laws of the State of California. This Agreement will be enforceable in the State of California. Any PARTNER initiating legal action arising from this Agreement will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this Agreement resides, or in the Superior Court of the county in which PROJECT is physically located.
53. All OBLIGATIONS of CALTRANS 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.
54. When CALTRANS performs IQA activities it does so for its own benefit. No one can assign liability to CALTRANS due to its IQA activities.
55. 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 CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this Agreement.

It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this Agreement.

56. Neither CALTRANS 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 and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this Agreement.

It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under this Agreement.

57. PARTNERS do not intend this Agreement to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. PARTNERS do not intend this Agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
58. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this Agreement.
59. PARTNERS will not interpret any ambiguity contained in this Agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.

60. A waiver of a PARTNER's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this Agreement does not constitute an amendment to or negate all other articles or sections of this Agreement.
61. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
62. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within 30 calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.
63. PARTNERS will first attempt to resolve Agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of CITY will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this Agreement. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

Except for equitable relief, no PARTNER may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

PARTNERS will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this Agreement resides or in the Superior Court of the county in which PROJECT is physically located. Each PARTNER will be responsible for their own costs, fees, and expenses, including attorney fees as a result of litigating a dispute under this Agreement or to enforce the provisions of this article including equitable relief.

64. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
65. If any provisions in this Agreement are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other Agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this Agreement.
66. PARTNERS intend this Agreement to be their final expression and supersedes any oral understanding or writings pertaining to OBLIGATIONS.
67. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this Agreement to include completion of those additional tasks.

68. Except as otherwise provided in the Agreement, PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
69. PARTNERS agree to sign a COOPERATIVE AGREEMENT CLOSURE STATEMENT to terminate this Agreement.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

DEFINITIONS

CALTRANS – The California Department of Transportation

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

CEQA (California Environmental Quality Act) – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

CFR (Code of Federal Regulations) – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government

CONSTRUCTION CAPITAL – See PROJECT COMPONENT.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this Agreement and in all amendments to this Agreement.

FHWA – Federal Highway Administration

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at www.fhwa.dot.gov/topics.htm.

FUNDING PARTNER – A PARTNER that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds it commits in this Agreement.

FUNDING SUMMARY – A document separate from this Agreement that documents the details of funding and billing/payment arrangements. Details include, but are not limited to, fund source, fund type, payment method, invoice frequency, deposit amounts and PROJECT COMPONENT in which funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

GAAP (Generally Accepted Accounting Principles) – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The PARTNER is responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

IQA (Independent Quality Assurance) – Ensuring that IMPLEMENTING AGENCY’s quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan (QMP). IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another PARTNER.

NEPA (National Environmental Policy Act of 1969) – This federal act establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

OBLIGATION COMPLETION – PARTNERS have fulfilled all OBLIGATIONS included in this Agreement, and all amendments to this Agreement, and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

OBLIGATIONS – All responsibilities included in this Agreement.

OMB (Office of Management and Budget) – This federal office oversees the preparation of the federal budget and supervises its administration in Executive Branch agencies.

PARTNER – Any individual signatory party to this Agreement.

PARTNERS – The term that collectively references all of the signatory agencies to this Agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER’s individual actions legally bind the other PARTNER.

PSA (Program Supplement Agreement) – The document executed for PROJECT between CITY and the Caltrans’ Division of Local Assistance that authorizes payment and billing to occur with locally sponsored state and federal funds..

PROJECT COMPONENT – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.
- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right of Way) SUPPORT** – The activities required to obtain all property interests for PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for PROJECT.

- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

PROJECT MANAGEMENT PLAN – A group of documents used to guide a project's execution and control throughout that project's lifecycle.

PS&E (Plans, Specifications, and Estimate) – See PROJECT COMPONENT.

QMP (Quality Management Plan) – An integral part of the PROJECT MANAGEMENT PLAN that describes IMPLEMENTING AGENCY's quality policy and how it will be used.

QC/QAP (QUALITY CONTROL/QUALITY ASSURANCE PROGRAM) – Per NEPA assignment CALTRANS will review all environmental documents as described in the Jay Norvell Memos dated October 1, 2012 (available at <http://www.dot.ca.gov/ser/memos.htm>). This also includes the independent judgment analysis and determination under CEQA that the environmental documentation meets CEQA statute and Guideline requirements.

R/W (Right of Way) CAPITAL – See PROJECT COMPONENT.

R/W (Right of Way) SUPPORT – See PROJECT COMPONENT.

SHS (State Highway System) – All highways, right of way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

SPONSOR – Any PARTNER that accepts the responsibility to establish scope of PROJECT and the obligation to secure financial resources to fund PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope. If a PROJECT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

WORK – All scope activities included in this Agreement.

CONTACT INFORMATION

The information provided below indicates the primary contact information for each PARTNER to this Agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this Agreement.

The primary Agreement contact person for CALTRANS is:

Steven Milton, Project Manager
2015 East Shields Avenue, Suite 100
Fresno, CA 93726
Office Phone: (559) 243-3451

The primary Agreement contact person for CITY is:

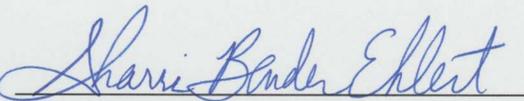
Luis Topete, Project Manager
1600 Truxton Ave
Bakersfield, CA 93301
Office Phone: (661) 326-3478

SIGNATURES

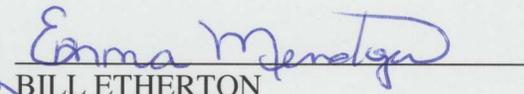
PARTIES declare that:

1. Each party is an authorized legal entity under California state law.
2. Each party has the authority to enter into this Agreement.
3. The people signing this Agreement have the authority to do so on behalf of their public agencies.

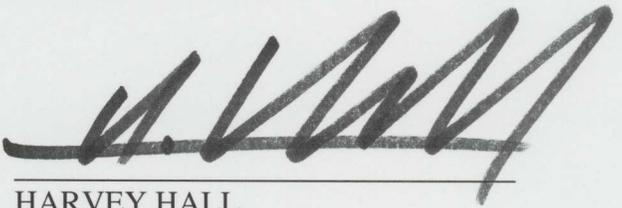
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: 
SHARRI BENDER EHLERT
District Director

CERTIFIED AS TO FUNDS:

By: 
for BILL ETHERTON
Budget Manager

CITY OF BAKERSFIELD

By: 
HARVEY HALL
MAYOR

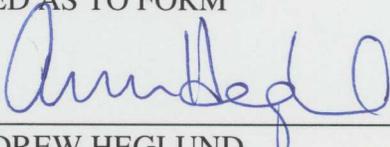
COUNTERSIGNED:

By: 
NELSON K. SMITH
FINANCE DIRECTOR

APPROVED AS TO CONTENT
Public Works Department

By: 
RAUL ROJAS
DIRECTOR

APPROVED AS TO FORM

By: 
ANDREW HEGLUND
DEPUTY CITY ATTORNEY II