City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.	1 E
COUNCIL MEETING	4/15/10
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	for Ben Fudd

April 15, 2010

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department

BRYAN D. JONES, TE, PTP, AICP City Traffic Engineer
Public Works Department, Traffic Engineering

SUBJECT: CONSIDER AND APPROVE A COOPERATIVE AGREEMENT WITH THE STATE OF CALIFORNIA FOR IMPROVEMENTS AT THE HERNDON AVENUE INTERCHANGE AT STATE ROUTE 99 (PROPERTY LOCATED IN COUNCIL DISTRICT 2)

Presented to City Council
Date 4/15/10
Disposition Rec approved

RECOMMENDATIONS

1. Approve the attached Cooperative Agreement with the State of California for Improvements at the Herndon Avenue interchange at State Route 99.

2. Authorize the Public Works Director or his designee to execute the Cooperative Agreement on behalf of the City.

EXECUTIVE SUMMARY

The developer for the El Paseo Marketplace located at the southwest and southeast corner of the intersection of Herndon Avenue and Bryan Avenue is working with the City of Fresno and California Department of Transportation (Caltrans) to design improvements to the Herndon Avenue/State Route (SR) 99 interchange. These improvements maybe constructed in the future, subject to available funding and completion and adoption of the necessary CEQA environmental analysis. These improvements include designing three traffic signals and associated mitigation as deemed necessary by the City and Caltrans to improve operations at the Herndon/SR 99 northbound off-ramp, the Herndon/Parkway intersection, and the Grantland/Parkway intersection. All three of these intersections are included in the City of Fresno Traffic Signal Mitigation Impact (TSMI) fee program originally adopted by the Council in 2004 and updated regularly with additional Council adoptions.

All costs for this work will be borne by the private developer and credited/reimbursable towards their future TSMI fee obligations. However, to expedite the improvements and reduce the costs to the overall Traffic Signal Mitigation Impact fee program, the City of Fresno and Caltrans desire to enter into a Cooperative Agreement. In order for Caltrans to review and approve the environmental document and engineering plans, it is necessary for the City and Caltrans to enter into a Cooperative Agreement. The attached Cooperative Agreement has been reviewed

and approved as to form by the City Attorney's Office. Approval of the agreement will allow the Herndon Avenue/SR 99 interchange project to continue moving forward.

BACKGROUND

In 2007, the City of Fresno received an application submittal for the El Paseo Marketplace development. In anticipation of mitigation measures identified in their preliminary environmental review process the developer would like to start the design process for Herndon Avenue/SR 99 interchange improvements. These improvements are consistent with improvements identified in the Traffic Signal Mitigation Impact fee program for which this work will be credited towards or reimbursed.

The City of Fresno 2025 General Plan anticipates 35 percent of the City's new residential growth will be west of SR99. The Central Unified School District (CUSD) is constructing new schools to keep up with the area's population growth at a rate of (1) one new school facility every (2) two years and the District spans to the east and the west of SR99. Construction of traffic signals at the Herndon Avenue/SR 99 interchange will greatly improve both operations and safety issues that currently exist and will be further exacerbated by the El Paseo Market Place. The existing interchange connections to SR99 at Herndon Avenue exceed the vehicle capacity for which they were designed. These traffic signals will help improve traffic circulation in the northwest and west areas of the City's Bullard Community and West Community boundaries in reference to the 2025 Fresno General Plan.

Additionally, the improvements at Herndon Avenue will help better connect school children with their schools, in the interim, until such time that the planned Veterans Boulevard/SR 99 interchange is constructed to further relieve traffic congestion at Herndon Avenue/SR 99. It will also correct the long queues of motor vehicles waiting to get across SR99, substantially improving the safety of students. CUSD continually reports that their bused students show up to school 15-30 minutes late on a daily basis due to congestion at the Herndon Avenue/SR 99 undercrossing.

Before any final design, right-of-way acquisition, utility relocation or traffic signal/road construction can occur, it is necessary to complete the CEQA environmental document for the project.

FISCAL IMPACT

No General Fund dollars will be used to fund this project. This project will be funded by a private developer. The current City of Fresno Traffic Signal Mitigation Impact fee and Traffic Signal Plan Check fees in the Master Fee Schedule will allow City staff to assist CALTRANS in the plan check for design approval.

PNW/SLM/BJ/eam
Consid & Apprv Coop Agr State of CA Imprv Herndon – SR99 Interch 4-15-2010

Attachments: Cooperative Agreement

06-1445

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4/15/10

EA:06-0L030

Fre 99 (PM 30.7)

CO

CITY OF FRESNO
City Clerk's Office (Original)

COOPERATIVE AGREEMENT

CD

This agreement, effective on May 28, 2010, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Fresno, a California municipal corporation, referred to as CITY.

RECITALS

1. CALTRANS and CITY, collectively referred to as PARTNERS, are authorized to enter into a cooperative agreement for improvements within the SHS right of way per Streets and Highways Code sections 114 and/or 130.

2. WORK completed under this agreement contributes toward improvements to the Herndon Avenue interchange, referred to as PROJECT.

3. PARTNERS will cooperate to develop PA&ED, PS&E, and R/W.

4. There are no prior PROJECT-related cooperative agreements.

5. No PROJECT deliverables have been completed prior to this agreement.

6. The estimated date for COMPLETION OF WORK is December 31, 2015.

7. PARTNERS now define in this agreement the terms and conditions under which they will accomplish WORK.

DEFINITIONS

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://dot.ca.gov.

CEQA – The California Environmental Quality 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.

COMPLETION OF WORK – All PARTNERS have met all scope, cost, and schedule commitments included in this agreement and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

CONSTRUCTION – The project component that includes the activities involved in the administration, acceptance, and final documentation of a construction contract for PROJECT.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all scope, cost, and schedule commitments included in this agreement.

FHWA – Federal Highway Administration.

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at http://www.fhwa.dot.gov/programs.html.

FUNDING PARTNER – A partner who commits a defined dollar amount to WORK.

FUNDING SUMMARY - The table in which PARTNERS designate funding sources, types of funds, and the project components in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are "not-to-exceed" amounts for each FUNDING PARTNER.

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 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. 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 – The National Environmental Policy Act of 1969 that establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

PA&ED (Project Approval and Environmental Document) – The project component that includes the activities required to deliver the project approval and environmental documentation for PROJECT.

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 partners.

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

PS&E (Plans, Specifications, and Estimates) – The project component that includes the activities required to deliver the plans, specifications, and estimates for PROJECT.

RESIDENT ENGINEER – A civil engineer licensed in the State of California who is responsible for construction contract administration activities. Said engineer shall be independent of the design engineering company and the construction contractor.

R/W (Right of Way) – The project component that includes the activities required to deliver the right of way for PROJECT.

SAFETEA-LU – The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, signed into federal law on August 10, 2005.

SCOPE SUMMARY – The table in which PARTNERS designate their commitment to specific scope activities within each project component as outlined by the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at http://dot.ca.gov.

SHS – State Highway System.

SPONSOR(S) – The partner that accepts the obligation to secure financial resources to fully fund WORK. This includes any additional funds beyond those committed in this agreement necessary to complete the full scope of WORK defined in this agreement or settle claims.

STATE-FURNISHED MATERIAL – Any materials or equipment supplied by CALTRANS.

WORK – All scope and cost commitments included in this agreement.

RESPONSIBILITIES

8. CITY is SPONSOR for all WORK except (1) any HM MANAGEMENT ACTIVITIES for HM-1 found in this SHS right-of-way; and (2) CALTRANS own IQA.

9. CITY is the only FUNDING PARTNER for this agreement. CITY's funding commitment is defined in the FUNDING SUMMARY.

10. CITY is IMPLEMENTING AGENCY for PA&ED, PS&E, and R/W.

SCOPE

Scope: General

11. All WORK will be performed in accordance with federal and California laws, regulations, and standards.

    All WORK will be performed in accordance with FHWA STANDARDS and CALTRANS STANDARDS.

12. IMPLEMENTING AGENCY for a project component will provide a Quality Management Plan for that component as part of the PROJECT MANAGEMENT PLAN.

13. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way. 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.

14. CITY may provide IQA for the portions of WORK outside existing and proposed SHS right of way.

15. PARTNERS may, at their own expense, have a representative observe any scope, cost, or schedule commitments performed by another partner. Observation does not constitute authority over those commitments.

16. Each partner will ensure that all of their personnel participating in WORK are appropriately qualified to perform the tasks assigned to them.

17. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in WORK.

18. PARTNERS 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 if PROJECT work is done under contract (not completed by a partner's own

employees) and is governed by the Labor Code's definition of a "public work" (section 1720(a)(1)).

PARTNERS will include wage requirements in all contracts for "public work" and will require their contractors and consultants to include prevailing wage requirements in all agreement-funded subcontracts for "public work".

19. IMPLEMENTING AGENCY for each project component included in this agreement will be available to help resolve WORK-related problems generated by that component for the entire duration of PROJECT.

20. CALTRANS will issue, upon proper application, at no cost, the encroachment permits required for WORK within SHS right of way.

Contractors and/or agents, and utility owners will not perform WORK without an encroachment permit issued in their name.

21. If unanticipated cultural, archaeological, paleontological, or other protected resources are discovered during WORK, all work in that area will stop until a qualified professional can evaluate the nature and significance of the discovery and a plan is approved for its removal or protection. CITY will notify CALTRANS within twenty-four (24) hours of any discovery.

22. PARTNERS will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law. Where applicable, the provisons of California Government Code section 6254.5(e) will govern the disclosure of such documents in the event that PARTNERS share said documents with each other.

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

23. If any partner receives a public records request, pertaining to WORK under this agreement, that partner will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any transferred public documents.

24. If HM-1 or HM-2 is found during WORK, IMPLEMENTING AGENCY for the project component during which it is found will immediately notify PARTNERS.

25. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. CALTRANS will undertake HM-1 MANAGEMENT ACTIVITIES with minimum impact to PROJECT schedule.

26. 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 impacts 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-2 MANAGEMENT ACTIVITIES.

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. IMPLEMENTING AGENCY for each project component will furnish PARTNERS with written quarterly progress reports during the implementation of WORK in that component.

31. Upon COMPLETION OF WORK, ownership and title to all materials and equipment constructed or installed as part of WORK within SHS right of way, for the maintenance and operation of SHS, will become the property of CALTRANS.

32. IMPLEMENTING AGENCY for a project component may accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do WORK in that component.

33. PARTNERS will confer on any claim that may affect WORK or PARTNERS' liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No partner shall prejudice the rights of another partner until after PARTNERS confer on claim.

34. PARTNERS will maintain and make available to each other all WORK-related documents, including financial data, during the term of this agreement and retain those records for four (4) years from the date of termination or COMPLETION OF WORK, or three (3) years from the date of final federal voucher, whichever is later.

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

    CALTRANS, the State auditor, and CITY will have access to all WORK-related records of each partner for audit, examination, excerpt, or transaction.

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 audited partner will review the preliminary audit, findings, and recommendations, and provide written comments within 60 calendar days of receipt.

Any audit dispute not resolved by PARTNERS is subject to dispute resolution mutually agreed to by PARTNERS. Any costs arising out of the dispute resolution process will be shared equally by PARTNERS and paid within 30 calendar days of the final audit or dispute resolution findings.

36. PARTNERS consent to service of process by mailing copies by registered or certified mail, postage prepaid. Such service becomes effective 30 calendar days after mailing. However, nothing in this agreement affects PARTNERS' rights to serve process in any other matter permitted by law.

37. PARTNERS will not incur costs beyond the funding commitments in this agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, SPONSOR(S) will seek out additional funds and PARTNERS will amend this agreement.

38. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.

39. If WORK stops for any reason, PARTNERS are still obligated to implement all 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 each partner's responsibilities in this agreement, in order to keep PROJECT in environmental compliance until WORK resumes.

40. CITY will coordinate and obtain the following resource agency permits, agreements, and/or approvals: the National Pollutant Elimination Discharge System (NPDES) Permit, and Regional Water Quality Control Board 401 Permit.

41. CITY will prepare the following resource agency permits, agreements and/or approvals for PROJECT: the NPDES Permit and Regional Waer Quality Control Board 401 Permint. CITY will submit all said applications to CALTRANS for review, comment and approval. CALTRANS will submit the final applications to the appropriate resource agencies.

42. CITY will implement the following resource agency permits, agreements, and/or approvals for PROJECT: the NPDES Permit and Regional Water Quality Control Board 401 Permit.

43. CITY will renew, extend, and/or amend the following resource agency permits as necessary: the NPDES Permit and Regional Water Quality Control Board 401 Permit.

44. Each partner accepts responsibility to complete the activities that they selected on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this agreement.

Scope: Project Approval and Environmental Document (PA&ED)

45. CALTRANS is the CEQA lead agency. CALTRANS will determine the type of environmental documentation required and will cause that documentation to be prepared.

46. All partners involved in the preparation of CEQA environmental documentation will follow the CALTRANS STANDARDS that apply to the CEQA process including, but not limited to, the guidance provided in the Standard Environmental Reference available at www.dot.ca.gov/ser.

47. CITY will prepare the appropriate environmental documentation to meet CEQA requirements.

48. Any partner preparing any portion of the CEQA environmental documentation, including any studies and reports, will submit that portion of the documentation to the CEQA lead agency for review, comment, and approval at appropriate stages of development prior to public availability.

49. CITY will prepare, publicize and circulate all CEQA-related public notices and will submit said notices to the CEQA lead agency for review, comment, and approval prior to publication and circulation.

50. The CEQA lead agency will attend all CEQA-related public meetings.

51. CITY will plan, schedule, prepare materials for, and host all CEQA-related public meetings and will submit all materials to the CEQA lead agency for review, comment, and approval at least 10 working days prior to the public meeting date.

52. If a partner who is not the CEQA lead agency holds a public meeting about PROJECT, that partner must clearly state their role in PROJECT and the identity of the CEQA lead agencies on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA public review process.

That partner will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the appropriate lead agency for review, comment, and approval at least 10 working days prior to publication or use. If that partner makes any changes to the materials, that partner will allow the appropriate lead agency to review, comment on, and approve those changes three (3) working days prior to the public meeting date.

The CEQA lead agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities.

53. The partner preparing the environmental documentation, including the studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that PROJECT remains in environmental compliance.

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

54. CITY will ensure that the engineering firm preparing the PS&E will not be employed by or under contract to the PROJECT construction contractor.

CITY will not employ the engineering firm preparing the PS&E for construction management of PROJECT.

However, CITY may retain the engineering firm during CONSTRUCTION to check shop drawings, do soil foundation tests, test construction materials, and perform construction surveys.

55. CITY will identify and locate all utility facilities within PROJECT area as part of PS&E responsibilities. All utility facilities not relocated or removed in advance of construction will be identified on the PS&E for PROJECT.

56. CITY will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of PROJECT or that violate CALTRANS' encroachment policy.

Scope: Right of Way (R/W)

57. 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 shall bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.

58. CITY will provide CALTRANS-approved verification of its arrangements for the protection, relocation, or removal of all conflicting facilities and that such work will be completed prior to construction contract award or as otherwise stated in the PROJECT PS&E. This verification must include references to all required SHS encroachment permits.

59. CITY will utilize a qualified CALTRANS-approved public agency or consultant in all right of way activities. Right of way consultant contracts will be administered by a qualified right of way person.

60. CITY will provide a Right of Way Certification to CALTRANS prior to PROJECT advertisement.

61. All right of way conveyances must be completed prior to COMPLETION OF WORK. 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.

62. All Resolutions of Necessity (RONs) will be heard by the California Transportation Commission (CTC).

COST

Cost: General

63. SPONSOR(S) will secure funds for all WORK including any additional funds beyond the FUNDING PARTNERS' existing commitments in this agreement. Any change to the funding commitments outlined in this agreement requires an amendment to this agreement.

64. The cost of any awards, judgments, or settlements generated by WORK is a WORK cost.

65. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within existing SHS right of way.

66. CITY, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to any HM-1 found outside of existing SHS right of way.

67. HM MANAGEMENT ACTIVITIES costs related to HM-2 are a PROJECT CONSTRUCTION cost.

68. The cost of coordinating, obtaining, complying with, implementing, and if necessary renewing and amending resource agency permits, agreements, and/or approvals is a WORK cost.

69. The cost to comply with and implement the commitments set forth in the environmental documentation is a WORK cost.

70. The cost to ensure that PROJECT remains in environmental compliance is a WORK cost.

71. The cost of any legal challenges to the CEQA environmental process or documentation is a WORK cost.

72. Independent of WORK costs, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.

73. Independent of WORK costs, CITY will fund the cost of its own IQA for WORK done outside existing or proposed future SHS right of way.

74. Fines, interest, or penalties levied against any partner will be paid, independent of WORK costs, by the partner whose actions or lack of action caused the levy. That partner will indemnify and defend all other partners.

75. The cost to place right of way in a safe and operable condition and meet all environmental commitments is a WORK cost.

76. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a PROJECT component, if there are insufficient funds available in this agreement to place the right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

    That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

77. If there are insufficient funds in this agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, the partner implementing the commitments or conditions accepts responsibility to fund these activities until such time are PARTNERS amend this agreement.

    That partner may request reimbursement for these costs during the amendment process.

78. PARTNERS will pay invoices within 30 calendar days of receipt of invoice.

79. FUNDING PARTNERS accept responsibility to provide the funds identified on the FUNDING SUMMARY.

80. SPONSOR(S) accepts responsibility to ensure full funding for the identified scope of work.

Cost: PROJECT Approval and Environmental Document (PA&ED)

81. The cost to prepare, publicize, and circulate all CEQA related public notices is a WORK cost.

82. The cost to plan, schedule, prepare, materials for, and host all CEQA related public hearings is a WORK cost.

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

83. The cost to positively identify and locate, protect, relocate, or remove any utility facilities 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 including, but not limited to, Freeway Master Contracts.

SCHEDULE

84. PARTNERS will manage the schedule for WORK through the work plan included in the PROJECT MANAGEMENT PLAN.

GENERAL CONDITIONS

85. This agreement will be understood 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 legal action arising from this agreement will be filed and maintained in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides.

86. 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.

87. All obligations of the CITY under the terms of this agreement are subject to the appropriation of funds by the City. Should funds not be appropriated, this agreement may be terminated by City upon prior written notice to CALTRANS.

88. Any PARTNER who performs IQA does so for its own benefit, further, that PARTNER cannot be assigned liability due to its IQA activities.

89. 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 under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS or arising under this agreement.

It is understood and agreed that CALTRANS 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, 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 under this agreement.

90. 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 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 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 under this agreement.

91. This agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this agreement. This agreement is not

intended to affect the legal liability of PARTNERS by imposing any standard of care for completing WORK different from the standards imposed by law.

92. PARTNERS will not assign or attempt to assign agreement obligations to parties not signatory to this agreement.

93. Any ambiguity contained in this agreement will not be interpreted against PARTNERS. PARTNERS waive the provisions of California Civil Code section 1654.

94. 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.

95. 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.

96. If any partner defaults in their agreement obligations, the non-defaulting partner(s) 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(s) may initiate dispute resolution.

97. 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 no resolution is reached, 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 WORK in accordance with the terms of this agreement. However, if any partner stops WORK, the other partner(s) may seek equitable relief to ensure that WORK continues.

    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.

    Any civil complaints will be filed in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides. The prevailing partner will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this agreement or to enforce the provisions of this article including equitable relief.

98. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

99. If any provisions in this agreement are deemed 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.

100. This agreement is intended to be PARTNERS' final expression and supersedes all prior oral understanding or writings pertaining to WORK.

101. 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.

102. PARTNERS will execute a formal written amendment if there are any changes to the commitments made in this agreement.

103. This agreement will terminate upon COMPLETION OF WORK or upon 30 calendar days' written notification to terminate and acceptance between PARTNERS, whichever occurs first.

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

104. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY.

105. Signatories may execute this agreement through individual signature pages provided that each signature is an original. This agreement is not fully executed until all original signatures are attached.

CONTACT INFORMATION

The information provided below indicates the primary contact data for each partner to this agreement. PARTNERS will notify each other in writing of any personnel or location changes. These 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, California 93726
Office Phone: (559) 243-3456
Email: steven_milton@dot.ca.gov

The primary agreement contact person for CITY is:
Bryan Jones, Traffic Engineer Manager
2600 Fresno Street
Fresno, California 93721
Office Phone: (559) 621-8792
Email: bryan.jones@fresno.gov

SIGNATURES

PARTNERS declare that:

1. Each partner is an authorized legal entity under California state law.
2. Each partner 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: _____ 5/28/10
~~BRIAN EVERSON~~ MALCOLM X DOUGHERTY
~~Acting~~ District Director

CERTIFIED AS TO FUNDS:

By: _____
DENISE RIKER
District 6 Budget Manager

CITY OF FRESNO

By: _____
Bruce Rudd
Interim City Manager

Attest: Cindy Bruer 5/13/10
Rebecca Klisch
City Clerk

APPROVED AS TO FORM

James C. Sanchez
City Attorney

By: _____
David Fox, Senior Deputy

Date: 4/6/2010

SCOPE SUMMARY

4	5	6	7	8	Description	CALTRANS	CITY	N/A
2					**Project Approval and Environmental Document (PA&ED) - 160, 165, 175, 180, 205**	X	X	
	160				Perform Preliminary Engineering Studies and Draft Project Report	X	X	
		05			Updated Project information		X	
		10			Engineering Studies		X	
		15			Draft Project Report		X	
		20			Engineering and Land Net Surveys		X	
		30			Environmental Study Request (ESR)		X	
		40			NEPA Delegation			X
		45			Base Maps and Plan Sheets for Project Report and Environmental Studies		X	
	165				Perform Environmental Studies and Prepare Draft Environmental Document	X	X	
		05			Environmental Scoping of Alternatives Identified for Studies in Project Initiation Document	X	X	
		10			General Environmental Studies		X	
		15			Biological Studies		X	
		20			Cultural Resource Studies		X	
			05		Archaeological Survey		X	
				05	Area of Potential Effects/Study Area Maps		X	
				10	Native American Consultation		X	
				15	Records and Literature Search		X	
				20	Field Survey		X	
				25	Archaeological Survey Report		X	
				99	Other Archaeological Survey Products		X	
			10		Extended Phase I Archaeological Studies		X	
				05	Native American Consultation		X	
				10	Extended Phase I Proposal		X	
				15	Extended Phase I Field Investigation		X	
				20	Extended Phase I Materials Analysis		X	
				25	Extended Phase I Report		X	
				99	Other Phase I Archaeological Study Products		X	
			15		Phase II Archaeological Studies		X	
				05	Native American Consultation		X	
				10	Phase II Proposal		X	
				15	Phase II Field Investigation		X	
				20	Phase II Materials Analysis		X	
				25	Phase II Report		X	
				99	Other Phase II Archaeological Study Products		X	
			20		Historical and Architectural Resource Studies		X	
				05	Preliminary Area of Potential Effects/Study Area Maps for Architecture		X	
				10	Historic Resources Evaluation Report - Archaeology		X	
				15	Historic Resource Evaluation Report - Architecture (HRER)		X	
				20	Bridge Evaluation		X	
				99	Other Historical and Architectural Resource Study Products		X	

			25		Cultural Resource Compliance Consultation Documents		X	
				05	Final Area of Potential Effects/Study Area Maps		X	
				10	PRC 5024.5 Consultation		X	
				15	Historic Property Survey Report/Historic Resources Compliance Report		X	
				20	Finding of Effect		X	
				25	Archaeological Data Recovery Plan/Treatment Plan		X	
				30	Memorandum of Agreement		X	
				99	Other Cultural Resources Compliance Consultation Products		X	
		25			Draft Environmental Document or Categorical Exemption/Exclusion	X	X	
			10		Section 4(F) Evaluation		X	
			20		Environmental Quality Control and Other Reviews	X		
			25		Approval to Circulate Resolution	X		
			30		Environmental Coordination		X	
			99		Other Draft Environmental Document Products		X	
		30			NEPA Delegation			X
		45			Required Permits During PA&ED Development		X	
		50			Permits During PA&ED Development		X	
	175				Circulate Draft Environmental Document and Select Preferred Project Alternative Identification	X	X	
	180				Prepare and Approve Project Report and Final Environmental Document	X	X	
		05			Final Project Report		X	
		10			Final Environmental Document	X	X	
			05		Approved Final Environmental Document	X		
				25	Statement of Overriding Considerations	X		
				30	CEQA Certification	X		
				40	Section 106 Consultation and MOA	X		
				45	Section 7 Consultation	X		
				50	Final Section 4(F) Statement	X		
				55	Floodplain Only Practicable Alternative Finding	X		
				60	Wetlands Only Practicable Alternative Finding	X		
				65	Section 404 Compliance	X		
				70	Mitigation Measures	X		
			10		Public Distribution of Final Environmental Document and Respond To Comments		X	
			15		Final Right of Way Relocation Impact Document		X	
			99		Other Final Environmental Document Products		X	
		15			Completed Environmental Document	X	X	
			05		Record of Decision (NEPA)	X		
			10		Notice of Determination (CEQA)	X		
			20		Environmental Commitments Record		X	
			99		Other Completed Environmental Document Products		X	
		20			NEPA Delegation			X
	205				Obtain Permits, Agreements, and Route Adoptions		X	
3					**Plans, Specifications, and Estimates (PS&E) - 185, 230, 235, 240, 250, 255, 260, 265**	X	X	
	185				Prepare Base Maps and Plan Sheets for PS&E Development		X	
	230				Prepare Draft Plans, Specifications, and Estimates		X	
	235				Mitigate Environmental Impacts and Clean Up Hazardous Waste		X	
	240				Draft Structures Plans, Specifications, and Estimates		X	
	250				Final Structures Plans, Specifications, and Estimates Package		X	

	255				Circulate, Review, and Prepare Final District Plans, Specifications, and Estimates Package		X	
	260				Contract Bid Documents Ready to List		X	
	265				Awarded and Approved Construction Contract		X	
4					**Right of Way (R/W) - 195, 200, 220, 225, 245, 300**	**X**	**X**	
	195				Right of Way Property Management and Excess Land			X
	200				Utility Relocation		X	
		15			Approved Utility Relocation Plan		X	
		20			Utility Relocation Package		X	
		25			Utility Relocation Management		X	
		30			Utility Close Out		X	
		99			Other Utility Relocation Products		X	
	220				Right of Way Engineering		X	
	225				Obtain Right of Way Interests for Project Right of Way Certification		X	
		50			Parcel and Project Documentation		X	
		55			Right of Way Interests		X	
			05		Right of Way Appraisals		X	
			10		Right of Way Acquisition		X	
			15		Right of Way Relocation Assistance		X	
			20		Right of Way Clearance		X	
			25		Right of Way Condemnation		X	
	245				Post Right of Way Certification Work		X	X
		50			Parcel and Project Documentation			X
		55			Close Out Right of Way Interests		X	X
			05		Right of Way Appraisals			X
			10		Right of Way Acquisition			X
			15		Right of Way Relocation Assistance			X
			20		Right of Way Clearance		X	
			25		Right of Way Condemnation			X
	300				Final Right of Way Engineering		X	
5					**Construction (CON) - 270, 285, 290, 295**			**X**
	270				Construction Engineering and General Contract Administration			
		10			Construction Staking Package and Control			
		15			Construction Stakes			
		20			Construction Engineering Work			
		25			Construction Contract Administration Work			
			05		Secured Lease for Resident Engineer Office Space or Trailer			
			10		Set Up Construction Project Files			
			15		Pre-Construction Meeting			
			20		Progress Pay Estimates			
			25		Weekly Statement of Working Days			
			30		Construction Project Files and General Field Office Clerical Work			
			35		Labor Compliance Activities			
			40		Approved Subcontractor Substitutions			
			45		Coordination			
			50		Civil Rights Contract Compliance			
			99		Other Construction Contract Administration Products			
		30			Contract Item Work Inspection			
		35			Construction Material Sampling and Testing			
			05		Materials Sampling and Testing for Quality Assurance			

			10		Plant Inspection for Quality Assurance			
			15		Independent Assurance Sampling and Testing			
			20		Source Inspection			
		40			Safety and Maintenance Reviews			
		45			Relief From Maintenance Process			
		55			Final Inspection and Acceptance Recommendation			
		60			Plant Establishment Administration			
		65			Transportation Management Plan Implementation During Construction			
		75			Resource Agency Permit Renewal and Extension Requests			
		80			Long-Term Environmental Mitigation/Mitigation Monitoring During Construction Contract			
		99			Other Construction Engineering and General Contract Administration			
	285				Contract Change Order Administration			
	290				Resolve Contract Claims			
	295				Accept Contract, Prepare Final Construction Estimate, and Final Report			
		05			Processed Estimate After Acceptance			
		10			Proposed Final Contract Estimate			
		15			As-Built Plans			
		20			Project History File			
		25			Final Report			
		30			Processed Final Estimate			
		35			Certificate of Environmental Compliance			
		40			Long Term Environmental Mitigation/Mitigation Monitoring After Construction Contract Acceptance			
		45			Post-Construction Traffic Operations Activities			
		99			Other Accept Contract/ Prepare Final Construction Estimate and Final Report			

FUNDING SUMMARY

Funding Source	Funding Partner	Funding Type	PA&ED	PS&E	R/W Support	CON Capital	CON Support
LOCAL	CITY	Local	$36,000.00	$72,000.00	$0.00	$0.00	$.00
		Subtotals by Component	$36,000.00	$72,000.00	$0.00	$.00	$.00

Funding Source	Funding Partner	Funding Type	Subtotal Support	Subtotal Capital	Subtotal Funds Type
LOCAL	CITY	Local	$108,000.00	$.00	$108,000.00
		Subtotals by Component	$108,000.00	$.00	$108,000.00

ENTERED