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8/18/11

CITY OF FRESNO
City Clerk's Office (Original)

COOPERATIVE AGREEMENT

THIS AGREEMENT (Agreement), ENTERED INTO ON **August 1, 2011**, is between the State of California, acting by and through its Department of Transportation, referred to herein as **DEPARTMENT**, and the City of Fresno, hereinafter referred to as **LOCAL AGENCY**.

RECITALS

1. **DEPARTMENT** and **LOCAL AGENCY**, pursuant to Streets and Highways Code section 114 (a) and 130, are authorized to enter in this Agreement affecting State highways within the jurisdiction of **LOCAL AGENCY**.
2. **LOCAL AGENCY** has agreed to implement Litter and Weed removal in State Right of Ways in District 06, hereinafter the Project, subject to the terms and conditions of this Agreement. The Project Description (Possible **DEPARTMENT** Maintenance Activities, Scope of Work/Special Provisions and Budget) is attached hereto as **Attachment III**.
3. The **LOCAL AGENCY's** governing body, under the authority of local ordinances, if applicable, if authorized to provide services or funding as described and specified herein pursuant to the **LOCAL AGENCY** resolution attached hereto as **Attachment II**.
4. All services performed by **LOCAL AGENCY** pursuant to this Agreement are intended to be performed in accordance with all applicable Federal, State, and **LOCAL AGENCY** laws, ordinances, regulations, and **DEPARTMENT** encroachment permits, published manuals, policies, and procedures.
5. Project funding is as follows:

<u>FUND TITLE</u>	<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
State Highway Account	100% STATE	\$500,000.00

6. This Agreement is exempt from legal review and approval by the Department of General Services, pursuant to PCC section 10295(c)(2).

SECTION I

LOCAL AGENCY AGREES:

To satisfactorily complete all Project Work described in **Attachment III**.

SECTION II

DEPARTMENT AGREES:

DEPARTMENT agrees that when conducting an audit of the costs claimed by **LOCAL AGENCY** under the provisions of this Agreement, **DEPARTMENT** will rely to the maximum extent possible on any prior audit of **LOCAL AGENCY** pursuant to the provisions of State and applicable Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that such work is acceptable to the **DEPARTMENT** when planning and conducting additional audits. See **Attachment I**, Accounting & Audit Guidelines for Agreements with **Department**.

SECTION III

IT IS MUTUALLY AGREED:

In consideration of the foregoing and the mutual promises of the parties hereto, **LOCAL AGENCY** and **DEPARTMENT** agree as follows:

1. Notification of Parties

- a. **LOCAL AGENCY's** Project Manager is Captain Andrew Hall, (559) 621-5051, Fax (559) 454-2614.
- b. **DEPARTMENT's** Contract Manager is Kip Michelson, (559) 287-2205, Fax (559) 445-6004.
- c. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at their respective addresses:

City of Fresno
Attention: Captain Andrew Hall
2323 Mariposa Street
Fresno, CA, 93721

California Department of Transportation
DISTRICT 6/Maintenance
Attention: Kip Michelson
1352 Olive Ave. M.S. 13
Fresno, CA 93728

2. Period of Performance

Work under this Agreement shall begin on **August 1, 2011**, contingent upon approval of this Agreement by **DEPARTMENT**, and will terminate on **July 31, 2013**, unless extended by amendment.

3. Changes in Terms/Amendment

This Agreement may only be amended or modified by mutual written agreement of the parties.

4. Termination

This Agreement may be terminated by either party for any reason by giving written notice to the other party at least thirty (30) days in advance of the effective date of such termination. In the event of termination by said notice, funds reimbursed to **LOCAL AGENCY** will include all authorized non-cancelable obligations and prior costs incurred.

5. Cost Limitation

- a. The total amount payable to **LOCAL AGENCY** pursuant to this Agreement by **DEPARTMENT** shall not exceed **\$500,000.00**.

- b. It is agreed and understood that this Agreement fund limit is an estimate and that **DEPARTMENT** will only reimburse the cost of services actually rendered as authorized by the **DEPARTMENT** Contract Manager at or below that fund limitation established hereinabove.

6. **Allowable Costs**

- a. The method of payment for this Agreement will be based on actual allowable costs. **DEPARTMENT** will reimburse **LOCAL AGENCY** for expended actual allowable direct and indirect costs, including, but not limited to labor costs, employee benefits, and travel (overhead is reimbursable only if the **LOCAL AGENCY** has an approved indirect cost allocation plan) and contracted consultant services costs incurred by **LOCAL AGENCY** in performance of the Project work, not to exceed the cost reimbursement limitation set forth in 5.a, above. Actual costs shall not exceed the estimated wage rates, labor costs, travel and other estimated costs and fees set forth in Attachment III without prior written agreement between **DEPARTMENT** and **LOCAL AGENCY**.
- b. Reimbursement of **LOCAL AGENCY** expenditures will be authorized only for those allowable costs actually incurred by **LOCAL AGENCY** in the performance of the Project work. **LOCAL AGENCY** must not only have incurred the expenditures on or after the Effective Date of this Agreement and before the Termination Date, but must have also paid for those costs to claim any reimbursement.
- c. Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates are not commercially available to **LOCAL AGENCY**, or its contractors, its subcontractors, and/or its subrecipients, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process.
- d. **DEPARTMENT** will reimburse **LOCAL AGENCY** for all allowable Project costs no more frequently than monthly in arrears as promptly as **DEPARTMENT** fiscal procedures permit upon receipt of itemized signed invoices in triplicate. Invoices shall reference this Agreement Number and shall be signed and submitted to the Contract Manager at the following address:

California Department of Transportation
District 6/Maintenance
Attention: Kip Michelson
1352 W. Olive Ave. M.S. 13
Fresno, CA 93728

- e. Invoices shall include the following information:
 - 1. Agreement Number **06A1656**
 - 2. Date(s) of Service
 - 3. Location(s) of Service (**LOCAL AGENCY** - address)
 - 4. Breakdown of position and labor hours worked
 - 5. Names of the **LOCAL AGENCY** Personnel performing work
 - 6. Equipment used
 - 7. Hours for equipment used and/or mileage (provided by daily log sheet)
 - 8. Actual item(s) treated and itemized listing of chemicals/supplies used

- (with applicable signed invoice of purchase involved)
9. Estimated acres treated per location

7. **Reports**

- a. **LOCAL AGENCY** shall submit written progress reports with each set of invoices to allow the **DEPARTMENT's** Contract Manager to determine if **LOCAL AGENCY** is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.
- b. Any document or written report prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of those documents or reports.
- c. **LOCAL AGENCY** will provide five (5) copies and one (1) electronic version of the final written report to the **DEPARTMENT's** Contract Manager.

8. **Cost Principles**

- a. **LOCAL AGENCY** agrees to comply with Title 2 Code of Federal Regulations (CFR) Part 225, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 225), and Title 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR 18).
- b. **LOCAL AGENCY** agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Title 48 CFR Part 31, Contract Cost Principles and Procedures (48 CFR 31), shall be used to determine the allowability of individual Project cost items and (b) all parties shall comply with Federal administrative procedures in accordance with 49 CFR 18. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with Federal administrative procedures in accordance with 49 CFR 18.
- c. Any Project costs for which **LOCAL AGENCY** has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR 31, or 49 CFR 18, are subject to repayment by **LOCAL AGENCY** to **DEPARTMENT**. Should **LOCAL AGENCY** fail to reimburse moneys due **DEPARTMENT** within thirty (30) days of discovery or demand, or within such other period as may be agreed in writing between the Parties hereto, **DEPARTMENT** is authorized to intercept and withhold future payments due **LOCAL AGENCY** from **DEPARTMENT** or any third-party source, including, but not limited to, the State Treasurer, the State Controller or any other fund source.
- d. **LOCAL AGENCY** agrees to include Project in the schedule of projects to be examined in **LOCAL AGENCY's** annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with Office of Management and Budget Circular (OMB) A-133.

- e. Prior to **LOCAL AGENCY** seeking reimbursement of indirect costs, **LOCAL AGENCY** must prepare and submit annually to the **DEPARTMENT** an indirect cost rate proposal and a central service costs allocation plan (if any) in accordance with 2 CFR 225 and Local Program Procedures Manual (LLP 04-10).

9. **Americans with Disabilities Act**

By signing this Agreement **LOCAL AGENCY** assures **DEPARTMENT** that it complies with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

10. **Indemnification**

- a. Nothing in this the provision of the Agreement is intended to create duties or obligations to or rights in third parties to this Agreement or affect the legal liability of either party to the Agreement by in putting any standard of care with respect to the maintenance of State highways different from the standard of care imposed by law.
- b. **DEPARTMENT** agrees to indemnify, save, hold harmless and at **LOCAL AGENCY's** request, defend the **LOCAL AGENCY**, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to **LOCAL AGENCY** in connection with the performance of the Agreement and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who maybe injured or damaged by the negligent performance of **DEPARTMENT**, its officers, agents or employees in the performance of this Agreement.
- c. **LOCAL AGENCY** agrees to indemnify, save, hold harmless and at **DEPARTMENT's** request, defend **DEPARTMENT**, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to **DEPARTMENT** in connection with the performance of the Agreement and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who maybe injured or damaged by the negligent performance of **LOCAL AGENCY**, its officers, agents or employees in the performance of this Agreement.
- d. In the event of concurrent negligence on the part of **DEPARTMENT** or any of its officers, agents or employees, and **LOCAL AGENCY** or any of its officers, agents or employees, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.
- e. This Section III, Item 10 shall survive termination or expiration of the Agreement for a period of 4 years.

11. Insurance

- a. **LOCAL AGENCY** shall provide to **DEPARTMENT** proof of Workers Compensation Insurance or **LOCAL AGENCY** self-insurance pursuant to Section 3700 of the Labor Code. A copy of this certificate shall be returned along with the Agreement after the **LOCAL AGENCY'S** governing body approves this Agreement. The final execution of this Agreement will not occur until this information is provided by the **LOCAL AGENCY**.
- b. **LOCAL AGENCY** shall provide workers compensation insurance for all **INMATES** deemed to be employees of the **LOCAL AGENCY**, and for all **LOCAL AGENCY** Officers. For the sole purposes of this paragraph and workers compensation, **INMATES** are "deemed to be employees of the **LOCAL AGENCY** during transportation to and from the job site by **LOCAL AGENCY** Officers and performance of the work under this Agreement.
- c. **LOCAL AGENCY** shall notify the **DEPARTMENT's** Contract Manager of any injuries occurring on the worksite within 24 hours. Within 48 hours of the occurrence of the injury **LOCAL AGENCY** will file with **DEPARTMENT's** Contract Manager a copy of the State Compensation Insurance Employers Report of Occupational Injury or Illness.
- d. It is understood and agreed that **DEPARTMENT** and **LOCAL AGENCY** maintain insurance policies or self-insurance programs to fund their respective liabilities. The parties agree that such respective programs or policy coverage for Workers Compensation shall contain a waiver of subrogation as to the other party and each of its officer, agents and employees. Evidence of Insurance, Certificates of Insurance or other similar documents shall not be required of either party under this Agreement, except as otherwise expressly required herein to be provide by **LOCAL AGENCY** regarding Workers Compensation Insurance.

12. Non-Discrimination

- a. During the performance of this Agreement, **LOCAL AGENCY** and all of its subcontractors, if any, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave, and denial of pregnancy disability leave. **LOCAL AGENCY** and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. **LOCAL AGENCY** and its sub-contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by this reference and are made a part hereof as if set forth in full. **LOCAL AGENCY** and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b. **LOCAL AGENCY** shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

13. **Funding Requirements**

- a. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement was executed only after ascertaining the availability of a congressional or legislative appropriation of funds.
- b. This Agreement is valid and enforceable only if sufficient funds are made available to **DEPARTMENT** by the United States Government and/or the California State Legislature for the purpose of this Project. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
- c. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program and Project, this Agreement shall be amended to reflect any reduction in funds.
- d. **DEPARTMENT** has the option to terminate this Agreement under the thirty (30) day termination clause or to amend this Agreement to reflect any reduction of funds. In the event of an unscheduled termination, the **DEPARTMENT** Contract Manager may reimburse **LOCAL AGENCY** in accordance with the provisions of Article 4 of this Section III.

14. **Records Retention**

- a. **LOCAL AGENCY**, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of **LOCAL AGENCY**, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **LOCAL AGENCY**, its contractors and subcontractors connected with Project performance under this Agreement shall be maintained for a minimum of three years from the date of final payment to **LOCAL AGENCY** and shall be held open to inspection, copying, and audit by representatives of **DEPARTMENT**, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by **LOCAL AGENCY**, its contractors, and its subcontractors upon receipt of any request made by **DEPARTMENT** or its agents. In conducting an audit of the costs and match credits claimed under this Agreement, **DEPARTMENT** will rely to the maximum extent possible on any prior audit of **LOCAL AGENCY** pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by **LOCAL AGENCY's** external and internal auditors may be relied upon and used by **DEPARTMENT** when planning and conducting additional audits.

- b. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of **LOCAL AGENCY's** contracts with third parties pursuant to Government Code section 8546.7, **LOCAL AGENCY, LOCAL AGENCY's** contractors and subcontractors and **DEPARTMENT** shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three years from the date of final payment to **LOCAL AGENCY** under this Agreement. **DEPARTMENT**, the California State Auditor, or any duly authorized representative of **DEPARTMENT** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and **LOCAL AGENCY** shall furnish copies thereof if requested.
- c. **LOCAL AGENCY**, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **DEPARTMENT**, for the purpose of any investigation to ascertain compliance with this Agreement.

15. **Disputes**

- a. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the **DEPARTMENT** Contract Officer, whose determination is the final decision of the **DEPARTMENT** regarding the dispute.
- b. Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse **LOCAL AGENCY** from full and timely performance in accordance with the terms of the Agreement.

16. **Subcontractors**

LOCAL AGENCY shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by **DEPARTMENT's** Contract Manager, unless expressly included (subcontractor identified) in **Attachment III**. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions of this Agreement.

17. **Third Party Contracting**

- a. **LOCAL AGENCY** shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of

DEPARTMENT. Contracts awarded by **LOCAL AGENCY**, if intended as local match credit, must meet the requirements set forth in this Agreement regarding local match funds.

- b. Any subcontract entered into by **LOCAL AGENCY** as a result of this Agreement shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.
- c. If local match is a requirement of these funds, **LOCAL AGENCY** must ensure that local match funds used for the Project meet the requirements outlined in this Agreement in the same manner as is required of all other Project expenditures.
- d. In addition to the above, the preaward requirements of third party contractor/consultants with local agencies must be consistent with Local Program Policy (LPP 00-05).

18. Drug-Free Workplace Certification

By signing this Agreement, **LOCAL AGENCY** hereby certifies under penalty of perjury under the laws of the State of California that **LOCAL AGENCY** will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and will provide a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code section 8355(b) to inform employees about all of the following:
 - 1. The dangers of drug abuse in the workplace,
 - 2. The person's or organization's policy of maintaining a drug-free workplace,
 - 3. Any available counseling, rehabilitation, and employee assistance programs, and
 - 4. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code section 8355(c), that every employee who works on the proposed contract or grant:
 - 1. Will receive a copy of the company's drug-free policy statement, and
 - 2. Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.

Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both, and **LOCAL AGENCY** may be ineligible for the award of any future state contracts if **DEPARTMENT** determines that any of

the following has occurred: (1) **LOCAL AGENCY** has made a false certification or, (2) **AGENCY** violates the certification by failing to carry out the requirements as noted above.

19. **Relationship of Parties**

It is expressly understood that this is an agreement is executed by and between two independent governmental entities and that this is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent Contractor.

20. **Equipment Purchase (By LOCAL AGENCY)**

- a. Prior authorization in writing by the **DEPARTMENT** Contract Manager shall be required before **LOCAL AGENCY** enters into any non-budgeted purchase order or subagreement exceeding \$500 for supplies, equipment, or consultant services. **LOCAL AGENCY** shall provide an evaluation of the necessity or desirability of incurring such costs.
- b. For the purchase of any item, service or consulting work not covered in the attached Project Description (**Attachment III**) and exceeding \$500, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified, and prior authorization must be obtained from the **DEPARTMENT's** Contract Manager. Title to equipment purchased by **LOCAL AGENCY** will rest in **DEPARTMENT**.
- c. Any equipment purchased as a result of this Agreement is subject to the following: **LOCAL AGENCY** shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on sale, in accordance with established **DEPARTMENT** procedures, purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to **DEPARTMENT** upon request by **DEPARTMENT**.
- d. At the conclusion of the Agreement, or if the Agreement is terminated, **DEPARTMENT** may request that equipment be returned to **DEPARTMENT** or authorize its continued use for work to be performed under a different contract. The parties agree that disposal of personal property shall be in accordance with the State Administrative Manual Section 3520.
- e. CFR 49, Part 18.32 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.
- f. Any subagreement entered into as a result of this Agreement shall contain all of the provisions of this Article.

21. **Disabled Access Review**

Disabled access review by the Department of General Services (Office of State Architect) is required for the construction of all publicly funded buildings, structures, sidewalks, curbs and related facilities. No construction contract will be awarded by **LOCAL AGENCY** unless **LOCAL AGENCY** plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Administrative Code and the Americans with Disabilities Act (42 USC 12101, et. seq.).

22. **Fire Marshal Review**

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any **DEPARTMENT** owned or **DEPARTMENT** occupied buildings per Section 13108 of the Health and Safety Code. When applicable, **LOCAL AGENCY** must assure that any relevant Project plans meet the standards of the State Fire Marshal to ensure consistency with **DEPARTMENT** fire protection standards.

23. **Environmental Clearance**

Environmental clearance of Project by **LOCAL AGENCY** and/or **DEPARTMENT** is required prior to requesting funds for right of way purchase or construction. No department or agency shall request funds nor shall any department/agency board or commission authorize expenditures of funds for any project, except feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied by an environmental impact report per California Public Resources Code section 21102. The California Environmental Quality Act (CEQA), in California Public Resources Code section 21080(b)(10), does provide an exemption for rail projects which institute or increase passenger or commuter services on rail or highway rights-of-way already in use.

24. **Project Close Out**

The Agreement Expiration Date refers to the last date for **LOCAL AGENCY** to incur valid Project costs or credits and is the date the Agreement expires. **LOCAL AGENCY** has sixty (60) days after that Expiration Date to make final allowable payments to Project contractors or vendors, prepare the Project Closeout Report, and submit the final invoice to **DEPARTMENT** for reimbursement for allowable Project costs. Any unexpended Project funds not invoiced by that sixtieth (60th) day will be reverted and will no longer be accessible to reimburse late Project invoices.

State-Owned Data

- a. **LOCAL AGENCY** agrees to comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:
 1. Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to

- protect **DEPARTMENT** data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
2. Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
 3. Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
 4. Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
 5. Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
 6. Notify the Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
 7. Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.
- b. To use the State-owned data only for State purposes under this Agreement.
- c. To not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). Reference State Administrative Manual (SAM) section 5335.1.

ATTACHMENTS:

The following attachments are incorporated into and are made a part of this Agreement by this reference and attachment.

- I. Accounting & Audit Guidelines
- II. **LOCAL AGENCY** Resolution
- III. Possible **DEPARTMENT** Maintenance Activities, Scope of Work/Special Provisions and Budget

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first herein above written:

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

CITY OF FRESNO

By: Cheryl D Smith

By: [Signature]

Title: Contract Officer

Title: POLICE CHIEF

Date: 9.16.2011

Date: 8/22/11

By: Mark Scott

Title: City Manager

Date: 8-24-11

By: Sherrie L. Badetscher

Title: Deputy City Clerk

Date: 8/29/11

**APPROVED AS TO FORM:
CITY OF FRESNO**

CITY ATTORNEY'S OFFICE

BY: [Signature] 8/25/11
Date
SENIOR DEPUTY Nancy A. Alger

ATTACHMENT I

ACCOUNTING & AUDIT GUIDELINES FOR AGREEMENTS WITH DEPARTMENT

INTRODUCTION

The purpose of this information is to outline for you, a potential contractor with the California State Department of Transportation (DEPARTMENT), and the basic elements of an adequate accounting system, and the types and objectives of audits that will be performed in relation to your contract. In order to successfully compete for a contract and meet the audit requirements, a contractor (whether a prime or subcontractor) must have a system of record keeping and internal control. Although a specific cost accounting system is not required, a contractor needs a system, which will assure compliance with the terms of the agreement. A preaward audit will be performed to assure you meet these requirements prior to contract execution. If your system is deficient, the contract will not be executed.

DEPARTMENT reimburses, through your overhead rate, the costs attributable to establishing and maintaining a cost accounting system.

Staff time and other costs related to an audit performed of your contract are also normally reimbursed through your overhead rate.

ACCOUNTING SYSTEM

Contractors (whether a prime or subcontractor) planning to contract with DEPARTMENT must have an accounting system which meets the following objectives:

- The ability to record and report financial data in accordance with generally accepted accounting principles.
- A system of record keeping to ensure that costs billed to DEPARTMENT are:
 - a. Supported by adequate documentation.
 - b. In compliance with the terms of the contract and applicable Federal and State regulations specified in the contract.
- A system of record keeping which ideally includes the following:
 - a. A General Ledger
 - b. Job cost ledger
 - c. Labor distributions
 - d. Time records
 - e. Subsidiary journals
 - f. Chart of accounts
 - g. Financial statements
- The ability to accumulate and segregate reasonable, allocable (incurred solely for a project) and allowable (per terms of the contract) costs through the use of a cost accounting system. The following are some of the attributes which would ideally be found in such a system:

- a. A chart of accounts which includes indirect and direct general ledger accounts. Indirect costs are not specifically identified to a project, for example, rent and/or utilities. Direct costs are specifically identified with a project, for example, drafting hours and/or design hours.
 - b. Segregation of costs by contract, category of cost and milestones (if applicable).
 - c. Proper recording of direct and indirect costs. For example, recording of labor costs should provide that non-project indirect hours be recorded on a timesheet and in the accounting records to an administration, vacation, sick leave or other indirect cost account/code. Direct project hours should be recorded on a timesheet and in the accounting records to a direct project cost account/code.
 - d. Consistent accounting treatment of costs in recording and reporting. For example, if travel expense is charged directly to a project, all travel expense incurred on any project should be considered a direct cost. As a result, project related travel, whether reimbursable per the contract terms or not, should not be included as an indirect cost.
 - e. Ability to trace from invoices submitted to DEPARTMENT to job cost records and original, approved source documents, for example, timesheets, vendor invoices, canceled checks.
 - f. Ability to reconcile job cost records to the accounting records.
- Compliance with cost principles described in the Code of Federal Regulations 48, Federal Acquisition Regulations System (FAR), Chapter 1, Part 31. Information on how to obtain this regulation is described under "Audit Criteria" in this brochure.
 - Procedures to monitor and adjust projected overhead rates to actual rates.
 - Controls to ensure that written approval is obtained prior to any changes to the contract.
 - Procedures to retain accounting records and source documentation as required by the terms of the contract.
 - A system of internal control which provides reasonable assurance that assets are protected; financial data, records and statements are reliable; and errors and irregularities are promptly discovered, reported, and corrected. The elements of a system of internal control should include, but not be limited to, the following:
 - a. Separation of duties for proper protection of assets. Incompatible duties are those that place any person in a position to both perpetrate and conceal errors or irregularities in the normal course of business. For example, the person who writes checks should be different from the person who reconciles bank statements and the person who purchases goods should be different from the person who receives goods.
 - b. Limiting access to assets to only authorized personnel who require these assets in the performance of their assigned duties. For example, blank check stock should be locked in a safe when not in use.
 - c. Authorization and record keeping procedures which provide effective accounting control over assets, liabilities, revenues, and expenditures.

- d. A system of practices to be followed in the performance of duties and functions. Such a system normally includes policies and procedures which establish the purpose and requirements of the accounting system. For example, timekeeping practices should ideally provide for the following:
- Timesheets be prepared, signed, and dated by all employees.
 - Timesheets be completed in non-erasable ink.
 - Timesheet corrections be crossed-out and initialed by the employee.
 - Timesheets be signed by a supervisor as reviewed and retained on file as required by the contract.
- e. Personnel with skills and training commensurate with their responsibilities.
- f. A system of internal review. For example, bank reconciliations and travel expense claims should be reviewed approved and signed by a supervisor.

AUDITS

Contractors, whether a prime or subcontractor, performing under a negotiated contract with DEPARTMENT are subject to the following audits:

PREAWARD AUDITS

Prior to the award of a contract, the DEPARTMENT Audits and Investigations will conduct a preaward audit to determine if the contractor's accounting system is adequate to accumulate and segregate costs as detailed in the previous section and to determine if the proposed costs are reasonable. The audit alerts both the contractor and DEPARTMENT management to problems relative to the contractor's cost proposal and cost accounting system. Due to time constraints in the award process, your cooperation in scheduling the preaward audit with short notice will expedite the execution of your contract.

INTERIM AUDITS

Interim audits are performed on an as needed basis. During the preaward audit, if it is determined that the contractor's accounting system is new or minor deficiencies are noted, an interim audit is scheduled to determine that the system is functioning adequately to ensure that billed costs are supported and that any deficiencies were corrected. An interim audit may be requested by the

contract administrator or by DEPARTMENT management to address concerns during the course of the contract. Also, an audit manager may initiate an interim audit of a long duration contract to ensure that costs reimbursed to date are allowable.

POST AUDITS

Post audits of contracts are performed routinely after project completion. Post audits are performed to determine whether the costs claimed are allowable, allocable, reasonable, and in compliance with the Federal and State laws and regulations as well as the fiscal provisions stipulated in the contract. The examination includes reviews of applicable laws and regulations, the contract requirements and the contractor's internal controls systems. Audit tests of the

contractor's accounting records and other auditing procedures considered necessary will also be performed. Applications of all audit procedures would also be governed by the individual contract under audit. Unsupported or unallowable costs are normally the result of weaknesses in the accounting system and will be reimbursed to DEPARTMENT.

To provide contractors with a procedure for obtaining prompt and equitable resolution to a dispute arising from a post-audit of a non-highway construction cost reimbursement contract, DEPARTMENT has established an Audit Review Committee (ARC). Information explaining the ARC should be found in your contract and/or as an attachment to the post-audit report.

AUDIT CRITERIA

For specific information regarding basic cost accounting systems and applicable State and Federal regulations, please see the following:

Code of Federal Regulations 48, Federal Acquisition Regulations System, Chapter 1, Part 31
This regulation contains cost principles and procedures for the pricing of contracts/subcontracts and the determination, negotiation, or allowance of costs. Contact:

Superintendent of Documents
Government Printing Office
Washington, DC 20402

Washington D.C. (202) 783-3238
San Francisco (415) 512-2770
Los Angeles (213) 239-9844

California State Administrative Manual

A reference source for statewide policies, procedures, regulations, and information. Contact:

Office of State Publishing
Department of General Services
(916) 445-2295

For review of the above references, contact your local library or the California State Library.

California State Library/Library and Courts Building
914 Capitol Mall
P. O. Box 942837
Sacramento, CA 94237-0001
Information: (916) 654-0261

For assistance in establishing an accounting system which will meet the objectives outlined in this brochure, you should contact an accountant and/or bookkeeper who is familiar with cost accounting systems.

DEPARTMENT is an affirmative action employer. Equal opportunity is offered to all regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age or sexual orientation. Contractors that contract with DEPARTMENT are responsible for taking necessary and reasonable steps to achieve these same goals.

Attachment II
Resolution

Resolution to be provided by City of Fresno

Attachment III

**POSSIBLE DEPARTMENT MAINTENANCE ACTIVITIES
THAT COULD BE PERFORMED BY LOCAL AGENCY INMATE LABORERS**

1. Clear unwanted, i.e., unsightly, dead overgrown, brush and trees within the right of way in general.
2. Trim or remove brush and trees, which have the potential of obstructing sight distance in the future as the brush becomes larger.
3. Remove seedling trees in cut separations, least ten feet up cut slopes and ten (10) feet down fill slopes in snow areas.
4. Open up vistas of scenic worth, i.e., mountains, oceans, lakes, rivers, by selective tree and brush removal within the right of way.
5. Trim up or remove trees in areas of deer and other wild game crossings for motorist visibility of animals and vice versa.
6. Remove brush, trees, and other debris within the right of way in ditches, channels, or natural gullies leading to cross-highway drainage.
7. In forestlands, clear natural vegetation-type debris, which has collected over time in natural waterways leading to cross-highway drainage, i.e., dead grass, logs, limbs, (say up to 1,000 feet from the highway).
8. Make firebreaks at fence lines and where appropriate adjacent to shoulders in lieu of spraying, grading, mowing, or disking.
9. Remove fire tinder within the right of way, i.e., dead grass, fallen limbs.
10. Plant natural vegetation on friable cut and fill slopes and any other areas subject to erosion.
11. Slope restoration and reseeding (eroded slopes). Clean culverts and restore ditches (especially top of slope).
12. Construction of protective walls, lining of drainage inlets and outlets, utilizing native rock salvage from cut slopes.
13. Plant restoration in landscaped areas:
 - Remove dead or end of life cycle plants, shrubs and trees
 - Prepare and replant areas of plant loss, shrubs and trees
 - Groundcover removal and replanting
14. Manual weed control.
15. Water systems restoration.

Attachment III

16. Clean up backside of landscaped areas, i.e., along local streets and frontage roads. Clean brush, weeds, remove debris, from unimproved right of way.
17. Mowing lawns and mulching plants.
18. Annual tree planting programs each winter or season.
19. Repair rock walls at scenic overlooks.
20. Restore right of way fence; i.e., rotted posts, broken wires, in areas of no active use of the adjacent properties where fences have deteriorated.
21. Wash and paint signs and guideposts (guardrail, wooden rail.).
22. General yard works at maintenance stations.
23. Litter removal (roadside and landscape).
24. Minor storm damage repair activity.

Attachment III

SCOPE OF WORK/SPECIAL PROVISIONS

1. The **DEPARTMENT** agrees, to the extent possible considering staff obligations and maintenance commitments, to utilize **LOCAL AGENCY** and County of Madera inmate laborers under the County's jurisdiction to perform certain labor- intensive activities.
2. The **LOCAL AGENCY** will be absolutely and solely responsible for the supervision, custody, care and control of the inmate laborers assigned to work in **DEPARTMENT** facilities and on **DEPARTMENT** road right-of-ways. There shall be no co-mingling of **LOCAL AGENCY** inmate work crews with the public or other **DEPARTMENT** work crews and staff other than the immediate technical direction by **DEPARTMENT** employees to ensure quality control of the work being performed. Notwithstanding the above, inmates may work with a **DEPARTMENT** employee at the Police Officer's discretion.
3. The **DEPARTMENT** will, at its sole expense, provide technical direction to oversee the work being performed under the terms of this agreement in its Maintenance and Equipment functions and will pay the cost of materials, supplies, tools and equipment utilized by **LOCAL AGENCY** inmate laborers at the job site.
4. The **LOCAL AGENCY** will be responsible for housing, custody, care, feeding and provide water and supervision of **LOCAL AGENCY** inmate laborers except for technical direction performed by **DEPARTMENT** employees.
5. The **LOCAL AGENCY** will provide transportation for all **LOCAL AGENCY** inmate laborers to and from work sites and provide a portable sanitary toilet for the use and convenience of work crews and **LOCAL AGENCY** staff.
6. The **DEPARTMENT** will provide **LOCAL AGENCY** inmate laborers with safety equipment such as signs, hard hats and orange vests.
7. The **DEPARTMENT** will provide the necessary safety instructions, and explain the work to be done. **DEPARTMENT** shall furnish the necessary safety warning signs and instruct **LOCAL AGENCY** personnel on the placement of said signs. Any required traffic control will be provided by the **DEPARTMENT**.
8. Only qualified **DEPARTMENT** employees will operate equipment, except transportation equipment, which shall be operated by qualified **LOCAL AGENCY** employees. At the discretion of the Police Officer, **LOCAL AGENCY** inmate laborers may operate power string trimmers (weed eaters).
9. In the event that a **LOCAL AGENCY** inmate laborer is injured on the job, the **LOCAL AGENCY** will be responsible for providing medical care and transportation to a medical facility. The **LOCAL AGENCY** will be responsible for the administration of any claims by the **LOCAL AGENCY** inmate due to injury on the job, as well as for treatment of the injury. The **DEPARTMENT's** Contract Manager shall be notified within 24 hours of any injuries incurred while working under this contract.

Attachment III

10. The **LOCAL AGENCY** will provide two (2) Police Officers and two (2) work crews generally consisting of one (1) Police Officer and a maximum of seven (7) inmate laborers per crew, depending on the type and amount of work to be accomplished at a specified job site. In addition, the Police Officer will supervise, coordinate and direct the work.
11. The **LOCAL AGENCY** shall have a minimum of six (6) inmate laborers per crew. No work shall be completed by any crew consisting of less than six (6) laborers, as this is not cost efficient to the **DEPARTMENT**. The **LOCAL AGENCY** shall notify **DEPARTMENT** by telephone if they are not going to report to work due to lack of inmate laborers.
12. The inmate laborer work crews will perform manual labor and services as provided in this Agreement on a five (5) day a week basis, Monday through Friday and recognized County, **DEPARTMENT** and national holidays. Inmate laborers may work on a **DEPARTMENT** holidays not recognized by the County.
13. Work crews are to report at a mutually agreed time to **DEPARTMENT**, 1635 West Pine Street Avenue, Fresno or at a pre-approved work site location.
14. The **LOCAL AGENCY** shall notify the **DEPARTMENT** by telephone at (559) 445-6641, before 8:00 a.m. on days **LOCAL AGENCY** staff members are unable to work due to equipment problems, sick leave or vacation. The **LOCAL AGENCY** will also advise the **DEPARTMENT** Contract Manager in advance of permanent changes in Police Officer's in charge of inmates. This information may be facsimile to (559) 488-4379.
15. The **LOCAL AGENCY** staff assigned to this program will each devote forty (40) hours per week towards the achievement of the program's goals and contract requirements. Each inmate on the work crew will generally devote a 6-7 hour workday consisting of uncompensated manual labor. Variations in the amount of daily work hours will be a reflection of transportation time to and from the designated work sites.
16. **DEPARTMENT** shall reimburse the **LOCAL AGENCY** on an actual cost basis for the salary and benefits of **LOCAL AGENCY** staff assigned full time to the program and all attendant costs of transportation, security, incidental equipment, indirect services and supplies needed to provide a inmate work crew as specified in this contract. Payment to the **LOCAL AGENCY** will be made by the **DEPARTMENT** on a monthly basis upon receipt of the **LOCAL AGENCY**'s itemized billing.
17. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have fully given when made in writing and deposited with the United States Postal Service, registered or certified postage prepaid and addressed as follows:

City of Fresno
Fresno Police Department
Attention: Captain Andrew Hall
2323 Mariposa Street
Fresno, California, 93721

Attachment III

BUDGET

1. RATE SCHEDULE FOR PAYMENT TO THE CITY, TOTAL NOT TO EXCEED **\$500,000.00** FOR REIMBURSEMENT FOR WORK CREW SUPERVISORS AND FOR THE WORK CREW INMATES & RELATED COSTS OVER THE DURATION OF THIS AGREEMENT.
2. **WORK CREW SUPERVISOR SALARY (INCLUDING RETIREMENT, BENEFITS AND FRINGE:**
 - a. Cost per month per CITY Officer (including retirement, benefits and fringe): \$8611.00, for year one of contract; \$8695.25 for year two of contract.
 - b. CITY Officer annual salary (including retirement, benefits and fringe): \$112,801.00, first year of contract, \$113,806.00 second year of contract per officer.
3. **COST FOR EQUIPMENT/TRANSPORTATION:**
Cost per month per passenger van: \$458.33
4. **INSURANCE CHARGE:**
Cost of insurance premium for INMATE work crews: \$2,500.00 per month
5. **INDIRECT COSTS:**
 - a. CITY Officer vacation time (based on 2 week earned annual vacation, replaced by officer on time and one-half pay): \$734.93 per month
 - b. CITY Officer sick time (based on 6 days annually, replaced by officer on time and one-half pay): \$201.12 per month

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

AGENDA ITEM NO.	1A
COUNCIL MEETING	08/18/2011
APPROVED BY	
	
DEPARTMENT DIRECTOR	

August 18, 2011

FROM: JERRY P. DYER, Chief of Police
Police Department

BY: H. A. BENNINK, Lieutenant
Police Department

SUBJECT: AUTHORIZE THE AGREEMENT BETWEEN THE CITY OF FRESNO AND CALTRANS, TO PROVIDE A LITTER CLEAN-UP PROGRAM USING INMATE LABOR

RECOMMENDATIONS

The Fresno Police Department uses a police officer to oversee a freeway litter clean-up operation utilizing Madera Country inmate labor. This officer and associated costs are reimbursed by Caltrans. It is recommended City Council approve this agreement between the Fresno Police Department and Caltrans.

EXECUTIVE SUMMARY

Effective April 1, 2011, the City of Fresno had the opportunity to renew a two year agreement with Caltrans to provide a freeway litter clean-up program. This program is funded by Caltrans and uses inmate labor, supervised by a Fresno police officer, to remove trash from Fresno area freeways. Caltrans has agreed to reimburse the City up to \$ 500,000.00 toward the cost of two full time police officer positions, overtime, transportation vehicles, fuel, and workers compensation premiums. The program, if approved, will operate Monday thru Friday, through March 31st, 2013. The agreement may be terminated by either party with 30 days written notice.

BACKGROUND

The most effective method of maintaining the appearance of our freeways is through a combination of strict litter enforcement and an on-going and sustained litter removal program. The State provides funding for litter removal along California freeways.

Studies have shown that when litter is allowed it to accumulate it quickly becomes an accepted norm in communities. This is especially so along freeways. Much like Graffiti tagging, the failure to remove litter encourages further littering. This can also lead to an increase in public disorder and more serious criminal activities.

According to Caltrans, the use of inmate labor has worked extremely well to quickly clean up and stop the spread of litter. The cooperative program developed by Caltrans and the City of Fresno has been an effective and worthwhile program, removing tons of litter from our freeways. Caltrans estimates an average of 50 cubic yards of trash are removed weekly per crew.

Presented to City Council
Date 8/18/11
Disposition Approved

At the start of this program, Fresno County inmate labor crews were used to staff the litter removal program. During the previous contract, however, the Fresno County Jail was unable to provide sufficient low risk offenders to staff a single crew. To maintain this program, the City of Fresno entered into an agreement with Madera County Corrections for inmate labor. Unfortunately, low risk inmate levels at the Madera facility have also declined to the point where we are currently only able to consistently staff one fulltime crew.

ISSUES RAISED BY COUNCIL

On June 9, 2011, this contract was sent to council for approval. The item was tabled after questions were raised by council requiring additional research. On June 28, City and Caltrans officials met to discuss these questions. The responses are contained below:

1. Is it possible for inmates to be supervised by someone other than a police officer?

Lieutenant Bennink made contact with the Madera Director of Corrections, Chief Manual Perez, who advised he would not allow Madera County inmates to be supervised by non-sworn personnel outside of a secured facility. Since the only available inmates are from the Madera County Jail, Chief Perez's decision effectively eliminates the ability to use non-sworn personnel. Caltrans advised they have a total of five contracts in the Valley and all of them require a police officer or corrections officer to supervise inmates.

2. Is Caltrans willing to contract litter clean-up with other private organizations in lieu of using inmate labor?

Caltrans has tried this in the past, but faced legal action by State labor groups for contracting with non-union workers. This has not been the case when using inmate labor. Caltrans pointed out the state's "Adopt-a-Highway Program" is the preferred avenue for private organizations to clean litter.

3. Is Madera County Corrections interested in contracting with Caltrans to perform supervision of inmate labor in Fresno County for litter removal?

According to Chief Perez, Madera County Corrections has no interest in assuming the Caltrans contract to perform litter clean-up in the City or County of Fresno.

4. Council was concerned that using a sworn officer for the Caltrans Litter Program takes an officer away from patrol duties.

This is not the case. In fact, if this contract is not approved by council, the position will be eliminated from the Police Department's budget, through attrition. Due to the current "no layoff" clause in the current FPOA MOU, this will leave the department without funding for an officer. It will also leave the City of Fresno without a freeway litter removal program.

FISCAL IMPACT

Caltrans will fully reimburse the City of Fresno for the cost of this contract, thus there is no net fiscal impact to the General Fund. These funds have already been included in the FY11 and FY12 budget.

JPD/hb/map

Attachment: Caltrans Contract