

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
BOARD ACTION SUMMARY

DEPT: Public Works

BOARD AGENDA #: *C-3

AGENDA DATE: October 24, 2017

SUBJECT:

Approval of a Joint Powers Agreement Between Stanislaus County and the City of Modesto Regarding Right of Way Acquisition for the State Route 132 West Freeway/Expressway Project

BOARD ACTION AS FOLLOWS:


No. 2017-600

On motion of Supervisor Withrow, Seconded by Supervisor Olsen
and approved by the following vote,
Ayes: Supervisors: Olsen, Withrow, Monteith, DeMartini, and Chairman Chiesa
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

ATTEST:


ELIZABETH A. KING, Clerk of the Board of Supervisors

File No. C-6-L-7

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

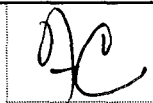
DEPT: Public Works

Urgent

Routine

BOARD AGENDA #: *C-3

AGENDA DATE: October 24, 2017



CEO CONCURRENCE:

4/5 Vote Required: Yes No

SUBJECT:

Approval of a Joint Powers Agreement Between Stanislaus County and the City of Modesto Regarding Right of Way Acquisition for the State Route 132 West Freeway/Expressway Project

STAFF RECOMMENDATIONS:

1. Approve a Joint Powers Agreement between Stanislaus County and the City of Modesto regarding Right of Way acquisition for the State Route 132 West Freeway/Expressway Project.
2. Authorize the Chief Executive Officer to execute the Joint Powers Agreement between Stanislaus County and the City of Modesto.

DISCUSSION:

The City of Modesto, in cooperation with the California Department of Transportation is proposing to construct State Route 132 West Freeway/Expressway in and near the City of Modesto, in Stanislaus County to alleviate traffic congestion, improve safety, and improve operations of State Route 132.

Pursuant to Section 1810 of the Streets and Highways Code, Stanislaus County must consent to the acquisition of the right-of-way by the City of Modesto in the unincorporated area of the County (the affected parcels are noted on the attached Exhibit A). City of Modesto has expressed a need for more than simple consent by the County, and has requested that the County enter into a Joint Powers Agreement under Government Code section 6502 et seq.; in order to make clear that, for this project, the County is delegating to City of Modesto its powers of right-or-way acquisition and Eminent Domain, to the fullest extent allowed by law. By providing consent through a Joint Powers Agreement, the County is allowing the City of Modesto to acquire right-of-way by purchase or eminent domain within the unincorporated County and not contiguous to the City limits. The Joint Powers Agreement is attached.

POLICY ISSUE:

Consent by Stanislaus County Board of Supervisors to allow right-of-way acquisition by the City of Modesto is required for needed road improvements. This Joint Powers Agreement is authorized under California Government Code section 6500 et seq. and California Civil Code section 1240.140.

Approval of a Joint Powers Agreement Between Stanislaus County and the City of Modesto Regarding Right of Way Acquisition for the State Route 132 West Freeway/Expressway Project

FISCAL IMPACT:

There is no fiscal impact to Stanislaus County. All costs associated with the right-of-way acquisition will be funded by the City of Modesto and the project.

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions are consistent with the Board of Supervisors' priority of A Safe Community, A Well-Planned Infrastructure System, and Effective Partnerships by working with the City of Modesto to improve regional and interregional circulation within Stanislaus County.

STAFFING IMPACT:

Existing Public Works staff is assisting City of Modesto staff with this project.

CONTACT PERSON:

Matt Machado, Public Works Director

Telephone: (209) 525-4153

ATTACHMENT(S):

1. Joint Powers Agreement
2. Exhibit A – Project Location Map by Parcel
3. Exhibit B – Project Location Map by Right of Way Need

ATTACHMENT 1
JOINT POWERS AGREEMENT

**JOINT POWERS AGREEMENT
BETWEEN STANISLAUS COUNTY AND CITY OF MODESTO REGARDING RIGHT OF
WAY ACQUISITIONS FOR STATE ROUTE 132**

THIS COOPERATIVE AGREEMENT (the “AGREEMENT”), is effective this ___ day of _____, 2017, by and between the City of Modesto, 1010 Tenth Street, P.O. Box 642, Modesto, CA 95353, a California Charter City and a municipal corporation (hereinafter referred to as “CITY”), and the County of Stanislaus, 1716 Morgan Road, Modesto, CA 95358, a political subdivision of the State of California (hereinafter referred to as “COUNTY”).

RECITALS:

WHEREAS, the CITY, in cooperation and partnership with the COUNTY are proposing to design and construct the State Route 132 West Freeway/Expressway – Phase 1 Project, (hereinafter referred to as the “PROJECT”) to realign a portion of the State Route 132 Highway from its present alignment on Maze Boulevard north to a new alignment and connection with Needham Street and State Route 99 in the City of Modesto to enhance safety and facilitate truck traffic; and

WHEREAS, the PROJECT is located in areas from the Maze Road/Dakota Road intersection north along Dakota to a new intersection just south of Kansas Avenue and along a new alignment east to a new connection with Needham Street in the CITY as shown in Exhibit A. These areas are located within Modesto’s City limits and sphere of influence as well as unincorporated areas of Stanislaus County; and

WHEREAS, CITY agrees to design, acquire right-of-way (excluding the STATE’s previously purchased properties for PROJECT), advertise, award, and administer the construction of the PROJECT, adhering to CITY, COUNTY, and Caltrans standards and requirements for work within the jurisdictional boundaries of CITY and COUNTY; and

WHEREAS, CITY and COUNTY acknowledge that CITY’s obligation is to secure funds and oversee the PROJECT under this Agreement; and

WHEREAS, CITY’s obligations to acquire Right of Way and construct the PROJECT under this Agreement are contingent upon and subject to Caltrans approval of the PROJECT pursuant to both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA); CITY shall have no obligations under this Agreement, and the Agreement shall have no force and effect, unless and until CITY determines, in its sole and absolute discretion, that Caltrans has completed and approved all applicable environmental reviews and clearances, and made any and all appropriate and applicable findings as required by law; and

WHEREAS, COUNTY is providing support during design and construction, including consultant selection, design and construction reviews and Traffic Management Planning services; and

WHEREAS, the AGREEMENT defines the specific terms and conditions, for right-of-way acquisition of the PROJECT;

WHEREAS, upon completion and acceptance by Caltrans of the PROJECT, or portion thereof, COUNTY will accept control and maintenance, at its own cost and expense those portions of the PROJECT lying within COUNTY boundaries, and CITY will accept control and maintenance, at its own cost and expense for those portions of the PROJECT lying within CITY boundaries, with the exception of those parcels identified in Exhibit B for which the CITY and COUNTY will enter a separate operation and maintenance agreement to be developed later. ;

WHEREAS, the Agreement is entered into and performed pursuant to the provisions of Chapter 5 (commencing with section 6500) of Division 7 of Title 1 of the Government Code (the "Joint Exercise of Powers Act") and section 1240.140 of the Code of Civil Procedure;

WHEREAS, City is vested by law with the authority to acquire real property and exercise the power of eminent domain to acquire real property under the provisions and authority of and for the purposes and uses authorized by Article 1, Section 19 of the Constitution of the State of California, Government Code sections 37350.5, 37353, 39792, 40401, 40404, Streets & Highways Code sections 104, 116, 130, 1810, 10102, and by California Code of Civil Procedure sections 1240.110, 1240.120, 1240.150, 1240.410, 1240.510 and 1240.610. Pursuant to Streets & Highway Code sections 104, 113, 116 and 130, City is vested with the authority to acquire and condemn real property for state highway purposes;

WHEREAS, County is vested by law with the authority to acquire real property and exercise the power of eminent domain to acquire real property under the provisions and authority of and for the purposes and uses authorized by Article I, Section 19 of the Constitution of the State of California, Government Code section 25350.5, Streets and Highways Code sections 104, 116, 130, 760 and 943, and by Code of Civil Procedure sections 1240.110, 1240.120, 1240.150, 1240.410, 1240.510, and 1240.610. Pursuant to Streets & Highways Code sections 104, 116, 130 and 760, County is vested with the authority to acquire and condemn real property for state highway purposes;

WHEREAS, pursuant to the Joint Exercise of Powers Act and Code of Civil Procedure section 1240.140, the Parties intend to delegate their common powers to acquire and condemn real property for state highway purposes to City, for right-of-way acquisition for the PROJECT; and

WHEREAS, CITY's City Council approved the AGREEMENT on October 24, 2017; and

WHEREAS, COUNTY's Board of Supervisors approved the AGREEMENT on October 24, 2017.

NOW, THEREFORE, it is mutually understood and agreed by CITY and COUNTY as follows:

ARTICLE 1. AGREEMENT CONCERNING RIGHT OF WAY ACQUISITION

The recitals contained in the AGREEMENT are true and correct. The AGREEMENT, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the agreement between CITY and COUNTY relating to Right of Way Acquisition for the PROJECT.

ARTICLE 2. RESPONSIBILITIES OF CITY

CITY agrees to the following responsibilities for the PROJECT:

- A. To work in partnership with COUNTY during the implementation of right-of-way acquisition for the PROJECT. To collaborate and cooperate with COUNTY staff, consultants, employees, and agents during right of way acquisition for the PROJECT.
- B. To be responsible for and coordinate activities relating to right-of-way acquisition (Excluding Caltrans' previously purchased properties, in part or whole), temporary construction easements and certification deemed necessary and appropriate by the CITY, including eminent domain, if necessary, for the construction of the PROJECT. CITY shall exercise the powers of COUNTY to acquire and condemn real property for state highway purposes, as delegated to CITY by COUNTY under this AGREEMENT pursuant to the Joint Exercise of Powers Act and Code of Civil Procedure section 1240.140, for the acquisition of right-of-way for the PROJECT.
- C. CITY agrees that any excess land it acquires shall be sold to adjacent property owners at fair market value. If excess land is disposed of by CITY net proceeds, after accounting for CITY's expenses as well as closing costs paid through escrow, shall be returned in their entirety to the PROJECT, subject to compliance with applicable law. Should the adjacent property owner not want the excess land within the COUNTY jurisdiction, CITY shall deed the excess land back to the COUNTY.

ARTICLE 3. RESPONSIBILITIES OF COUNTY

County agrees to support the CITY in all actions to acquire real property required for construction of the PROJECT, and to delegate all responsibility and authority to CITY for said acquisition, including acquiring properties through eminent domain if necessary and coordination of activities relating to right-of-way acquisition (excluding Caltrans' previously purchased properties, in part or whole), temporary construction easements and certification deemed necessary and appropriate by the CITY, , for the PROJECT. Pursuant to the Joint Exercise of Powers Act and Code of Civil Procedure section 1240.140, COUNTY delegates to CITY its powers to acquire and condemn real property for state highway purposes, for the acquisition of right-of-way for the PROJECT.

County agrees to accept any excess land within the COUNTY jurisdiction acquired by CITY as part of the PROJECT that is not purchased by adjacent property owners, or disposed of in any other way by CITY. COUNTY will accept control and maintenance, at its own cost and expense those portions of the PROJECT lying within COUNTY boundaries, with the exception of those parcels identified in Exhibit B for which the CITY and COUNTY will enter a separate operation and maintenance agreement to be developed later.

ARTICLE 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT & NATIONAL ENVIRONMENTAL POLICY ACT

CITY's obligations under the AGREEMENT are contingent upon and subject to Caltrans approval of the PROJECT pursuant to both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). CITY shall have no obligations under the AGREEMENT, and the AGREEMENT shall have no force and effect, unless and until CITY determines, in its sole and absolute discretion, that Caltrans has completed and approved all applicable environmental reviews and clearances, and made any and all appropriate and applicable findings as required by law.

ARTICLE 5. DELEGATED AUTHORITY

The actions required to be taken by COUNTY in the implementation of the AGREEMENT are delegated to its COUNTY Director of Public Works, or designee, and the actions required to be taken by CITY in the implementation of this Agreement are delegated to CITY Manager or designee.

ARTICLE 6. INDEMNIFICATION

- A. CITY shall defend, indemnify and hold harmless COUNTY and COUNTY's officers, agents, elected officials, and employees, from all liability, claims, losses and demands, including defense costs and reasonable attorneys' fees, whether resulting from court action or otherwise, arising out of the acts or omissions of CITY, officers, agents, or employees, in the performance of this Agreement, excepting acts or omissions directed by COUNTY, officers, agents, or employees, acting within the scope of their employment, for which COUNTY agrees to defend and indemnify CITY in a like manner.
- B. COUNTY shall defend, indemnify and hold harmless CITY and CITY's officers, agents, elected officials, and employees, from all liability, claims, losses and demands, including defense costs and reasonable attorneys' fees, whether resulting from court action or otherwise, arising out of the acts or omissions of COUNTY, officers, agents, or employees, in the performance of this Agreement, excepting acts or omissions directed by CITY, its officers, agents, or employees, acting within the scope of their employment, for which CITY agrees to defend and indemnify COUNTY in a like manner.

ARTICLE 7. ADDITIONAL PROVISIONS

- A. CITY will form a Steering Committee (COMMITTEE) that consists of senior staff members from the Parties to the AGREEMENT. Along with its other functions, COMMITTEE will provide guidance and input on Right of Way Acquisition and relocation assistance plans.
- B. The exhibits in the Agreement showing the configuration of the PROJECT are based on the Draft Environmental Document that is presently being circulated and may not reflect the final configuration of the facilities. CITY and COUNTY will work together during final design to explore other configuration options that may reduce the impact of PROJECT on adjacent properties.
- C. CITY and COUNTY shall comply with all applicable laws, statues, ordinances and regulations of any governmental authority having jurisdiction over the PROJECT.
- D. The AGREEMENT shall continue in full force and effect through final acceptance of the PROJECT by COUNTY or August 1, 2021, whichever is later. The AGREEMENT may be extended upon mutual written agreement by both Parties.
- E. The AGREEMENT may be amended in writing at any time by the mutual consent of both Parties. No amendment shall have any force or effect unless executed in writing by both Parties.
- F. The persons executing the AGREEMENT on behalf of the Parties hereto warrant that they are duly authorized to execute the AGREEMENT on behalf of said Parties and that, by so executing the AGREEMENT, the Parties hereto are formally bound to the provisions of the AGREEMENT.
- G. All notices hereunder and communications regarding this Agreement, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, and addressed as follows :

To COUNTY: COUNTY OF STANISLAUS
1716 Morgan Road
Modesto, CA 95358
Attention: Matt Machado
County Public Works Director
Ph: (209)525-4153
e-mail: machadom@stancounty.com

To CITY: CITY OF MODESTO
P.O. Box 642
Modesto, CA 95353
Attention: Vickey Dion
City Engineer
Ph: (209)571-5542
e-mail: vdion@modestogov.com

- H. The headings of all sections of the AGREEMENT are inserted solely for convenience of reference, and are not part of and not intended to govern, limit or aid in the construction or interpretation of any terms or provisions thereof.
- I. Each of the terms and conditions of the AGREEMENT shall inure to the benefit of and shall bind, as the case may be, not only the Parties hereto, but each and every one of the heirs, executors, administrators, successors, assignees, and legal representatives of the parties.
- J. If any term, provision, covenant or condition of the AGREEMENT is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of the AGREEMENT shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- K. The AGREEMENT may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original, and all of which together shall constitute the same Agreement. Facsimile signatures will not be permitted.
- L. Each Party shall promptly notify the other Party in writing of any legal impediment, change of circumstance, pending litigation, or any other event, occurrence, or condition that may adversely affect such party's ability to carry out and perform any of the duties, services, and/or obligations under the AGREEMENT.
- M. The terms of the AGREEMENT are intended to confer benefits only on the Parties to the AGREEMENT and to their heirs, executors, administrators, successors, assignees and legal representatives. No rights of action shall accrue to any other persons or entities under the AGREEMENT.
- N. CITY or COUNTY shall not delegate or assign its rights or otherwise transfer its obligations, in whole or in part, under the AGREEMENT to any other person or entity without the prior written consent of the other Party.
- O. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of the AGREEMENT, to obtain injunctive relief, a

declaratory judgment or any other remedy consistent with the purposes of the AGREEMENT.

- P. The AGREEMENT shall be governed and construed in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret the AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.
- Q. The AGREEMENT shall be made effective upon execution by both Parties and approval of their respective governing bodies.

IN WITNESS WHEREOF, the Parties hereto have caused this **Agreement No. 2017-1** to be executed on the date first above written.

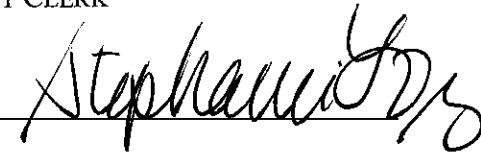
CITY OF MODESTO

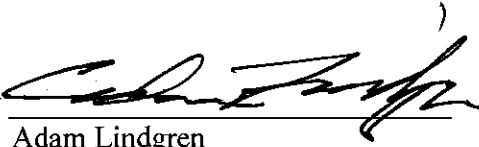
By 
Joseph P. Lopez
Interim City Manager

“City”


ATTEST:
STEPHANIE LOPEZ
CITY CLERK

APPROVED AS TO FORM:
OFFICE OF CITY ATTORNEY

By 


By 
Adam Lindgren
City Attorney

COUNTY OF STANISLAUS

By 
Jody L. Hayes
Chief Executive Officer

“County”

APPROVED AS TO FORM:
COUNTY COUNSEL

By 
John P. Doering
County Counsel

ATTACHMENTS

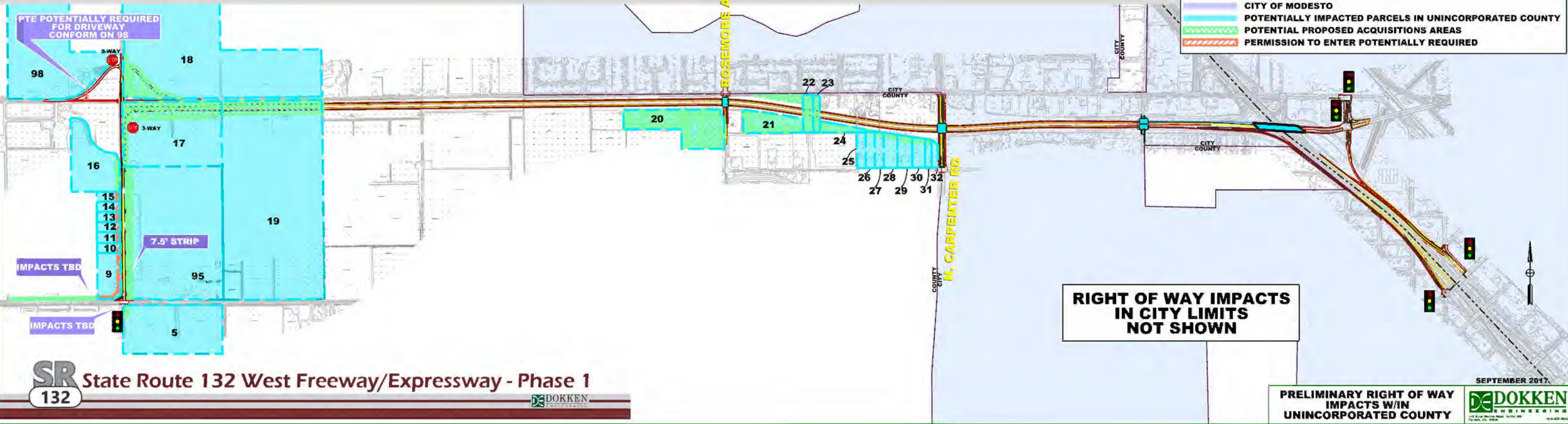
- Exhibit A - Project Location Map
- Exhibit B – Project Location Map Exceptions

2866509.1

ATTACHMENT 2

EXHIBIT A – PROJECT LOCATION MAP BY PARCEL

PHASE 1 - 2 LANES



SR 132 State Route 132 West Freeway/Expressway - Phase 1



ATTACHMENT 3

EXHIBIT B – PROJECT LOCATION MAP BY RIGHT OF WAY NEED



SR
132

State Route 132 West Freeway/Expressway - Phase 1

DOKKEN
ENGINEERING

LEGEND

	EXISTING RIGHT OF WAY		PROPERTY LINE
	PROPOSED RIGHT OF WAY		PROPOSED EDGE OF PAVEMENT
	LIQUID RIGHT OF WAY*		PROPOSED WALL
	PROPOSED ACCESS CONTROL		ACQUISITION AREA
	EXISTING RIGHT OF WAY TO BE ACQUIRED		

**SR-132 WEST PHASE 1
RIGHT OF WAY EXHIBIT
SEPTEMBER 2017**

DOKKEN
ENGINEERING
110 Blue Ravine Road, Suite 200
Folsom, CA 95630 (916) 958-0642

*THE ULTIMATE RIGHT OF WAY IS BASED ON INFORMATION PROVIDED BY OTHERS AND IS SUBJECT TO CHANGE BASED ON THE ULTIMATE DESIGN.