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

DEPT:	Public Works			BOARD AGENDA:4.C.1 DA DATE: May 1, 2018
		•		California, Department t
BOARD	ACTION AS FOLLO	NS:	RESOL	UTION NO. 2018-0193
and appro Ayes: Sup Noes: Sup Excused o Abstaining 1)X	ved by the following vot ervisors: _ Olsen, Chies ervisors: ir Absent: Supervisors: g: Supervisor: Approved as recommo	te, a, Withrow, Mor None None None ended	nteith, and Chairman DeM	or Monteith
4) MOTION:	Other:			

ATTEST: ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

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

DEPT: Public Works BOARD AGENDA:4.C.1
AGENDA DATE: May 1, 2018

CONSENT: 🗸

CEO CONCURRENCE: 4/5 Vote Required: No

#### SUBJECT:

Approval of District 10 Cooperative Agreement with the State of California, Department of Transportation for the State Route 132 West Extension Project

#### STAFF RECOMMENDATION:

- Approve District 10 Cooperative Agreement No. 10-484 with the State of California, Department of Transportation (Caltrans) for the Project Approval and Environmental Document (PA&ED) Phase for the State Route (SR) 132 West Extension Project from Dakota Avenue to Gates Road
- 2. Authorize the Director and Deputy Director of Public Works to execute Cooperative Agreement No. 10-484 with Caltrans for the SR 132 West Extension Project.

#### **DISCUSSION:**

The State Route 132 (SR 132) West Expressway Extension (Project) proposes to construct an access controlled facility (expressway) on either the existing alignment or new alignment or a freeway/expressway on new alignment. The Project is located within the west central portion of Stanislaus County, wholly within District 3, 3.1 miles east of the San Joaquin River Bridge near Gates Road/Paradise Road and 2 miles west of the City of Modesto near Dakota Avenue.

SR 132 has experienced an increase in traffic due to increases in commuter traffic, as a result of jobs in the Bay Area and affordable housing in the San Joaquin Valley. This increase in traffic has resulted in congestion and an increase in collisions along the corridor during peak commute periods. Additionally, SR 132 West project is in Project Approval and Environmental Document (PA&ED) to construct a freeway/expressway from SR 99 within the City of Modesto to Dakota Avenue within Stanislaus County on new alignment. The extension of the expressway or freeway westerly for another 5 miles is being initiated with this project.

SR 132 between Interstate 580 (I-580) and State Route 99 (SR 99) is part of the National Highway System (NHS). SR 132 was originally a county road constructed in the early 1900's east of State Route 33 and added to the State Highway System (SHS) in 1933.

Traffic studies conducted for the Modesto area relative to development of SR 99 to a freeway through the City of Modesto led to the development of a master plan of State Highways for the metropolitan area of Modesto. A master plan was submitted to the former California Highway Commission (CHC) on December 20, 1954, currently the California Transportation Commission (CTC). The proposal to develop SR 132 from the San Joaquin County line to SR 99 in Modesto was submitted to the CHC on June 27, 1955. The proposal was to provide a four-lane freeway that began west of the San Joaquin River Bridge, curved slightly north and east on a new alignment to a projection of Kansas Avenue. The route then would run due east parallel to and approximately 0.5 miles north of existing SR 132 (Maze Boulevard). Interchanges were proposed at Maze Boulevard, just east of the San Joaquin River Bridge, Gates Road, Hart Road, Dakota Avenue, Carpenter Road and SR 99.

After two public hearings held on December 5, 1955 and April 12, 1956, the Stanislaus Board of Supervisors passed a resolution on May 2, 1956 recommending that SR 132 be presented to the CHC for route adoption. The Modesto City Council passed a similar resolution on May 9, 1956. Route 132 was then adopted by the CHC on June 20, 1956 as a freeway. Funds for acquisition of the right of way were appropriated by the CHC during the 1957/58 fiscal year. Right of way parcels were purchased for this adopted route between 0.4 miles west of Butler Road and SR 99, in Modesto. Approximately 75% of the right-of-way was acquired between Gates Road and Dakota Avenue. Portions of SR 132 were constructed to freeway standards at I-580 and I-5 in San Joaquin County. Further freeway construction of SR 132 was delayed due to the lack of funding caused in part by the need to comply with 1972 deadline for completion of the Interstate Highway System in California. In June 1974, the project became inactive.

The State of California, Department of Transportation (Caltrans) in conjunction with the Stanislaus Council of Governments (StanCOG) and County Public Works approved a Project Study Report and Project Development Support Document (PSR-PDS) on June 30, 2015. The PSR-PDS described four alternatives to study. A total of four alternatives were envisioned in the PSR-PDS; two alternatives along existing SR 132, Maze Boulevard, and two alternatives on the new SR 132 alignment.

Caltrans was approached by County staff to prepare a proposal for the PA&ED work. The proposal was reviewed by County staff and was found to be cost effective and timely. The Cooperative Agreement has the County as the Sponsor of the Project and Caltrans as the Implementing Agency. Caltrans has agreed to perform the PA&ED work in 4 years and for \$5.9 million.

There are many benefits of using Caltrans as the Implementing Agency:

- SR 132 is a Caltrans facility and they are the owner of the future facility.
- Caltrans is the NEPA and CEQA lead and they are writing the environmental document. This means less time spent on revisions and reviews.
- Caltrans District 10 has the desire, expertise and management support to deliver this important regional project.
- County as the Project Sponsor will ensure that Caltrans meets our targets for deliverables
- Subsequent to signing the Cooperative Agreement, Caltrans and the County will sign a project Charter which will include regular project reporting milestones to the California Transportation Commission (CTC) and in newsletters.

#### **POLICY ISSUE:**

The California Streets and Highways Code section 114 authorizes the Board of Supervisors to enter into this Cooperative Agreement.

#### **FISCAL IMPACT:**

The SR 132 West Extension Project is fully funded with Public Facilities Fees. The total Cooperative Agreement is approximately \$5,900,000.

Funding for the Project Approval and Environmental Document Phase (PA&ED) of the project is included in the Fiscal Year 2017-2018 Adopted Final Public Works Road Projects budget. The right-of-way and construction phase will be included in future budgets and will commence when the PA&ED phase is completed and funding is approved.

#### **BOARD OF SUPERVISORS' PRIORITY:**

The recommended actions are consistent with the Boards' priority of *Delivering Efficient Public Services and Community Infrastructure* by entering into an agreement with the State of California for performing the environmental work for the Project.

#### **STAFFING IMPACT:**

Existing Public Works staff is overseeing this project.

#### **CONTACT PERSON:**

Matt Machado, Public Works Director Telephone: (209) 525-4153
David Leamon, Deputy Director Telephone: (209) 525-4151

#### ATTACHMENT(S):

1. Cooperative Agreement No. 10-484

## **COOPERATIVE AGREEMENT COVER SHEET**

#### **Work Description**

COUNTY PROPOSES TO CONSTRUCT AN ACCESS CONTROLLED FACILITY EXPRESSWAY OR FREEWAY ON EITHER THE EXISTING ALIGNMENT OR NEW ALIGNMENT

#### **Contact Information**

#### **CALTRANS**

Jes Padda, Project Manager 1973 E. Dr. Martin Luther King Jr. Blvd. Stockton, CA 95205

Office Phone: (209) 948-7765 Email: jes.padda@dot.ca.gov

#### STANISLAUS COUNTY

David A. Leamon, Deputy Director 1716 Morgan Road Modesto, CA 95358 Office Phone: (209) 525-4151

Email: leamond@stancounty.com

## **Table of Contents**

RECITALS	1
RESPONSIBILITIES	2
Sponsorship	2
Implementing Agency	3
Funding	3
CEQA/NEPA Lead Agency	4
Environmental Permits, Approvals and Agreements	4
Project Approval and Environmental Document (PA&ED)	4
California Environmental Quality Act (CEQA)	4
National Environmental Policy Act (NEPA)	5
Schedule	6
Additional Provisions	7
Standards	7
Qualifications	7
Protected Resources	7
Disclosures	8
Hazardous Materials	8
Claims	9
Accounting and Audits	9
Interruption of Work	10
Penalties, Judgements and Settlements	11
GENERAL CONDITIONS	11
Venue	11
Exemptions	11
Indemnification	11
Non-parties	12
Ambiguity and Performance	12
Defaults	12
Dispute Resolution	13

Prevailing Wage	13
DEFINITIONS	15
SIGNATURES	16
FUNDING SUMMARY No. 01	1
FUNDING TABLE	1
SPENDING SUMMARY	1
Funding	2
ICRP Rate	2
Invoicing and Payment	2
Project Approval and Environmental Document (PA&ED)	3
CLOSURE STATEMENT	5

## **COOPERATIVE AGREEMENT**

This AGREEMENT, effective on	, is between the State of
California, acting through its Department of Transportation, referred to as	s CALTRANS, and:
Stanislaus County, a political subdivision of the State of California, COUNTY.	referred to hereinafter as

## **RECITALS**

- 1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per the California Streets and Highways Code sections 114 and 130.
- 2. For the purpose of this AGREEMENT, County proposes to construct an access controlled facility expressway or freeway on either the existing alignment or new alignment will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g. Project Study Report, Permit Engineering Evaluation Report, or Project Report).
- 3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:
  - PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT (PA&ED)

Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

PARTIES agree to sign a CLOSURE STATEMENT to terminate this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

- 5. No PROJECT deliverables have been completed prior to this AGREEMENT.
- 6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
- 7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

#### RESPONSIBILITIES

#### **Sponsorship**

- 8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.
  - PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.
- 9. COUNTY is the SPONSOR for the WORK in this AGREEMENT.

#### **Implementing Agency**

- 10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.
  - CALTRANS is the Project Approval and Environmental Document (PA&ED)
     IMPLEMENTING AGENCY.
    - PA&ED includes the completion of the Final Environmental Document and the Project Report (documenting the project alternative selection).
- 11. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

#### **Funding**

- 12. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.
  - PARTIES will amend this AGREEMENT by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.
- 13. PARTIES will not be reimbursed for costs beyond the funds obligated in this AGREEMENT.
  - If an IMPLEMENTING AGENCY anticipates that funding for the WORK will be insufficient to complete the WORK, the IMPLEMENTING AGENCY will promptly notify the SPONSOR.
- 14. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
- 15. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.

16. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

#### **CEQA/NEPA Lead Agency**

- 17. CALTRANS is the CEQA Lead Agency for the PROJECT.
- 18. CALTRANS is the NEPA Lead Agency for the PROJECT.

#### **Environmental Permits, Approvals and Agreements**

- 19. PARTIES will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTIES responsibilities in this AGREEMENT.
- 20. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
- 21. It is expected that the PROJECT will not require environmental permits/approvals.

#### **Project Approval and Environmental Document (PA&ED)**

- 22. As the PA&ED IMPLEMENTING AGENCY, CALTRANS is responsible for all PA&ED WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
- 23. Any PARTY preparing environmental documentation, including studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that the PROJECT remains in environmental compliance.

#### California Environmental Quality Act (CEQA)

24. The CEQA Lead Agency will determine the type of CEQA documentation and will cause that documentation to be prepared in accordance with CEQA requirements.

- 25. Any PARTY involved in the preparation of CEQA documentation will prepare the documentation to meet CEQA requirements and follow the CEQA Lead Agency's standards that apply to the CEQA process.
- 26. Any PARTY preparing any portion of the CEQA-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.
- 27. The CEQA Lead Agency will attend all CEQA-related public meetings.
- 28. If a PARTY who is not the CEQA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the CEQA Lead Agency 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 PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the CEQA Lead Agency to review, comment on, and approve those changes at least 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.

#### National Environmental Policy Act (NEPA)

29. Pursuant to Chapter 3 of Title 23, United States Code (23 U.S.C. 326) and 23 U.S.C. 327, CALTRANS is the NEPA Lead Agency for the PROJECT. CALTRANS is responsible for NEPA compliance, will determine the type of NEPA documentation, and will cause that documentation to be prepared in accordance with NEPA requirements.

CALTRANS, as the NEPA Lead Agency for PROJECT, will review, comment, and approve all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination and obtain, renew, or amend approvals pursuant to the Federal Endangered Species Act, and Essential Fish Habitat.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination approvals pursuant to Section 106 of the National Historic Preservation Act.

- 30. Any PARTY involved in the preparation of NEPA documentation will follow FHWA and CALTRANS standards that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook (available at <a href="https://www.fhwa.dot.gov/hep/index.htm">www.fhwa.dot.gov/hep/index.htm</a>) and the CALTRANS Standard Environmental Reference.
- 31. Any PARTY preparing any portion of the NEPA documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.
- 32. CALTRANS will prepare, publicize, and circulate all NEPA-related public notices. CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.
- 33. The NEPA Lead Agency will attend all NEPA-related public meetings.
- 34. If a PARTY who is not the NEPA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the NEPA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the NEPA public review process.

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

The NEPA Lead Agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

#### **Schedule**

- 35. PARTIES will manage the WORK schedule to ensure the timely use of obligated funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.
- 36. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with written quarterly progress reports during the completion of the WORK.

#### **Additional Provisions**

#### **Standards**

- 37. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; FHWA standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:
  - CADD Users Manual
  - CALTRANS policies and directives
  - Plans Preparation Manual
  - Project Development Procedures Manual (PDPM)
  - Workplan Standards Guide
  - Standard Environmental Reference
  - Highway Design Manual

#### Qualifications

- 38. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.
- 39. COUNTY will issue any encroachment permits that are necessary for WORK within its jurisdiction and outside the State Highway System right-of-way. COUNTY will provide encroachment permits to CALTRANS, its contractors, consultants and agents, at no cost.
- 40. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

#### Protected Resources

41. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

#### **Disclosures**

- 42. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code section 6254.5(e) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.
  - PARTIES will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.
- 43. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public documents. PARTIES will consult with each other prior to the release of any public documents related to the WORK.

#### **Hazardous Materials**

- 44. HM-1 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, irrespective of whether it is disturbed by the PROJECT or not.
  - HM-2 is 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 the PROJECT.
  - The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.
- 45. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
- 46. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing State Highway System right-of-way. CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.
  - CALTRANS will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the existing State Highway System right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

- 47. COUNTY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way. COUNTY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.
  - COUNTY will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside of the existing State Highway System right-of-way with funds that are independent of the funds obligated in this AGREEMENT.
- 48. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.
- 49. 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.

#### Claims

- 50. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.
- 51. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
- 52. If the WORK expends state or federal funds, each PARTY will comply with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.

#### Accounting and Audits

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

54. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

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

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

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

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

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

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

- 56. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.
- 57. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with Chapter 10 of the Local Assistance Procedures Manual.

#### <u>Interruption of Work</u>

58. If WORK stops for any reason, each PARTY will continue to implement the obligations of this AGREEMENT, including the commitments and conditions included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

#### Penalties, Judgements and Settlements

- 59. The cost of awards, judgments, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
- 60. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
- 61. Any PARTY who action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

### **GENERAL CONDITIONS**

#### Venue

62. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.

#### **Exemptions**

63. All CALTRANS' obligations under 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.

#### Indemnification

64. Neither CALTRANS nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by COUNTY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon COUNTY under this AGREEMENT. It is understood and agreed that COUNTY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of their 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 and assertions of liability occurring by reason of anything done or omitted to be done by COUNTY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

65. Neither COUNTY nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless COUNTY and all of their 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 and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

#### **Non-parties**

- 66. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
- 67. PARTIES will not assign or attempt to assign obligations to PARTIES not signatory to this AGREEMENT without an amendment to this AGREEMENT.

#### **Ambiguity and Performance**

- 68. COUNTY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. COUNTY waives the provisions of California Civil Code section 1654.
  - A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.
- 69. 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.

#### **Defaults**

70. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

#### **Dispute Resolution**

71. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of COUNTY will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

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

#### **Prevailing Wage**

73. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations found in Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from federal prevailing wage requirements.

## **DEFINITIONS**

- PARTY Any individual signatory party to this AGREEMENT.
- PARTIES The term that collectively references all of the signatory agencies to this AGREEMENT.
- WORK BREAKDOWN STRUCTURE (WBS) A WBS is a standardized hierarchical listing of project work activities/products in increasing levels of detail. The CALTRANS WBS defines each PROJECT COMPONENT as a group of work activities/products. The CALTRANS Work Breakdown Structure is defined in the CALTRANS Workplan Standards Guide.

## **SIGNATURES**

PARTIES are empowered by California Streets and Highways Code to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

Signatories may execute this AGREEMENT thro signature is an original. This AGREEMENT is no attached.	
STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION  Dengas T. Agar District Director	David A. Leamon Deputy Director
VERIFICATION OF FUNDS AND AUTHORITY:  Diana Guerra District Budget Manager  CERTIFIED AS TO FINANCIAL TERMS AND POLICIES:	Attest:  Matt Machado Director
Ama Salumar hay Gina Schumacher Accounting Supervisor	Approved as to form and procedure:  Amanda Dehart

Deputy County Counsel

## **FUNDING SUMMARY NO. 01**

FUNDING TABLE			
			PA&ED
Source	Party	Fund Type	Totals
LOCAL	COUNTY	Local	5,900,000
	5,900,000		

SPENDING SUMMARY  v 2				
	PA&			
Fund Type	<u>CALTRANS</u>	COUNTY	Totals	
Local	5,900,000	0	5,900,000	
Totals	5,900,000	0	5,900,000	

#### **Funding**

- 1. If there are insufficient funds available in this AGREEMENT to place the PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTIES amend this AGREEMENT.
  - That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.
- 2. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the 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, each PARTY accepts responsibility to fund their respective WORK until such time as PARTIES amend this AGREEMENT.

Each PARTY may request reimbursement for these costs during the amendment process.

#### ICRP Rate

3. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.

#### **Invoicing and Payment**

- 4. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, COUNTY will pay invoices within five (5) calendar days of receipt of invoice.
- 5. If COUNTY has received EFT certification from CALTRANS then COUNTY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.

6. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

Project Approval and Environmental Document (PA&ED)

## **CLOSURE STATEMENT INSTRUCTIONS**

1.	Did PARTIES complete all scope, cost and schedule commitments included in AGREEMENT and any amendments to this AGREEMENT?	n this
		YES / NO
Did CA	LTRANS accept and approve all final deliverables submitted by other PARTIE	S?
		YES / NO
	CALTRANS HQ Office of Accounting verify that all final accounting for this GREEMENT and any amendments to this AGREEMENT were completed?	
		YES / NO
an	ruction is involved, did the CALTRANS District Project Manager verify that all d third party billings (utilities, etc.) have been settled before termination of the GREEMENT?	l claims
		YES / NO
	RTIES complete and transmit the As-Built Plans, Project History File, and all or quired contract documents?	ther

If ALL answers are "YES", this form may be used to TERMINATE this AGREEMENT.

YES / NO

## **CLOSURE STATEMENT**

PARTIES agree that they have completed all scope, cost, and schedule commitments included in Agreement 10-0484 and any amendments to the agreement. The final signature date on this document terminates agreement 10-0484 except survival articles. All survival articles in agreement 10-0484 will remain in effect until expired by law, terminated or modified in writing by the PARTIES' mutual agreement, whichever occurs earlier.

The people signing this agreement have the authority to do so on behalf of their public agencies. **CALTRANS** Dennis T. Agar Date District Director CERTIFIED AS TO ALL FINANCIALOBLIGATIONS/TERMS AND POLICIES Diana Guerra Date District Budget Manager STANISLAUS COUNTY David A. Leamon Date **Deputy Director**