

COOPERATIVE AGREEMENT

This AGREEMENT, effective on _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Temecula, a municipal corporation in the State of California, referred to hereinafter as CITY.

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, *the construction of a 2-lane collector/distributor road in the northbound direction along the Interstate 15 in the city of Temecula* 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 COMPONENTS will be referred to hereinafter as WORK:
 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)
 - RIGHT-OF-WAY

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. The following work associated with this PROJECT has been completed or is in progress:
 - The PA&ED, PS&E and RIGHT-OF-WAY cooperative agreement was completed under the parent project EA 43270 in 2010 (Cooperative Agreement No. 8-1217). The parent project is currently split into three phases, EA 43271, EA 43272 and EA 43273.
 - The Construction of Phase 1, EA 43271, was completed in 2012, (Cooperative Agreement No. 8-1508).
 - Phase 2, EA 43272, is in progress and Phase 3, EA 43273, will be implemented at a later date.
 - CITY signed and approved the Initial Study (IS) on December 12, 2009.
 - CALTRANS signed and approved the Finding of No Significant Impact (FONSI) on January 29, 2010.
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. CITY 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.

- CITY is the IMPLEMENTING AGENCY for the Plans, Specifications, and Estimate (PS&E).

PS&E includes the development of the plans, specifications, and estimate; obtaining any resource agency permits; and the advertisement/award of the construction contract.

- CITY is the IMPLEMENTING AGENCY for the RIGHT-OF-WAY.

RIGHT-OF-WAY includes coordination with utility owners for the protection, removal, or relocation of utilities; the acquisition of right-of-way interests; and post-construction work such as right-of-way monumentation/recordation, relinquishments/vacations, and excess land transactions. The RIGHT-OF-WAY component budget identifies the cost of the capital costs of right-of-way acquisition (RIGHT-OF-WAY Capital) and the cost of the staff work in support of the acquisition (RIGHT-OF-WAY Support).

11. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for the WORK in that component. The Quality Management Plan describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The Quality Management Plan will include a process for resolving disputes between the PARTIES at the team level. The Quality Management Plan is subject to CALTRANS review and approval.

12. 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

13. 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.

14. 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.

15. 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.
16. 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.
17. 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.

CALTRANS' Quality Management

18. CALTRANS, as the owner/operator of the State Highway System, will perform quality management work including independent quality assurance (IQA) and owner/operator approvals for the portions of WORK within the existing and proposed State Highway System right-of-way.
19. CALTRANS' independent quality assurance (IQA) efforts are to ensure that CITY's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's quality management plan (QMP). An IQA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs IQA it does so for its own benefit. No one can assign liability to CALTRANS due to its IQA.

20. CALTRANS, as the owner/operator of the State Highway System, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
21. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

CEQA/NEPA Lead Agency

22. CALTRANS is the CEQA Lead Agency for the PROJECT.
23. CALTRANS is the NEPA Lead Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

24. 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.
25. 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.

26. The PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS
1602 California Department of Fish and Wildlife
404, US Army Corps of Engineers
401, Regional Water Quality Control Board

Plans, Specifications, and Estimate (PS&E)

27. As the IMPLEMENTING AGENCY for the PS&E, CITY is responsible for all PS&E WORK except those activities and responsibilities that are assigned to another PARTY pursuant to this AGREEMENT or other writing approved by the CITY and CALTRANS, and those activities that are excluded under this AGREEMENT.

28. CALTRANS will be responsible for completing the following PS&E activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.15.10.xx Quality Management	No
255.20 Final PS&E Package	Yes
260 Contract Bid Documents Ready to List	Yes
265 Awarded and Approved Construction Contract	Yes

29. CITY will prepare Utility Conflict Maps identifying the accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the PROJECT or that violate CALTRANS' encroachment policy.

CITY will provide CALTRANS a copy of Utility Conflict Maps for CALTRANS' concurrence prior to issuing the Notices to Owner and executing the Utility Agreement. All utility conflicts will be addressed in the PROJECT plans, specifications, and estimate.

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

31. At the submittal of all PS&E packages, plans will be submitted in Micro station DGN format, version 7.0 or later. The DGN file will be in addition to the number of hardcopies required for each PS&E package review.
32. PARTIES acknowledge that the activities Final District PS&E Package (255.20) and Contract Bid Documents “Ready to List” (260) will be performed by CALTRANS. Because CALTRANS is anticipated to perform the advertisement, award, and administration (AAA) of the construction contract, the PS&E package must be reviewed and approved by CALTRANS District and HQ Office Engineers prior to advertisement.

CITY will ensure that any consultant involved in the preparation of the PS&E package will remain available to address all comments generated during the performance of the Final District PS&E Package and Contract Bid Documents “Ready to List” activities.

33. CALTRANS will not issue the Acceptance of Final Plans, Specifications, and Estimate to CITY until the following conditions are met:
 - Any new or amended Maintenance Agreement required for the WORK is executed.
 - Any new or amended Freeway Agreement required for the WORK is executed.

RIGHT-OF-WAY

34. As the IMPLEMENTING AGENCY for RIGHT-OF-WAY, CITY is responsible for all RIGHT-OF-WAY WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
35. CALTRANS will be responsible for completing the following RIGHT-OF-WAY activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.25.10.xx Quality Management	No

36. The selection of personnel performing RIGHT-OF-WAY WORK will be in accordance with federal and California laws and regulations, and CALTRANS’ policies, procedures, standards, practices, and applicable agreements.
37. CITY will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the PROJECT or that violate CALTRANS’ encroachment policy.

38. CITY will provide CALTRANS a copy of conflict maps, relocation plans, proposed notices to owner, reports of investigation, and utility agreements (if applicable) for CALTRANS' concurrence prior to issuing the notices to owner and executing the utility agreement. All utility conflicts will be fully addressed prior to Right-of-Way Certification and all arrangements for the protection, relocation, or removal of all conflicting facilities will be completed prior to construction contract award and included in the PROJECT plans, specifications, and estimate.
39. CITY will provide a land surveyor licensed in the State of California to be responsible for surveying and right-of-way engineering. All survey and right-of-way engineering documents will bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.
40. Acquisition of right-of-way will not occur prior to the approval of the environmental document without written approval from the CEQA Lead Agency.
41. CITY will hear and adopt Resolutions of Necessity when authorized to do so by law or will work with local agencies having jurisdiction and authorized under the law to hear and adopt Resolutions of Necessity.

CITY will conduct and document Condemnation Evaluation and Condemnation Panel Review meetings as required in accordance with CALTRANS policy and guidance. CALTRANS will be notified in advance of any Condemnation Panel Review meetings.

42. If CITY acquires any right-of-way to be incorporated into the State Highway System, CITY will first acquire in its own name.

Title to the State Highway System right-of-way will ultimately be vested in the State. CALTRANS' acceptance of title will occur after the Right-of-Way Closeout activities are complete.

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

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

CITY will submit a final Right-of-Way Certification to CALTRANS for approval prior to the advertising of the construction contract.

44. Physical and legal possession of the right-of-way must be completed prior to advertising the construction contract, unless PARTIES mutually agree to other arrangements in writing.

45. CALTRANS' acceptance of title for right-of-way acquisitions is subject to review of an Updated Preliminary Title Report provided by CITY verifying that the title is free of all encumbrances and liens. Upon acceptance, CITY will provide CALTRANS with a Policy of Title Insurance in CALTRANS' name.
46. Right-of-way conveyances must be completed prior to WORK completion unless PARTIES mutually agree to other arrangements in writing.

Schedule

47. 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.
48. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with a final report of the WORK completed.

Additional Provisions

Standards

49. 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 User's Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual (PDPM)
- Workplan Standards Guide
- Standard Environmental Reference
- Highway Design Manual
- Right of Way Manual

Noncompliant Work

50. CALTRANS retains the right to reject noncompliant WORK. CITY agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.

Qualifications

51. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

Consultant Selection

52. CITY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

53. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System right-of-way. Contractors and/or agents, and utility owners will not work within the State Highway System right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to PARTIES, their contractors, consultants and agents, and utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
54. CITY will issue any encroachment permits that are necessary for WORK within its jurisdiction and outside the State Highway System right-of-way. CITY will provide encroachment permits to CALTRANS, its contractors, consultants and agents, at no cost.
55. 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

56. 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

57. 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, counsel, agents, and consultants who require access to advise regarding the WORK or to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.

58. 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

59. 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.

60. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
61. 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.

62. CITY, 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. CITY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CITY 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.

63. The IMPLEMENTING AGENCY for CONSTRUCTION is responsible for HM-2 MANAGEMENT within the PROJECT limits.
64. 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

65. 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.

66. 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.
67. 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

68. 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.
69. 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.

70. 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 CITY 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.

Documents or records subject to the Attorney-Client Privilege or Attorney Work Product are not considered WORK-related records under this Section 70.

71. 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.
72. 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.

Interruption of Work

73. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
74. 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

75. The cost of awards, judgments, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
76. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
77. Any PARTY whose negligent action or willful misconduct causes the levy of fines, interest, or penalties will indemnify and hold the other PARTY harmless per the terms of this AGREEMENT.

Environmental Compliance

78. If, during performance of WORK, additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTIES will amend this AGREEMENT to include completion of those additional tasks.

GENERAL CONDITIONS

Venue

79. 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

80. 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

81. 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 CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of 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 CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
82. Neither CITY 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 CITY 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

83. 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.
84. 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

85. Neither PARTY to this AGREEMENT will interpret any ambiguity contained in this AGREEMENT against the other PARTY. Each PARTY to this AGREEMENT waives the provisions of California Civil Code section 1654.
86. A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.
87. 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

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

Dispute Resolution

89. 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 CITY 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.

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

Prevailing Wage

91. 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 through individual signature pages provided that each signature is an original. This AGREEMENT is not fully executed until all original signatures are attached.

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Michael Beauchamp
District Director

VERIFICATION OF FUNDS AND AUTHORITY:

Mary Risaliti
District Budget Manager

APPROVED AS TO FORM:

Meera Danday
Deputy Attorney

CERTIFIED AS TO FINANCIAL TERMS AND POLICIES:

Darwin Salmos
HQ Accounting Supervisor

CITY OF TEMECULA A MUNICIPAL CORPORATION

Michael S. Naggar
Mayor

ATTEST:

Randi Johl
City Clerk

APPROVED AS TO FORM:

Peter M. Thorson
City Attorney

FUNDING SUMMARY NO. 01

FUNDING TABLE						
IMPLEMENTING AGENCY →			CITY	CITY		
Source	Party	Fund Type	PS&E	Right-of-Way SUPPORT	Right-of-Way CAPITAL	Totals
LOCAL-FEDERAL	CITY	DEMO-SAFETEA-LU (80.20%)	671,000	0	0	671,000
LOCAL	CITY	Local	798,947	0	0	798,947
LOCAL ^M	CITY	Local	106,603	0	0	106,603
LOCAL	CITY	Local	3,085,433	0	0	3,085,433
LOCAL	CITY	Local	1,029,040	0	0	1,029,040
LOCAL	CITY	Local	0	673,562	0	673,562
LOCAL	CITY	Local	0	0	3,396,308	3,396,308
Totals			5,691,023	673,562	3,396,308	9,760,893

^MNon-Federal match for TUMF-CETAP

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<u>SPENDING SUMMARY</u>						
Fund Type	PS&E		Right-of-Way Support		Right-of-Way CAPITAL	Totals
	CALTRANS	CITY	CALTRANS	CITY	CITY	
DEMO-SAFE/TEA-LU	671,000	0	0	0	0	671,000
Local	0	798,947	0	0	0	798,947
Local ^M	0	106,603	0	0	0	106,603
Local	0	3,085,433	0	0	0	3,085,433
Local	0	1,029,040	0	0	0	1,029,040
Local	0	0	0	673,562	0	673,562
Local	0	0	0	0	3,396,308	3,396,308
Totals	671,000	5,020,023	0	673,562	3,396,308	9,760,893

^MNon-Federal match for TUMF-CETAP

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.
4. In accordance with the CALTRANS Federal-Aid Project Funding Guidelines, PARTIES must obtain approval from the Federal Highway Administration prior to any PROJECT funding changes that will change the federal share of funds.

Invoicing and Payment

5. 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.
6. If CITY has received Electronic Funds Transfer (EFT) certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.

7. 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.

Plans, Specifications, and Estimate (PS&E)

8. CALTRANS will invoice CITY and CITY will reimburse CALTRANS for the PS&E activities identified as AGREEMENT funded costs in this AGREEMENT.

RIGHT-OF-WAY Support

9. No invoicing or reimbursement will occur for the RIGHT-OF-WAY SUPPORT PROJECT COMPONENT.

RIGHT-OF-WAY Capital

10. No invoicing or reimbursement will occur for the RIGHT-OF-WAY CAPITAL PROJECT COMPONENT.