

## **COOPERATIVE AGREEMENT COVER SHEET**

### **Work Description**

Installation of ITS communications (traffic signal synchronization equipment)

### **Contact Information**

#### **CALTRANS**

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## **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 Fresno, a California municipal corporation, referred to hereinafter as CITY.

### **RECITALS**

1. PARTNERS are authorized to enter into a cooperative agreement for improvements to the state highway system (SHS) per the California Streets and Highways Code sections 114 and 130.
2. For the purpose of this AGREEMENT, *installation of ITS communications (traffic signal synchronization equipment) at various locations on State Route 41, 168 and 180 in the City of Fresno*, 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 responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENTS will be referred to hereinafter as OBLIGATIONS:
  - Plans, Specifications, and Estimate (PS&E)
  - Right of Way Support (R/W SUPPORT)
  - Right of Way Capital (R/W CAPITAL)
  - CONSTRUCTION SUPPORT
  - CONSTRUCTION CAPITAL
4. This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between PARTNERS regarding the PROJECT.

5. The following work associated with this PROJECT has been completed or is in progress:
  - CITY is developing the Categorical Exemption on August 1, 2017 (Cooperative Agreement No. N/A).
  - CITY is developing the Categorical Exclusion on August 1, 2017 (Cooperative Agreement No. N/A).
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTNERS hereby set forth the terms, covenants, and conditions of this AGREEMENT, under which they will accomplish OBLIGATIONS.

## **RESPONSIBILITIES**

### **Sponsorship**

8. CITY is the SPONSOR for the PROJECT COMPONENTS in this AGREEMENT.

### **Funding**

9. FUNDING PARTNERS, funding sources, funding limits, spending limits, and invoicing/payment details are documented in the FUNDING SUMMARY. The FUNDING SUMMARY is incorporated and made an express part of this AGREEMENT.

PARTNERS will execute a new FUNDING SUMMARY each time the funding details change. The FUNDING SUMMARY will be executed by a legally authorized representative of the respective PARTNERS. The most current fully executed FUNDING SUMMARY supersedes any previous FUNDING SUMMARY created for this AGREEMENT.

Replacement of the FUNDING SUMMARY will not require an amendment to the body of this AGREEMENT unless the funding changes require it.

10. PARTNERS will not incur costs beyond the funding commitments in this AGREEMENT.
11. Unless otherwise documented in the FUNDING SUMMARY, all fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.
12. 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.

13. All costs incurred for WORK except those that are specifically excluded in this AGREEMENT are OBLIGATIONS COSTS. OBLIGATIONS COSTS are to be paid from the funds shown in the FUNDING SUMMARY. Costs that are not OBLIGATIONS COSTS are to be paid by the PARTNER incurring the costs from funds that are outside the scope of this AGREEMENT.

### **Implementing Agency**

14. CITY is the IMPLEMENTING AGENCY for PS&E.
15. CITY is the IMPLEMENTING AGENCY for RIGHT OF WAY.
16. CITY is the IMPLEMENTING AGENCY for CONSTRUCTION.
17. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN. The Quality Management Plan describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The Quality Management Plan is subject to CALTRANS review and approval.
18. Any PARTNER responsible for completing WORK shall 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 COMPONENT work that may occur under separate agreements.

### **Independent Quality Assurance**

19. CALTRANS will provide Independent Quality Assurance for the portions of WORK within the existing and proposed SHS right-of-way.

CALTRANS' Independent Quality Assurance efforts are to ensure that City's quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan. Independent Quality Assurance does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking work performed by another party.

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

The cost of CALTRANS' Independent Quality Assurance is not an OBLIGATIONS COST.

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

20. CALTRANS is the CEQA Lead Agency for the PROJECT.

21. FHWA is the NEPA Lead Agency for the PROJECT.

**Environmental Permits, Approvals and Agreements**

22. PARTNERS 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 PARTNER’s responsibilities in this AGREEMENT.

23. 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.

**Plans, Specifications, and Estimate (PS&E)**

24. As IMPLEMENTING AGENCY for PS&E, CITY is responsible for all PS&E WORK except those PS&E activities and responsibilities that are assigned to another PARTNER in this AGREEMENT and those activities that may be specifically excluded.

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

CALTRANS Work Breakdown Structure Identifier (If Applicable)	OBLIGATION COST
Independent Quality Assurance	No

26. 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.

**Right of Way (R/W)**

27. As IMPLEMENTING AGENCY for R/W, CITY is responsible for all R/W SUPPORT WORK except those R/W SUPPORT activities and responsibilities that are assigned to another PARTNER in this AGREEMENT and those activities that may be specifically excluded.

28. CALTRANS will be responsible for completing the following R/W SUPPORT activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	OBLIGATION COST
Independent Quality Assurance	No

- 29. The selection of R/W personnel and WORK within the completed PROJECT's SHS right-of-way will be performed in accordance with federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements.
- 30. 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.
- 31. 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.
- 32. City will determine the cost to positively identify and locate, protect, relocate, or remove any utility facilities whether inside or outside SHS 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.
- 33. 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.
- 34. 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 document to CALTRANS six (6) weeks prior to the scheduled Right of Way Certification milestone date for review.

CITY will submit a final Right of Way certification document to CALTRANS for approval prior to the PROJECT advertisement.

35. Physical and legal possession of right-of-way must be completed prior to construction advertisement, unless PARTNERS mutually agree to other arrangements in writing. Right of way conveyances must be completed prior to OBLIGATION COMPLETION, unless PARTNERS mutually agree to other arrangements in writing.
36. CALTRANS' acceptance of right-of-way title is subject to review of an Updated Preliminary Title Report provided by City verifying that the title is free of all encumbrances and liens. Upon acceptance, City will provide CALTRANS with a Policy of Title Insurance in CALTRANS' name.
37. The California Transportation Commission is responsible for hearing and adopting Resolutions of Necessity.

**Construction**

38. As IMPLEMENTING AGENCY for CONSTRUCTION, CITY is responsible for all CONSTRUCTION SUPPORT WORK except those CONSTRUCTION SUPPORT activities and responsibilities that are assigned to another PARTNER in this AGREEMENT and those activities that may be specifically excluded.
39. CALTRANS will be responsible for completing the following CONSTRUCTION SUPPORT activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	OBLIGATION COST
Independent Quality Assurance	No
285.05.15.xx Change Order Acceptance as required in this Agreement	No
270.20.45.xx SWPPP/WPCP Review & Approval	No

40. CITY will include a Disadvantaged Business Enterprise (DBE) utilization goal in the PROJECT construction contract(s) in accordance with the *Local Assistance Procedures Manual*. CITY will award the construction DBE contract to the lowest responsive bidder who makes a Good Faith Effort to meet the DBE goal.
41. CALTRANS will not issue an Encroachment Permit to CITY for construction work until CALTRANS accepts:
  - The final Plans, Specifications, and Estimate
  - The Right-of-Way Certification



42. CITY will require the construction contractor to furnish payment and performance bonds naming CITY as obligee, and CALTRANS as additional obligee, and to carry liability insurance in accordance with CALTRANS Standard Specifications.
43. CITY will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code. By accepting responsibility to advertise and award the construction contract, CITY also accepts responsibility to administer the construction contract.
44. If the lowest responsible construction contract bid is greater than the funding commitment to CONSTRUCTION CAPITAL, PARTNERS must agree in writing on a course of action within fifteen (15) working days. If no agreement is reached within fifteen (15) work days the IMPLEMENTING AGENCY shall not award the construction contract.
45. CALTRANS will not issue an Encroachment Permit to City's construction contractor until CALTRANS accepts:
  - The payment and performance bonds
  - The CONSTRUCTION Quality Management Plan
46. CITY will provide a Resident Engineer and CONSTRUCTION SUPPORT staff that are independent of the construction contractor. The Resident Engineer will be a Civil Engineer, licensed in the State of California, who is responsible for construction contract administration activities.
47. The CONSTRUCTION Quality Management Plan will describe how construction material verification and workmanship inspections will be performed at manufacturing sources and the PROJECT job-site. The construction material and source inspection Quality Management Plan is subject to review and approval by the State Materials Engineer.
48. The CONSTRUCTION Quality Management Plan will address the radiation safety requirements of the California Code of Regulations 17 CCR § 30346 when the work will require Gamma-Gamma Logging acceptance testing for CIDH pile or whenever else it is applicable. In accordance with these Regulations CITY, as the "well operator", will have a written agreement with any consultant or external entity performing these tests.

49. CITY will implement changes to the construction contract through Change Orders. PARTNERS will review and concur on all Change Orders over \$10,000.
50. CALTRANS will review and concur with:
  - Change Orders affecting public safety, public convenience, protected environmental resources, the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS Construction Manual. These Change Orders must receive written concurrence by CALTRANS prior to implementation.
  - The Stormwater Pollution Prevention Plan (SWPPP) or the Water Pollution Control Plan (WPCP).
51. If CONSTRUCTION CAPITAL is funded with state or federal funds then CITY will administer and process all construction contract claims using a CALTRANS-approved process. CALTRANS will provide Independent Quality Assurance for the claims process.
52. CITY is designated as the Legally Responsible Person pursuant to the Construction General Permit, State Water Resources Control Board (SWRCB) Order Number 2009-0009-DWQ, as defined in Appendix 5, Glossary, and assumes all roles and responsibilities assigned to the Legally Responsible Person as mandated by the Construction General Permit. CITY is required to comply with the CALTRANS MS4 National Pollutant Discharge Elimination System (NPDES) permit for all work within the State Highway System.
53. CITY may request CALTRANS to complete portions of CONSTRUCTION SUPPORT work as reimbursed engineering services. Should CALTRANS agree to perform the requested services, PARTNERS will document the arrangement in written Task Order. Such an arrangement does not change the responsibilities assigned in this AGREEMENT. Engineering services requested by CITY and provided by CALTRANS during CONSTRUCTION are an OBLIGATIONS COST.
54. As the CONSTRUCTION IMPLEMENTING AGENCY, CITY is responsible for maintenance of the State Highway System within the PROJECT limits as part of the construction contract until the following conditions are met:
  - Any required Maintenance Agreements are executed for the portions of SHS for which relief of maintenance is to be granted.
  - CALTRANS approves a request from CITY for relief from maintenance of the PROJECT or a portion thereof.
55. PARTNERS will develop and execute a new or amended maintenance agreement prior to OBLIGATION COMPLETION.

56. Within one hundred eighty (180) calendar days following the completion and acceptance of the PROJECT construction contract, CITY shall furnish CALTRANS with a complete set of “As-Built” plans and Change Orders, including any changes authorized by CALTRANS, on a CD ROM and in accordance with CALTRANS’ then current CADD User’s Manual (Section 4.3), Plans Preparation Manual, and CALTRANS practice. The plans will have the Resident Engineer’s name, contract number, and construction contract acceptance date printed on each plan sheet, and with the Resident Engineer’s signature only on the title sheet. The As-Built plans will be in Microstation DGN format, version 7.0 or later. In addition, CITY will provide one set of As-Built plans and addenda in TIFF format.

The submittal must also include all CALTRANS requested contract records, and land survey documents. The land survey documents include monument preservation documents and Records of Surveys prepared to satisfy the requirements of the California Land Surveyors Act (Business and Professions Code sections 8700 – 8805). Copies of survey documents and Records of Surveys filed in accordance with Business & Professions Code, including sections 8762 and 8771, shall contain the filing information provided by the county in which filed.

57. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right-of-way as part of WORK become the property of CALTRANS.

CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside the SHS right-of-way.

### **Schedule**

58. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

### **Additional Provisions**

59. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
60. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
61. Each PARTNER will ensure that personnel participating in OBLIGATIONS are appropriately qualified or licensed to perform the tasks assigned to them.
62. PARTNERS will invite each other to participate in the selection of any consultants who participate in OBLIGATIONS.

63. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right-of-way. Contractors and/or agents, and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, and utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT shall prevail.
64. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the PROJECT COMPONENT WORK.
65. If any PARTNER discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS within twenty-four (24) hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.
66. PARTNERS will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the PROJECT in confidence to the extent permitted by law and where applicable, the provisions of California Government Code section 6254.5(e) shall protect the confidentiality of such documents in the event that said documents are shared between PARTNERS.  
  
PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.
67. If a PARTNER receives a public records request pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public documents. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
68. If HM-1 or HM-2 is found during a PROJECT COMPONENT, the IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
69. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing SHS right-of-way. CALTRANS will undertake, or cause to be undertaken, HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to the PROJECT schedule.

The cost for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right-of-way is not an OBLIGATIONS COST and CALTRANS will pay, or cause to be paid, all costs for HM-1 ACTIVITIES.

70. CITY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing SHS right-of-way. CITY will undertake, or cause to be undertaken, HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to the PROJECT schedule.

The cost of HM MANAGEMENT ACTIVITIES related to HM-1 found within the PROJECT limits and outside of the existing SHS right-of-way is not an OBLIGATIONS COST and CITY will pay, or cause to be paid, all costs for such ACTIVITIES.

71. If HM-2 is found within the PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
72. 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.
73. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with only a final report for OBLIGATIONS completed in that component.
74. Any PARTNER that is responsible for completing OBLIGATIONS will accept, reject, compromise, settle, or litigate claims arising from those OBLIGATIONS.
75. PARTNERS will confer on any claim that may affect OBLIGATIONS or PARTNERS' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on the claim.
76. If the PROJECT expends state or federal funds, each PARTNER will comply with the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTNERS will ensure that any for-profit party hired to participate in the OBLIGATIONS will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the PROJECT these principles and requirements apply to all funding types included in this AGREEMENT.
77. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS 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.

78. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this AGREEMENT.

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

79. PARTNERS 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 OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, 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 PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER 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, PARTNERS have thirty (30) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

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

80. If the PROJECT expends state or federal funds, each PARTNER will undergo an annual audit in accordance with the Single Audit Act and the federal Office of Management and Budget (OMB) Circular A-133.
81. If the PROJECT expends federal funds, any PARTNER that hires an A&E consultant to perform WORK on any part of the PROJECT will ensure that the procurement of the consultant and the consultant overhead costs are in accordance with Chapter 10 of the *Local Assistance Procedures Manual*.
82. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.

83. If WORK stops for any reason, each PARTNER will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to each PARTNER's responsibilities in this AGREEMENT, in order to keep the PROJECT in environmental compliance until WORK resumes.
84. The cost of awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS COST.
85. The cost of legal challenges to the environmental process or documentation is an OBLIGATIONS COSTS.
86. Fines, interest, or penalties levied against a PARTNER are not an OBLIGATIONS COST and will be paid, independent of OBLIGATIONS COST, by the PARTNER whose action or lack of action caused the levy.
87. 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.
88. If the WORK is funded with state or federal funds, any PARTY seeking CALTRANS reimbursement of indirect costs must submit an indirect cost rate proposal and central service cost allocation plan (if any) in accordance with 2 CFR, Part 200 and Chapter 5 of the Local Assistance Procedures Manual. These documents are to be submitted annually to Caltrans' Audits and Investigations for review and acceptance prior to CALTRANS' reimbursement of indirect costs.
89. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS COST only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this AGREEMENT.

If CITY invoices for rates in excess of DPA rates, CITY will fund the cost difference and reimburse CALTRANS for any overpayment.

90. If there are insufficient funds available in this AGREEMENT to place PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTNERS amend this AGREEMENT.

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

91. If there are insufficient funds in this AGREEMENT to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTNER accepts responsibility to fund their respective OBLIGATIONS until such time as PARTNERS amend this AGREEMENT.

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

92. CITY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on SHS within sixty (60) days following the completion of each PROJECT COMPONENT. CITY will prepare the Project History File in accordance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and on a CD ROM in PDF format.

### **GENERAL CONDITIONS**

93. PARTNERS 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 PARTNER 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.
94. 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.



95. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS, 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 its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories 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.
96. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, 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 its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories 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.
97. PARTNERS do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this AGREEMENT. PARTNERS do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
98. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this AGREEMENT without an amendment to this AGREEMENT.
99. CITY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. CITY waives the provisions of California Civil Code section 1654.  
  
A waiver of a PARTNER's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.
100. 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.
101. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.

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

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this AGREEMENT. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

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

PARTNERS 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.

103. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
104. 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.
105. If during performance of WORK additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTNERS will amend this AGREEMENT to include completion of those additional tasks.
106. Except as otherwise provided in the AGREEMENT, PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
107. When WORK performed on the PROJECT is done under contract and falls within the Labor Code section 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771, PARTNERS shall conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTNERS shall 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 PARTNER's own employees is exempt from the Labor Code's Prevailing Wage requirements.

108. 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, PARTNERS shall conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. § 276(a).

When applicable, PARTNERS shall include federal prevailing wage requirements in contracts for public work. WORK performed by a PARTNER's employees is exempt from federal prevailing wage requirements.

109. PARTNERS 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.
110. PARTNERS intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the OBLIGATIONS. The requirements of this AGREEMENT shall preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

## **DEFINITIONS**

**AGREEMENT** – This agreement including any attachments, exhibits, and amendments.

**CALTRANS STANDARDS** – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the Project Development Procedures Manual (PDPM) and the CALTRANS Workplan Standards Guide for the Delivery of Capital Projects (WSG) [which contains the CALTRANS Work Breakdown Structure (WBS) and was previously known as the WBS Guide] and is available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

**CEQA (California Environmental Quality Act)** – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

**CFR (Code of Federal Regulations)** – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

**CONSTRUCTION** – See PROJECT COMPONENT.

**CONSTRUCTION CAPITAL** – See PROJECT COMPONENT.

**CONSTRUCTION SUPPORT** – See PROJECT COMPONENT.

**CLOSURE STATEMENT** – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this AGREEMENT and in all amendments to this AGREEMENT.

**FHWA** – Federal Highway Administration.

**FHWA STANDARDS** – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at [www.fhwa.dot.gov/topics.htm](http://www.fhwa.dot.gov/topics.htm).

**FUNDING PARTNER** – A PARTNER that commits funds in this AGREEMENT to fulfill OBLIGATIONS. A FUNDING PARTNER accepts the responsibility to provide the funds it commits in this Agreement.

**FUNDING SUMMARY** – An executed document that names FUNDING PARTNER(S), includes a FUNDING TABLE, SPENDING SUMMARY, deposit amounts, and invoicing and payment methods.

**FUNDING TABLE** – The table that designates funding sources, types of funds, and the PROJECT COMPONENT in which the funds are to be spent. Funds listed on the FUNDING TABLE are “not-to-exceed” amounts for each FUNDING PARTNER.

GAAP (Generally Accepted Accounting Principles) – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by the PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The PARTNER responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

IQA (Independent Quality Assurance) – CALTRANS' efforts to ensure that another PARTNER's quality assurance activities are in accordance with the applicable standards and the PROJECT's Quality Management Plan (QMP). When CALTRANS performs Independent Quality Assurance it does not develop, produce, validate, verify, re-check, or quality control another PARTNER's work products.

NEPA (National Environmental Policy Act of 1969) – This federal act establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

OBLIGATIONS – All WORK responsibilities and their associated costs.

OBLIGATION COMPLETION – PARTNERS have fulfilled all OBLIGATIONS included in this AGREEMENT and have signed a CLOSURE STATEMENT.

OBLIGATIONS COST(S) – The cost(s) to complete the responsibilities assigned in this AGREEMENT. Costs that are specifically excluded in this AGREEMENT or that are not incurred in the performance of the responsibilities in this AGREEMENT are not OBLIGATIONS COSTS.

OBLIGATIONS COSTS are to be paid from the funds shown in the FUNDING SUMMARY. Costs that are not OBLIGATIONS COSTS are to be paid by the party that incurs the cost from funds that are outside the scope of this AGREEMENT.

PARTNER – Any individual signatory party to this AGREEMENT.

**PARTNERS** – The term that collectively references all of the signatory agencies to this AGREEMENT. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER’s individual actions legally bind the other PARTNER.

**PROJECT COMPONENT** – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The work required to deliver the project initiation document for the PROJECT in accordance with CALTRANS STANDARDS.
- **PA&ED (Project Approval and Environmental Document)** – The work required to deliver the project approval and environmental documentation for the PROJECT in accordance with CALTRANS STANDARDS.
- **PS&E (Plans, Specifications, and Estimate)** – The work required to deliver the plans, specifications, and estimate for the PROJECT in accordance with CALTRANS STANDARDS.
- **R/W (Right of Way)** – The project components for the purpose of acquiring real property interests for the PROJECT in accordance with CALTRANS STANDARDS.
  - **R/W (Right of Way) SUPPORT** – The work required to obtain all property interests for the PROJECT.
  - **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for the PROJECT.
- **CONSTRUCTION** – The project components for the purpose of completing the construction of the PROJECT in accordance with CALTRANS STANDARDS.
  - **CONSTRUCTION SUPPORT** – The work required for the administration, acceptance, and final documentation of the construction contract for the PROJECT.
  - **CONSTRUCTION CAPITAL** – The funds for the construction contract.

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

**PS&E (Plans, Specifications, and Estimate)** – See PROJECT COMPONENT.

**QMP (Quality Management Plan)** – An integral part of the PROJECT MANAGEMENT PLAN that describes IMPLEMENTING AGENCY’s quality policy and how it will be used.

**R/W (Right of Way) CAPITAL** – See PROJECT COMPONENT.

R/W (Right of Way) SUPPORT – See PROJECT COMPONENT.

SHS (State Highway System) – All highways, right-of-way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

SPENDING SUMMARY – A table that identifies the funds available for expenditure by each PARTNER. The table shows the maximum reimbursable expenditure for each PARTNER in each PROJECT COMPONENT.

SPONSOR – Any PARTNER that accepts the responsibility to establish scope of the PROJECT and the obligation to secure financial resources to fund the PROJECT COMPONENTS in this AGREEMENT. A SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT COMPONENTS in this AGREEMENT. If this AGREEMENT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

WORK – All efforts to complete the OBLIGATIONS included in this AGREEMENT as described by the activities in the CALTRANS Workplan Standards Guide for the Delivery of Capital Projects (WSG).

**SIGNATURES**

PARTNERS are empowered by California Streets and Highways Code section 114 and 130 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**

By: \_\_\_\_\_  
SHARRI BENDER EHLERT  
District Director

Certified as to funds:

By: \_\_\_\_\_  
WILLIAM ETHEERTON  
Budget Manager

**CITY OF FRESNO**

By: \_\_\_\_\_  
SCOTT MOZIER  
Public Works Director

Attest:

By: \_\_\_\_\_  
YVONNE SPENCE  
CMC City Clerk

Approved as to form:

By: \_\_\_\_\_  
DOUGLAS T. SLOAN  
Deputy City Attorney

Name: \_\_\_\_\_  
Date: \_\_\_\_\_



**FUNDING SUMMARY NO. 01**

v. 122								
<b><u>FUNDING TABLE</u></b>								
<u>IMPLEMENTING AGENCY</u> →			<u>CITY</u>	<u>CITY</u>		<u>CITY</u>		
Source	FUNDING PARTNER	Fund Type	PS&E	R/W SUPPORT	R/W CAPITAL	CONST. SUPPORT	CONST. CAPITAL	Totals
State	CALTRANS	SHOPP Minor *	34,000	0	0	49,000	254,000	337,000
Federal	City	CMAQ *	260,000	0	0	376,000	1,964,000	2,600,000
Totals			294,000	0	0	425,000	2,218,000	2,937,000

\* This fund type includes federal funds

v 22121									
<b><u>SPENDING SUMMARY</u></b>									
Fund Type	PS&E		R/W Support		R/W CAPITAL	CONST. SUPPORT		CONST. CAPITAL	Totals
	CALTRANS	<u>CITY</u>	CALTRANS	<u>CITY</u>	<u>CITY</u>	CALTRANS	<u>CITY</u>	<u>CITY</u>	
<b>State Funds</b>									
SHOPP Minor	0	34,000	0	0	0	0	49,000	254,000	337,000
<b>Federal Funds</b>									
CMAQ	0	260,000	0	0	0	0	376,000	1,964,000	2,600,000
Totals	0	294,000	0	0	0	0	425,000	2,218,000	2,937,000

### **Funding**

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

### **Invoicing and Payment**

2. PARTNERS will invoice for funds where the SPENDING SUMMARY shows that one PARTNER provides funds for use by another PARTNER. PARTNERS 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, CITY will pay invoices within five (5) calendar days of receipt of invoice.
3. If CITY has received EFT certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
4. When a PARTNER is reimbursed for actual costs, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTNERS will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTNERS will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.
5. If an executed Program Supplement Agreement (PSA) or STIP Planning, Programming, and Monitoring Program Fund Transfer Agreement (PPM) exists for this PROJECT then CITY will abide by the billing and payment conditions detailed for the fund types identified in the PSA or PPM.
6. If CALTRANS reimburses CITY for any costs later determined to be unallowable, CITY will reimburse those funds.

### **Plans, Specifications, and Estimate (PS&E)**

7. CITY will invoice and CALTRANS will reimburse for actual costs.

### **Right of Way Support (R/W SUPPORT)**

8. No invoicing or reimbursement will occur for the R/W SUPPORT PROJECT COMPONENT.

Right of Way Capital (R/W CAPITAL)

9. No invoicing or reimbursement will occur for the R/W CAPITAL PROJECT COMPONENT.

CONSTRUCTION SUPPORT

10. CITY will invoice and CALTRANS will reimburse for actual costs.

CONSTRUCTION CAPITAL

11. CITY will invoice and CALTRANS will reimburse for actual costs.

**Signatures**

PARTNERS are empowered by California Streets and Highways Code sections 114 and 130 to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this FUNDING SUMMARY on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this FUNDING SUMMARY.

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

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**CITY OF FRESNO**

By: \_\_\_\_\_  
SHARRI BENDER EHLERT  
District Director

By: \_\_\_\_\_  
SCOT MOZIER  
Public Works Director

Date \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
WILLIAM ETHERTON  
District Budget Manager

By: \_\_\_\_\_  
HQ Accounting

## **CLOSURE STATEMENT INSTRUCTIONS**

1. Did PARTNERS complete all scope, cost and schedule commitments included in this AGREEMENT and any amendments to this AGREEMENT?

YES / NO

2. Did CALTRANS accept and approve all final deliverables submitted by CITY?

YES / NO

3. Did the CALTRANS HQ Office of Accounting verify that all final accounting for this AGREEMENT and any amendments to this AGREEMENT were completed?

YES / NO

4. If construction is involved, did the CALTRANS District Project Manager verify that all claims and third party billings (utilities, etc.) have been settled before termination of the AGREEMENT?

YES / NO

5. Did PARTNERS complete and transmit the As-Built Plans, Project History File, and all other required contract documents?

YES / NO

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

**CLOSURE STATEMENT**

PARTNERS agree that they have completed all scope, cost, and schedule commitments included in Agreement 06-1594 and any amendments to the agreement.

The final signature date on this document terminates Agreement 06-1594 except survival articles.

All survival articles in Agreement 06-1594 will remain in effect until expired by law, terminated or modified in writing by PARTNER's mutual agreement, whichever occurs earlier.

The people signing this Agreement have the authority to do so on behalf of their public agencies.

**CALTRANS**

By: \_\_\_\_\_

Name:

District Director

Date: \_\_\_\_\_

**CITY OF FRESNO**

By: \_\_\_\_\_

Name:

Public Works Director

Date: \_\_\_\_\_