

COOPERATIVE AGREEMENT COVER SHEET

THE FOLLOWING IS AN EXAMPLE OF A POTENTIAL AGREEMENT FOR INFORMATION PURPOSES ONLY FOR A LOCAL AGENCY TO ACT AS THE CEQA LEAD FOR PR/ED PHASE

Work Description

Homefed Corporation (“Homefed”), in cooperation with the California Department of Transportation (“Caltrans”) and the City of Chula Vista (“City”), has initiated a Project Study Report-Project Development Support (PSR-PDS) to evaluate alternatives that provide new local street connections, increase capacity, improve mobility, and relieve congestion on State Route 125 (SR-125) between the Otay River and Birch Road to accommodate anticipated increased traffic demand due to new development expansion in the eastern Otay Ranch area of Chula Vista. The City of Chula Vista will act as the Local Agency CEQA Lead for the PR/ED Phase.

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COOPERATIVE AGREEMENT

Agreement.pda.ca.010.oca.[2013-05-04](#)

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

Agmt - City.pda.ca.020a.oca.[2013-05-14](#)

City of Chula Vista, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

RECITALS

Recital Authorization - PDA.pda.rec.010b.leg.[2016-10-01](#)

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.

Recital Project.pda.rec.020b.oca.[2015-02-18](#)

2. For the purpose of this AGREEMENT, Homefed has initiated a Project Study Report-Project Development Support (PSR-PDS) to evaluate alternatives that provide new local street connections, increase capacity, improve mobility, and relieve congestion on State Route 125 (SR-125) between the Otay River and Birch Road to accommodate anticipated increased traffic demand due to new development expansion in the eastern Otay Ranch area of Chula Vista and the City of Chula Vista will act as the Local Agency CEQA Lead for the PR/ED Phase which 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, Design Engineering Evaluation Report, or Project Report).

Recital Work.pda.rec.030.oca.[2016-10-01](#)

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.

NOTE: CITY may only be designated CEQA lead agency with written approval of the District Director. It is the District's responsibility to obtain this approval before execution of any agreement

Recital Agreement.pda.rec.040.oca.[2016-10-01](#)

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.

Recital No Completed and Concurrent Work.pda.pda.rec.060b.oca.[2014-04-01](#)

5. No PROJECT deliverables have been completed prior to this AGREEMENT.

Recital Defined Terms.pda.rec.070.oca.[2015-03-05](#)

6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.

Recital Agreement Terms.pda.rec.080.leg.[2014-04-01](#)

7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

RESPONSIBILITIES

Sponsorship

Sponsorship.pda.sponsor.001.oca.[2015-12-05](#)

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.

Sponsorship – Single Sponsor.pda.sponsor.010a.oca.[2015-02-23](#)

9. CITY is the SPONSOR for the WORK in this AGREEMENT.

Implementing Agency

Implementing Agency.pda.imp.010.oca.[2016-10-01](#)

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.

Implementing PA&ED.pda.imp.010-3.oca.[2016-10-01](#)

- CITY 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).

Keep this line to prevent the preceding list from breaking across pages.

Implementing - Quality Management Plan.pda.imp.020.oca.[2019-07-29](#)

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

Implementing - Personnel Availability.pda.imp.030.oca.[2016-10-01](#)

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

Funding Summary.pda.funding.020a.oca.2016-10-01

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.

Funding - Spending Limits.pda.funding.040.oca.2016-10-01

14. PARTIES will not be reimbursed for costs beyond the funds obligated in this AGREEMENT.

Funding - Proportionate Expenditure of Funds.pda.funding.050.oca.2017-02-16

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.

Funding - Proportionate Savings.pda.funding.060.oca.2014-09-26

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.

Funding - Agreement Costs.pda.funding.070a.oca.2016-10-01

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

Quality Management.pda.qm.010.oca.2019-07-09

18. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.

Quality Management - IQA.pda.qm.020.oca.2019-07-09

19. CALTRANS' Quality Management Assessment (QMA) 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). QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

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

Quality Management – Owner Operator Approvals.pda.qm.030.oqa.[2016-10-01](#)

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.

Quality Management - EDQC.pda.qm.040.env;oqa.[2016-10-01](#)

21. Per National Environmental Policy Act (NEPA) assignment and California Environmental Quality Act (CEQA) statutes, CALTRANS will perform environmental document quality control and NEPA assignment review procedures for environmental documentation. CALTRANS quality control and quality assurance procedures for all environmental documents are described in the NEPA Assignments memorandums, available at <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/nepa-recordretention-policy-final-ally.pdf>. This also includes the independent judgement analysis and determination under CEQA that the environmental documentation meets CEQA requirements.

Quality Management – Work Products.pda.qm.050.con;oqa.[2016-10-01](#)

22. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.
23. CITY, including any employee, agent, consultant or sub-consultant retained by the CITY, shall implement uniform document control policies necessary to retain all records and electronically stored information associated with the WORK, including but not limited to those records identified in California Public Resources Code, Section 21167.6, and including email and attachments, in a manner consistent with the CALTRANS Uniform Filing System and the "Final Caltrans Environmental Records Retention Policy", available at <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/nepa-recordretention-policy-final-a11y.pdf>. These records, along with an index of the records, shall be provided to CALTRANS within 60 days of CALTRANS' written request.

CEQA/NEPA Lead Agency

CEQA Lead Agency.pda.env_lead.010.env.[2014-04-01](#)

24. CITY is the CEQA Lead Agency for the PROJECT.

CEQA Responsible Agency.pda.env_lead.020.env.[2015-03-25](#)

25. CALTRANS is a CEQA Responsible Agency for the PROJECT.

Nepa Lead Agency.pda.env_lead.030.env.[2014-04-01](#)

26. CALTRANS is the NEPA Lead Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

Permit & Env Compliance.pda.ep.010.env.[2016-10-01](#)

27. 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 PARTY’s responsibilities in this AGREEMENT.

Permit Work.pda.ep.020.[2014-09-26](#)

28. 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.

Project Permits.pda.ep.030b.[2016-10-01](#)

29. It is expected that the PROJECT will not require environmental permits/approvals.

Project Approval and Environmental Document (PA&ED)

PA&ED Implementing Agency Work.pda.paed.010.oca.[2016-10-01](#)

30. As the PA&ED IMPLEMENTING AGENCY, CITY 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.

PA&ED non-Implementing Work.pda.paed.020.oca.[2016-10-01](#)

31. CALTRANS will be responsible for completing the following PA&ED activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.10.10.xx Quality Management	No
165.15.15.xx Essential Fish Habitat Consultation	Yes
165.15.15.xx Section 7 Consultation	Yes
165.25.25 Approval to Circulate Resolution	Yes
180.10.05.45 Section 7 Consultation	Yes
180.15.05 Record of Decision (NEPA)	Yes

PA&ED Qualified Personnel and Environmental Documentation.pda.paed.040.env.2016-10-01

32. 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.

PA&ED Notification to CEQA& NEPA Lead.pda.paed.045.env.2016-10-01

33. CITY will provide written notice of the initiation of environmental studies to the NEPA Lead Agency prior to completing any other PA&ED phase work.

California Environmental Quality Act (CEQA)

CEQA Lead Agency Determines Document Type.pda.paed.060.2016-10-01

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

CEQA Document Standards.pda.paed.070.env.2016-10-01

35. 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.

CEQA Caltrans Review as Responsible Agency.pda.paed.080.env.2015-03-25

36. CALTRANS is a CEQA Responsible Agency for the PROJECT and is responsible for review, comment, and concurrence on 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.

CEQA Lead Review of Documentation.pda.paed.090.env.2016-10-01

37. 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.

CEQA Caltrans Review of Document Changes.pda.paed.100.env.2016-10-01

38. If the CEQA Lead Agency makes any changes to the CEQA documentation, the CEQA Lead Agency will allow CALTRANS to review, comment, and concur on those changes prior to the CEQA Lead Agency's approval at appropriate stages of development prior to public availability.

CEQA Caltrans Public Notice Review When Not Lead.pda.paed.120b.env.2014-04-01

39. If the CEQA Lead Agency makes any changes to CEQA-related public notices, then the CEQA Lead Agency will allow CALTRANS to review, comment, and concur on those changes prior to publication and circulation.

CEQA Lead Meeting Attendance.pda.paed.150.env.2016-10-01

40. The CEQA Lead Agency will attend all CEQA-related public meetings.

CEQA Public Meetings Held By Non Lead Agency.pda.paed.160.env.2016-10-01

41. 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)NEPA Lead - Caltrans.pda.paed.170a.env.2014-07-28

42. Pursuant to Chapter 3 of Title 23, United States Code, Sections 326 and 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, is responsible for the review, comment, and approval of 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.

NEPA Documentation Standards.pda.paed.180a.env.[2016-10-01](#)

43. 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 <http://environment.fhwa.dot.gov/index.asp>) and the CALTRANS Standard Environmental Reference.

NEPA Review – Caltrans Is Lead.pda.paed.190b.env.[2016-10-01](#)

44. 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.

NEPA Public Notices – Caltrans is Lead and not Preparing.pda.paed.200b.env.[2014-04-01](#)

45. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.

CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.

NEPA Lead Meeting Attendance.pda.paed.210.env.[2016-10-01](#)

46. The NEPA Lead Agency will attend all NEPA-related public meetings.

NEPA Public Meeting Mtls – Caltrans is Lead.pda.paed.230a.env.[2014-04-01](#)

47. CITY will submit all NEPA-related public meeting materials to CALTRANS for CALTRANS' review, comment, and approval at least ten (10) working days prior to the public meeting date.

NEPA Public Meetings Held By Non Lead Agency.pda.paed.240.env.[2016-10-01](#)

48. 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.

NEPA FSTIP Inclusion.pda.paed.250.env.[2016-10-01](#)

49. CITY will ensure that the PROJECT is included in the approved Federal Statewide Transportation Improvement Program (FSTIP) prior to the NEPA Lead Agency's approval of the environmental document.

Schedule

Schedule.pda.sch.010.oca.[2016-10-01](#)

50. 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.

Schedule Progress Report - Periodic.pda.sch.020a.oca.[2016-10-01](#)

51. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with written quarterly progress reports during the completion of the WORK.

Additional Provisions

Standards

AP Laws, Regulations, and Standards.pda.ap.010.leg.[2016-10-01](#)

52. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (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

Noncompliant Work

AP Noncompliant Work.pda.ap.020.oca;con;mets.[2016-10-01](#)

53. 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

AP Qualified Personnel.pda.ap.030.oca.[2016-10-01](#)

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

Consultant Selection

AP Consultant Selection.pda.ap.040.oca; con.[2016-10-01](#)

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

Encroachment Permits

AP Encroachment Permits - Caltrans.pda.ap.050.ep.[2018-02-13](#)

56. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. CITY, their contractors, consultants, 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 CITY, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.

AP Encroachment Permits - Implementing Agency.pda.ap.070.oca.[2016-10-01](#)

57. 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

AP Protected Resources.pda.ap.080.env.[2016-10-01](#)

58. 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

AP Confidentiality.pda.ap.090.leg.[2016-10-01](#)

59. 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.

AP Public Records Requests.pda.ap.100.leg.[2019-07-09](#)

60. 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 records.

Hazardous Materials

AP HM Definition.pda.ap.130.ee.[2016-10-01](#)

61. 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.

AP HM Notification of Partners.pda.ap.110b.ee.[2016-10-01](#)

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

AP HM-1 Within the SHS.pda.ap.140.ee.[2016-10-01](#)

63. 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.

AP HM-1 for City-County.pda.ap.150a.ee.[2016-10-01](#)

64. 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.

AP HM-2.pda.ap.160.ee.[2016-10-01](#)

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

CITY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and CITY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. CITY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

AP HM and RW Acquisition.pda.ap.170a.ee.[2014-04-01](#)

66. 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

AP Settlement of Claims.pda.ap.180b.leg.[2016-10-01](#)

67. 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.

AP Claims Conference.pda.ap.190.leg.[2016-10-01](#)

68. 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.

AP Federal Cost Principles.pda.ap.200.acc, aud.[2016-10-26](#)

69. 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

AP GAAP.pda.ap.210.acc, aud.[2014-03-05](#)

70. 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.

AP Document Availability And Retention.pda.ap.220.acc, aud.[2016-10-01](#)

71. 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.

AP Right to Audit - Parties.pda.ap.230a.acc; aud.[2016-10-01](#)

72. 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.

AP Annual Audits.pda.ap.240.aud.[2016-10-01](#)

73. 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.

AP A&E Consultant costs.pda.ap.250.aud.[2016-10-01](#)

74. 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 the Local Assistance Procedures Manual, Chapter 10.

Interruption of Work

AP Safe And Operable Right of Way.pda.ap.270.oca.[2014-04-01](#)

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

AP Work Stoppage.pda.ap.270.env.[2016-10-01](#)

76. If WORK stops for any reason, each PARTY will continue with environmental commitments 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

AP Legal Judgements.pda.ap.280.leg.[2016-10-01](#)

77. The cost of awards, judgements, fines, interest, penalties, attorney's fees, and/or settlements generated by the WORK are considered WORK costs.

AP Environmental Legal Challenges.pda.ap.290.env;leg.[2016-10-01](#)

78. The cost of legal challenges to the environmental process or documentation are considered WORK costs.

AP Fines, Interest, and Penalties.pda.ap.300a.leg.[2016-10-01](#)

79. Any PARTY whose 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.

Project Files

AP Project History File.pda.ap.310.oca.[2016-10-01](#)

80. CITY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on State Highway System within sixty (60) days following the completion of each PROJECT COMPONENT. CITY will assure that the Project History File is prepared and submitted in compliance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and in PDF format.

GENERAL CONDITIONS

[GC Enforcement.pda.gc.010.leg.2020-07-29](#)

81. All portions of this AGREEMENT, including the Recitals Section, are enforceable.

Venue

GC Jurisdiction.pda.gc.010.leg.2016-10-01

82. 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

GC Appropriations for Caltrans Obligations.pda.gc.020.leg.2016-10-01

83. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

Indemnification

GC Indemnity.pda.gc.030.leg.2016-10-01

84. Neither CALTRANS nor any of its 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.

GC Indemnity.pda.gc.030.leg.2016-10-01

85. Neither CITY nor any of its 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

GC No Creation of Third Party Rights.pda.gc.040.leg.[2016-10-01](#)

86. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights for entities ~~in PARTIES~~ 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.

GC Obligation Assignment.pda.gc.050.leg.[2016-10-01](#)

87. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

Ambiguity and Performance

GC California Civil Code 1654 Waiver.pda.gc.060.leg.[2016-10-01](#)

88. Neither PARTY will interpret any ambiguity contained in this AGREEMENT against the other PARTY. PARTIES waive 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.

GC Delays or Omissions in Exercising Rights.pda.gc.70.leg.[2014-04-01](#)

89. 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

GC Default in Obligations.pda.gc.80.leg.[2016-10-01](#)

90. 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

GC Dispute Resolution.pda.gc.90.leg.[2019-07-29](#)

91. 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.

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

GC Additional Dispute Remedies.pda.gc.130.leg.[2016-10-01](#)

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

Prevailing Wage

GC Prevailing Wages.pda.gc.120.leg.[2016-10-01](#)

93. 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, 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.

DRAFT

SIGNATURES

Signatures - Authority to Execute.pda.sig.020.leg.2016-10-01

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

CITY OF CHULA VISTA

GUSTAVO DALLARDA
District 11 Director

WILLIAM S. VALLE
Director of Engineering & Capital Projects

Verification of funds and authority:

Attest:

Erika O’Farrell
District 11 Budget Manager

Kerry K. Bigelow
City Clerk

Certified as to financial terms and policies:

Approved as to form and procedure:

Nadine Karavan
HQ Accounting Supervisor

Glen R. Googins
City Attorney

This is a sample for discussion purposes only

FUNDING SUMMARY NO. 01

<u>FUNDING TABLE</u>			v. 1
Source	Party	Fund Type	PA&ED
			Totals
STATE	CALTRANS	SHOPP	\$50,000
LOCAL	CITY	Local	\$6,500,000
Totals			\$6,550,000

<u>SPENDING SUMMARY</u> v 2			
Fund Type	PA&ED		Totals
	CALTRANS	<u>CITY</u>	
SHOPP	\$50,000	\$0	\$50,000
Local	\$0	\$6,500,000	\$6,500,000
Totals	\$50,000	\$6,500,000	\$6,550,000

Funding**FS Insufficient Funds - Safe and Operable.pda.fs_fund.010.oca.[2016-10-01](#)**

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.

FS Insufficient Funds.pda.fs_fund.020.env.[2016-10-01](#)

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.

FS Indirect Costs - Caltrans.pda.fs_fund.030b.acc.[2016-10-01](#)

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.

In accordance with California Senate Bill 848, the Administration Rate is capped at 10 percent until January 1, 2023, for Self-Help Counties with a countywide sales tax measure dedicated to transportation improvements.

FS Indirect Costs - Party.pda.fs_fund.040.acc.2016-10-01

4. 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 Local Assistance Procedures Manual, 2 CFR, Part 200 and Chapter 5. These documents are to be submitted annually to CALTRANS' Audits and Investigations for review and acceptance prior to CALTRANS' reimbursement of indirect costs.

FS Per Diem Rates.pda.fs.050.acc;aud.2016-10-01

5. Travel, per diem, and third-party contract reimbursements for WORK are to be paid from the funds in this AGREEMENT only after the contractor performs the work and incurs said costs.

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

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

6. Notwithstanding the terms of this AGREEMENT, PARTIES agree to abide by the funding guidelines for all contributed funds that are programmed and allocated by the CTC.
7. SHOPP funds can only be expended on SHOPP-eligible items and work.

Invoicing and Payment**Invoice And Payment.pda.inv.010.acc.2016-10-01**

8. 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, CITY will pay invoices within five (5) calendar days of receipt of invoice.

Invoice and Payment - EFT.pda.inv.020.acc.[2014-11-03](#)

9. 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.

Invoice and Payment - Actual Cost Invoicing.pda.inv.040.acc.[2016-10-01](#)

10. 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.

Invoice and Payment - Program Supplement Agreement.pda.inv.050.oca.[2015-03-05](#)

11. 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.

Invoice and Payment - Unallowable Costs.pda.inv.060.acc; aud.[2015-03-05](#)

12. If CALTRANS reimburses CITY for any costs later determined to be unallowable, CITY will reimburse those funds.

Project Approval and Environmental Document (PA&ED)

Invoicing - Actual Cost.pda.inv.070a-2.[2016-10-01](#)

13. CITY will invoice and CALTRANS will reimburse for actual costs incurred and paid.

CLOSURE STATEMENT INSTRUCTIONS

1. Did PARTIES 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 other PARTIES?

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 PARTIES 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

PARTIES agree that they have completed all scope, cost, and schedule commitments included in Agreement 11-11-XXYY and any amendments to the agreement. The final signature date on this document terminates agreement 11-11-XXYY except survival articles. All survival articles in agreement 11-11-XXYY 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. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

CITY OF CHULA VISTA

District 11 Director

Director of Engineering & Capital Projects

Date: _____

Date: _____

**Certified as to all financial
obligations/terms and policies**

District 11 Budget Manager

Date: _____