

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE on _____, 2008, is between the State of California, acting by and through its Department of Transportation, herein referred to as "STATE," and the

CITY OF SACRAMENTO, a body politic and a municipal corporation of the State of California, referred to herein as "CITY."

RECITALS

1. STATE and CITY, collectively referred to herein as "PARTIES," pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into this Cooperative Agreement for improvements to the State Highway System (SHS) right-of-way (R/W) within the CITY's jurisdiction.
2. CITY wishes the extension of Cosumnes River Boulevard from Franklin Boulevard to Freeport Boulevard, State Route (SR) 160, along with State highway improvements consisting of a new interchange on Interstate 5 (I-5) at the extended Cosumnes River Boulevard, PM 14.3/15.5. Said interchange and roadway extension is referred to herein as "PROJECT". CITY is willing to fund one hundred percent (100%) of all capital outlay and staffing costs, except for costs of STATE's Independent Quality Assurance (IQA).
3. CITY performed and funded the Project Approval and Environmental Documentation (PA&ED) phase of PROJECT, which was covered in Cooperative Agreement 03-0290.
4. CITY will perform all Plans, Specifications, and Estimates (PS&E), R/W, and construction work necessary for PROJECT completion, except for STATE's Independent Quality Assurance (IQA) efforts. STATE shall perform IQA only on those portions of the PROJECT situated within STATE right of way.
5. STATE will contribute the lump sum amount of \$5,108,000 toward PROJECT R/W costs, using State Transportation Improvement Program – Regional Improvement Program (STIP-RIP) funds and will fund one hundred percent (100%) of the cost of STATE's IQA efforts. CITY's PROJECT funding is detailed on Exhibit A, attached to and made a part of this Agreement.
6. PARTIES agree that CITY will prepare the contract documents and advertise, award, and administer the PROJECT construction contract.
7. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
8. PARTIES intend to define herein the terms and conditions under which PROJECT PS&E, R/W, and construction will be accomplished

SECTION I

CITY AGREES:

1. To perform and prepare the detailed PS&E and to perform all necessary R/W and construction activities for PROJECT completion, except for STATE's IQA efforts.
2. All PROJECT work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all STATE and Federal laws, regulations, policies, procedures and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate sequential stages of development.
3. To pay all PROJECT PS&E, R/W, and construction costs, including but not limited to, state furnished material (SFM) and STATE's source inspection costs, in excess of STATE's lump sum contribution for PS&E, as shown on Exhibit A.
4. To submit a bill to STATE, upon execution of this Agreement, in the amount of \$550,000, which amount represents two months' estimated PROJECT PS&E costs.
5. To, thereafter, on a monthly basis, in arrears, submit invoices to STATE, along with detailed supporting documents, representing current PROJECT R/W costs. Invoices will meet format and content requirements specified by STATE. Each invoice shall be submitted to STATE's Project Manager for approval and forwarding to the appropriate Accounting Office for payment. In no event shall bills sent to STATE for such costs exceed the amount of \$5,108,000.
6. To provide written notice to STATE forty-five (45) days prior to award of PROJECT construction contract, requesting any SFM identified in the PROJECT PS&E. To also provide written notice to STATE requesting any additional SFM deemed necessary during PROJECT construction.
7. To deposit with STATE within twenty (20) days of receipt of billing thereof (which billing will be forwarded within forty-five (45) days of receipt of CITY's request), the estimated cost of said SFM. Upon receipt by STATE of both the requested material and CITY's payment, STATE will make said material available to CITY at a STATE-designated site.
8. To reimburse STATE for all direct and indirect costs incurred for any source inspection performed by STATE.
9. To deposit with STATE within twenty-five (25) days of receipt of STATE's billing thereof the amount of said bill, which amount represents the estimated cost of source inspection, as referred to in Article 8 of this Section I.
10. To pay STATE upon completion of all work on PROJECT and within twenty-five (25) days of receipt of a detailed statement made upon final accounting of costs therefore, any amount, over

and above the aforesaid deposits for SFM and source inspection, required to complete CITY's financial obligations assumed pursuant to this Agreement.

11. To submit to STATE a detailed PS&E for review and acceptance prior to preparing contract documents. A Civil Engineer registered in the State of California shall sign the PS&E and the final PROJECT plans.
12. To permit STATE to monitor, participate in, and oversee the selection of personnel who will provide construction-engineering services for PROJECT. CITY agrees to consider any request by STATE to void a contract award or to discontinue the contracted services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
13. Personnel who prepared environmental documentation, including investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems which may arise during PS&E, right of way acquisition, construction, and/or to make design revisions for contract change orders.
14. Personnel who prepare the PS&E, R/W maps, and other PROJECT-related documents and materials shall be available to STATE, at no cost to STATE, to discuss problems which may arise during construction or to make design revisions for contract change orders until completion and acceptance by STATE of Right of Way Record Maps and Record of Survey for PROJECT.
15. To apply for and obtain the necessary encroachment permits from STATE for any required work within the SHS R/W in accordance with STATE's standard permit procedures and in regards to PROJECT construction, as more specifically defined in Section III of this Agreement.
16. To advertise, award, and administer the construction contract for PROJECT in accordance with requirements of the Local Agency Public Construction Act and the California Labor Code, including its prevailing wage provisions. Workers employed in the performance of work contracted for by CITY, and/or performed under encroachment permit, are covered by provisions of the California Labor Code in the same manner as are workers employed by STATE's contractors. The use of any Federal funds towards PROJECT construction will mandate the inclusion and enforcement of all applicable Federal labor mandates.
17. To acquire and furnish all R/W, if any, outside of the existing SHS R/W and to perform all R/W activities, including all eminent domain activities, if necessary, at no cost to STATE, and in accordance with procedures acceptable to STATE. These activities shall comply with all applicable State and Federal laws and regulations, subject to STATE's IQA to ensure that the completed work is acceptable for incorporation into the SHS R/W.
18. To use the services of a qualified public agency or a qualified consultant, as determined by STATE's District Division Chief of R/W, in all matters related to the acquisition of R/W in accordance with STATE's procedures as published in STATE's current R/W Manual. Whenever

CITY uses personnel other than personnel of a qualified public agency, administration of the personnel contract shall be performed by a qualified R/W person employed or retained by CITY.

19. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside existing SHS right of way that could impact PROJECT as part of performing any preliminary engineering work. If CITY discovers hazardous material or contamination within the PROJECT study area during said investigation, CITY shall immediately notify STATE.
20. To certify legal and physical control of R/W ready for construction and that all R/W parcels were acquired in accordance with applicable State and Federal laws and regulations, subject to review and concurrence by STATE, prior to the advertisement for bids for the contract to construct PROJECT.
21. In recognition that construction work for PROJECT done on STATE's property will not be directly funded and paid by STATE, for the purpose of protecting stop notice claimants and the interests of STATE relative to the successful completion of PROJECT, CITY agrees to require the construction contractor to furnish both a payment and a performance bond naming CITY as obligee with both bonds complying with the requirements set forth in Section 3-1.02 of STATE's current Standard Specifications prior to performing any construction work for PROJECT. CITY shall defend, indemnify and hold harmless STATE, its officers and employees from all claims by stop notice claimants related to the construction of PROJECT under the payment bond.
22. Construction by CITY of those portions of PROJECT which lie within the SHS R/W shall not commence until CITY's contract plans involving such work, the utility relocation plans, and the R/W certification have been reviewed and accepted by STATE and encroachment permits have been issued to CITY and CITY's contractor.
23. CITY's construction contractor shall maintain in force, until completion and acceptance of the PROJECT construction contract, a policy of General Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability that complies with all coverage requirements with Section 7-1.12 of STATE's then effective Standard Specifications. Such policy shall contain an additional insured endorsement naming STATE and its officers, agents, and employees as additional insureds. This insurance coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to STATE which shall be delivered to STATE before the issuance of an encroachment permit to CITY's construction contractor.
24. To have PROJECT constructed by contract to the satisfaction of and subject to STATE's acceptance in accordance with the STATE accepted PROJECT PS&E.
25. To conform to STATE's Construction Manual, Local Assistance Procedures Manual for contract administration and the PROJECT encroachment permits.
26. Construction within the existing or ultimate SHS R/W shall comply with STATE's Standard Specifications, the PROJECT Special Provisions, and STATE's Construction Manual.

27. To identify and locate all utility facilities within PROJECT area as part of CITY's PROJECT design responsibility. All utility facilities not relocated or removed in advance of construction shall be identified on PROJECT PS&E for protection, relocation or removal.
28. To furnish evidence to STATE, in a form acceptable to STATE, that arrangements have been made for the protection, relocation, or removal of all conflicting facilities within the SHS R/W and that such work will be completed prior to the award of the contract to construct PROJECT or as covered in the PS&E for said contract. This evidence shall include a reference to all required SHS encroachment permits.
29. CITY shall require the utility owner or its contractors performing the protection or relocation work within the SHS R/W to obtain an encroachment permit from STATE prior to the performance of said work.
30. All survey work shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and STATE's Staking Information Booklet.
31. PROJECT material testing and Quality Control/Assurance shall conform to STATE's Construction Manual, Construction Manual Supplement for Local Agency Resident Engineer, Local Agency Structure Representative Guideline and STATE's California Test Methods, and shall be performed by a material-tester certified by STATE, at CITY's expense.
32. To furnish, at CITY's expense and subject to the approval of STATE, a field site representative who is a licensed civil engineer in the State of California to perform the functions of a Resident Engineer. The Resident Engineer shall not be an employee or subcontractor of the entity, if any that prepared the PROJECT PS&E or an employee of the construction contractor.
33. At PROJECT's expense, to furnish sufficient qualified support staff, subject to the approval of STATE, to assist the Resident Engineer in, but not limited to, structure representative construction surveys, soils and foundation tests, measurement and computation of quantities, testing of construction materials, checking shop drawings, preparation of estimates and reports, preparation of the mandated "As-Built" drawings, and other inspection and staff services necessary to assure that the construction is being performed in accordance with the PROJECT PS&E. Said qualified support staff shall be independent of the design engineering company and construction contractor, except that the PROJECT designer may be retained to check shop drawings, do soils foundation tests, test construction materials, and perform construction surveys.
34. Within one hundred and eighty (180) days following the completion and acceptance of the PROJECT construction contract, to furnish STATE with a complete set of "As-Built" plans in accordance with STATE's then current CADD Users Manual, Plans Preparation Manual, and STATE practice. The submittal must also include all STATE requested contract records, including survey documents and Records of Surveys (to include monument perpetuation per the

Land Surveyor Act, section 8771). CITY shall also submit corrected full-sized hardcopy structure plans.

35. To retain or cause to be retained for audit by STATE or other government auditors for a period of four (4) years from the date of final payment under the PROJECT contract, or four (4) years from STATE payment of the final voucher, whichever is longer, all records and accounts relating to PROJECT construction. CITY shall retain said records and accounts longer for such periods as are required in writing by STATE.
36. Upon completion of PROJECT construction, CITY will operate and maintain, at CITY's cost, any part of PROJECT located outside of the existing SHS R/W (including CITY underpasses and overcrossings of then existing SHS R/W), until any subsequent acceptance of any part of PROJECT into the SHS by STATE, approval by FHWA, if required, and conveyance of acceptable title to STATE.
37. If CITY cannot complete PROJECT as originally scoped, scheduled, and estimated, CITY will, only with STATE's prior written consent, amend the PROJECT PS&E for a suitable resolution to ensure an alternate form of modified PROJECT that will, at all times, provide a safe and operable SHS.
38. If CITY terminates PROJECT prior to completion, STATE shall require CITY to return all previously received STATE funds to STATE and, at CITY's expense, to return the SHS R/W to its original condition or to a safe and operable condition acceptable to STATE. If CITY fails to do so, STATE reserves the right to finish PROJECT or to place PROJECT in a safe and operable condition and STATE will bill CITY for all actual expenses incurred and CITY agrees to pay said bill within thirty (30) days of receipt.
39. If unanticipated cultural, archaeological, paleontological or other protected materials are encountered during PROJECT construction, CITY shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material. The costs for any removal or protection of that material shall be covered as a PROJECT cost contemplated by this Agreement.
40. To obtain, at CITY's expense, all necessary permits or agreements from appropriate regulatory agencies. All mitigation, monitoring, or remedial action required by said permits shall constitute part of the cost of PROJECT.
41. All aerial photography and photogrammetric mapping shall conform to STATE's current standards.
42. A copy of all original survey documents resulting from surveys performed for PROJECT, including original field notes, adjustment calculations, and final results, shall be delivered to STATE and shall become property of STATE. For aerial mapping, all information and materials listed in the document "Materials Needed to Review Consultant Photogrammetric Mapping" shall be delivered to STATE and shall become property of STATE.

43. All original recorded land title documents created by PROJECT that establish STATE property rights shall be delivered to STATE and become property of STATE.
44. To submit to STATE a list of Caltrans horizontal and vertical control monuments, which will be used to control surveying activities for PROJECT.
45. To cause, at no cost to STATE, the permanent monumentation of the location of all R/W acquisitions and the re-monumentation of any control or land net monuments destroyed during construction. Land net monuments within the State R/W need not be re-monumented, but must be referenced. All of the above referenced permanent monumentation and re-monumentation, and the existing land net, are to be shown on a Record of Survey filed with the County Surveyor in conformance with the California Land Surveyors Act. CITY shall deliver one copy of any field notes, Corner Records, with appurtenant back up and reference data and the Record of Survey to the STATE for approval prior to submitting the Record of Survey to the County.
46. To provide, at no cost to STATE, all necessary R/W Maps and Documents used to acquire R/W by CITY. All maps and documents shall be prepared by or under the direction of a person authorized to practice land surveying in the State of California. All maps and documents shall be prepared in accordance with the State of California R/W Manual, Chapter 6 - R/W Engineering, the State of California Drafting and Plans Manual or the superseding Plans Preparation Manual, the State of California Surveys Manual, applicable State laws, and other pertinent reference material and examples as provided by STATE. All R/W Maps and Documents shall bear the appropriate professional seal, certificate number, expiration date of registration certification and signature of the licensed person in "Responsible Charge of Work". CITY shall submit to STATE for review and acceptance all documents used to acquire R/W prior to signature of the property grantor. A certified copy of the recorded deeds shall be provided to STATE.
47. To deliver to STATE legal title of R/W, including access rights, free and clear of all encumbrances detrimental to STATE's present and future uses not later than the date of acceptance by STATE of maintenance and operation of the highway facility. Acceptance of said title by STATE is subject to a review of a Policy of Title Insurance in the name of the State of California to be provided and paid for by CITY.
48. To provide, at no cost to STATE, survey and mapping services necessary to perpetuate the existing land net in accordance with the California Land Surveyors Act. To submit to STATE for review and acceptance all R/W Engineering Hard Copies and R/W Appraisal Maps with appurtenant back up and reference data prior to preparation of legal descriptions and acquisition documents.
49. To provide, at no cost to STATE, an electronic copy of the Final R/W Record Maps and the Record of Survey with a hardcopy in Microstation format, including an electronic copy of the file, and two reproducible copies and a color bond copy of each final R/W Map.

50. To provide a Construction Zone Enhancement Enforcement Program (COZEEP) by contracting directly with the California Highway Patrol (CHP) for all traffic restrictions as outlined in STATE's Construction Manual.
51. STATE's IQA activities referred to in Section II of this Agreement do not include performance of any engineering services required for PROJECT. These services are to be performed by CITY. If CITY requests STATE to perform any of these services, CITY shall reimburse STATE for such services. An amendment to this Agreement authorizing STATE's performance of such services will be required prior to performance of any engineering work by STATE.

SECTION II

STATE AGREES:

1. To pay the lump sum amount of \$5,108,000 toward PROJECT R/W and to fund STATE's IQA costs, as shown on Exhibit A.
2. To deposit with CITY within thirty (30) days of receipt of billing the amount of \$550,000 (which billing will be forwarded to STATE upon execution of this Agreement), which figure represents two months' estimated PROJECT PS&E costs.
3. To, thereafter, pay CITY's approved monthly invoices within thirty (30) days of receipt. Said invoices shall represent current PROJECT PS&E costs. In no event shall bills paid by STATE for such costs exceed the amount of \$5,108,000.
4. To provide, at CITY's expense, any SFM as requested by CITY, and to make said material available to CITY at a STATE-designated site upon receipt of both said material and CITY's payment made pursuant to Section I, Article 7.
5. To submit an invoice to CITY for the estimated cost of said material, based on current data for the specific items listed, within forty-five (45) days of receipt of CITY's request for SFM, pursuant to Section I, Article 6.
6. STATE shall perform source inspection as outlined in STATE's Construction Manual, Construction Manual Supplement for Local Agency Resident Engineer, and Local Agency Structure Representative Guideline.
7. To submit an invoice to CITY for the estimated direct and indirect source inspection costs upon receipt of said estimate from STATE's representative.
8. Upon completion of PROJECT and all work incidental thereto, to furnish CITY with a detailed statement of the SFM and source inspection costs to be borne by CITY. To thereafter refund to CITY, promptly after completion of STATE's final accounting of said PROJECT costs, any amount of CITY's deposits, specified in this Agreement, remaining after actual SFM and source

inspection costs to be borne by CITY have been deducted or to bill CITY for any additional amount required to complete CITY's financial obligations assumed pursuant to this Agreement.

9. To provide, at no cost to CITY, STATE's IQA activities of all work on PROJECT done by CITY, to provide prompt reviews and to accept or reject, as appropriate, CITY's submittals, and to cooperate in timely processing of PROJECT.
10. Upon proper application by CITY and by CITY's contractor, to issue, at no cost to CITY and CITY's contractor, the encroachment permits for required work within the SHS R/W as more specifically defined elsewhere in this Agreement.
11. As a part of STATE's IQA activities, to provide a qualified representative of STATE during construction of PROJECT who shall have authority to accept or reject work and materials or to order any actions needed for public safety or the preservation of property and to assure compliance with all provisions of the encroachment permit(s) issued to CITY and CITY's contractor.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature in the annual State Budget Act and the action of the California Transportation Commission (CTC) allocating resources to STATE for the purposes of fulfilling STATE's obligations herein.
2. PARTIES understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance upon those portions of PROJECT situated within STATE Right of way, which is administered by CITY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by CITY conform to STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT nor does it involve any validation by the verification and rechecking of any work performed by CITY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by CITY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE pursuant to an agreement that is not direct IQA shall be chargeable against the PROJECT funds as a service for which STATE will invoice its actual costs and CITY will pay or authorize STATE to reimburse itself from available funds.
3. Execution of this Agreement by CITY grants to STATE the right to enter upon CITY controlled lands to perform necessary IQA.
4. All phases of PROJECT, from inception through construction shall be developed in accordance with all policies, procedures, practices, and standards that STATE would normally follow.

5. The design and right of way acquisition for PROJECT shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be considered by STATE for approval via the processes outlined in STATE's Highway Design Manual and appropriate memoranda and design bulletins published by STATE. In the event that STATE proposes and/or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on PROJECT in accordance with STATE's current Highway Design Manual Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with CITY in a timely manner regarding the effect of proposed and/or required changes on PROJECT.
6. Construction by CITY of improvements referred to herein which lie within the SHS R/W or affect STATE's facilities, shall not be commenced until CITY's original contract plans involving such work and plan for utility relocations have been reviewed and accepted by signature of STATE's District Director of Transportation, or the District Director's delegated agent, and until an encroachment permit to CITY authorizing such work has been issued by STATE.
7. CITY shall obtain aforesaid encroachment permit through the office of STATE's District Permit Engineer and CITY's application shall be accompanied by five (5) sets of reduced construction plans of aforesaid STATE-accepted contract plans, and five (5) sets of specifications for PROJECT. Receipt by CITY of the approved encroachment permit shall constitute CITY's authorization from STATE to proceed with work to be performed by CITY or CITY's representatives within the proposed SHS R/W or which affects STATE's facilities, pursuant to work covered by this Agreement. CITY's authorization to proceed with said work shall be contingent upon CITY's compliance with all provisions set forth in this Agreement and said encroachment permit.
8. CITY's construction contractor shall also be required to obtain an encroachment permit from STATE prior to the commencing any work within the SHS R/W or which affects STATE's facilities. The application by CITY's construction contractor for said encroachment permit shall be made through the office of STATE's District Permit Engineer and shall include proof said construction contractor has payment and performance surety bonds covering construction of PROJECT.
9. CITY shall provide a R/W certification prior to the granting of said encroachment permit by STATE, to certify that legal and physical control of R/W were acquired in accordance with applicable State and Federal laws and regulations.
10. CITY shall not advertise for bids to construct PROJECT until after an encroachment permit has been issued to CITY by STATE.
11. If, during preparation of the PS&E, performance of right of way activities, or performance of PROJECT construction, new information is obtained, which requires additional environment documentation to comply with the California Environmental Quality Act (CEQA) and if

applicable, the National Environmental Policy Act (NEPA), this Agreement will be amended to include completion of these additional tasks by CITY.

12. During the construction of PROJECT, representatives of CITY and STATE will cooperate and consult, and all PROJECT work shall be accomplished according to STATE-accepted plans and specifications, and STATE's applicable standards. STATE's representative shall verify satisfaction of these requirements. STATE's representative is authorized to enter CITY's property during construction for the purpose of monitoring and coordinating construction activities.
13. Changes to the PROJECT PS&E shall be implemented by contract change orders reviewed and concurred with by STATE's representative. All changes affecting public safety or public convenience, all design and specification changes, and all major changes as defined in STATE's Construction Manual shall be approved by STATE in advance of performing the work. Unless otherwise directed by STATE's representative, changes authorized as provided herein will not require an encroachment permit rider. All changes shall be shown on the "As-Built" plans referred to in Section I, Article 32.
14. CITY shall provide a construction contract claims process acceptable to STATE and shall process any and all claims through CITY's claim process. STATE's representative will be made available to CITY to provide advice and technical input in any claim process.
15. CITY agrees to obtain, as PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permit, agreements and/or approvals, those said costs shall be a PROJECT cost.
16. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or environmental approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
17. Any hazardous material or contamination of an HM-1 category found within existing SHS right of way during PROJECT shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within local road right of way during PROJECT shall be the responsibility of CITY. For the purpose of this Agreement, hazardous material of HM-1 category is defined as that level or type of contamination which must be remediated by reason of its mere discovery regardless of whether it is disturbed by PROJECT or not. STATE shall sign the HM-1 manifest and pay all costs for remedy or remedial action within existing SHS right of way, except that if STATE determines, in its sole judgment, that STATE's cost for remedy or remedial action is increased as a result of CITY's decision to proceed with PROJECT, that additional cost identified by STATE shall be borne by CITY. CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within local road right of way or other property. While STATE will exert every reasonable effort to fund the remedy or remedial action for which STATE is responsible, in the event STATE is unable to provide

funding, CITY will have the option to either delay PROJECT until STATE is able to provide that corrective funding or CITY may proceed with the remedy or remedial action as a PROJECT expense without any subsequent reimbursement by STATE

18. Any remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within existing SHS right of way shall be the responsibility of CITY, who shall sign the HM-2 manifest and management of HM-2 will be a PROJECT cost if the PROJECT proceeds. Any remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within CITY right of way shall be the responsibility of CITY who shall sign the HM-2 manifest and management of HM-2 will be at CITY's cost, if the PROJECT proceeds. For the purposes of this Agreement any hazardous material or contamination of HM-2 category is defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed had PROJECT not proceeded.
19. If hazardous material or contamination of either HM-1 or HM-2 category is found on new right of way acquired by or on account of CITY for PROJECT, CITY shall be responsible, at CITY's expense, for all required remedy or remedial action and/or protection in the absence of a generator or prior property owner willing and prepared to perform that corrective work.
20. Remedial actions proposed by CITY on SHS right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and practices and standards and practices mandated by those Federal and State regulatory agencies.
21. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). PARTIES agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
22. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the acquisition of R/W, construction, operation, or maintenance of SHS and public facilities different from the standard of care imposed by law.
23. If any existing utility facilities conflict with PROJECT construction or violate STATE's encroachment policy, CITY shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.
24. The costs for PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside STATE's R/W shall be determined in accordance

with Federal and California laws and regulations, and STATE's policies, procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts

25. Neither STATE 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 under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
26. 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 STATE under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
27. Pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas as are within the limits of PROJECT and are open to public traffic, CITY shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CITY shall take all necessary precautions for safe operation of CITY's vehicles, the construction contractor's equipment and vehicles or vehicles of personnel retained by CITY, and for the protection of the traveling public from injury and damage from such vehicles or equipment.
28. Upon completion and acceptance of the construction contract for PROJECT by CITY to the satisfaction of STATE's representative and subsequent to the execution or amendment of a maintenance agreement, STATE will accept control and maintain, at its own cost and expense, those portions of PROJECT lying within the SHS R/W, except local roads delegated to CITY for maintenance.
29. Upon completion of all work under this Agreement, ownership and title to materials, equipment, and appurtenances installed within the SHS R/W will automatically be vested in STATE, and materials, equipment and appurtenances installed outside of the SHS R/W will automatically be vested in CITY. No further agreement will be necessary to transfer ownership as hereinbefore stated.
30. CITY will accept control and maintain, at its own cost and expense, the portions of PROJECT lying outside the SHS R/W. Also, CITY will maintain at CITY's expense, local roads within STATE's R/W delegated to CITY for maintenance.

31. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
32. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by PARTIES hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
33. Prior to the commencement of any work pursuant to this Agreement, either STATE or CITY may terminate this Agreement by written notice to the other party.
34. Those portions of this Agreement pertaining to the design and construction of PROJECT shall terminate upon the satisfactory completion of all post-construction obligations of CITY and delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2017, whichever is earlier in time, except that the ownership, operation, maintenance, environmental commitments, legal challenges, indemnification, and claims clauses shall remain in effect until terminated or modified in writing, by mutual agreement. Should any construction-related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related claims are settled, dismissed or paid.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

By: _____
JOSEPH C. CAPUTO II, P.E., Chief
North Region Program/Project Management

Approved as to form and procedure:

By: _____
Attorney, Department of Transportation

Certified as to funds:

By: _____
District Budget Representative

Certified as to financial terms and policies:

By: _____
Accounting Administrator

CITY OF SACRAMENTO

By: _____
RAY KERRIDGE
City Manager

Attest: _____
City Clerk

Approved as to form and procedure:

By: _____
City Attorney

Certified as to funds:

By: _____
City Financial Officer

EXHIBIT A

The total PROJECT cost estimate for all PS&E, RW and construction phases of work covered under this Agreement is \$95,026,000, fully funded by STATE, Local Federal aid, and Local funds as listed below.

<u>SOURCE:</u>	<u>AMOUNT:</u>
STATE (a):	
STIP-RIP (toward R/W)	\$ 5,108,000
Sub-total:	<u>\$ 5,108,000</u>
LOCAL FEDERAL (b):	
Regional Surface Transportation Program (RSTP)	\$3,899,000
Sub-total:	<u>\$ 3,899,000</u>
LOCAL FUNDS (c):	
Local Funds	\$ 86,019,000
Sub-total:	<u>\$ 86,019,000</u>
TOTAL PROJECT COST:	\$ 95,026,000

(a) "Changes to STATE funding, if any, shall require an amendment to this Agreement or must be authorized in a superseding cooperative agreement and identified in the appropriate PROJECT approval document(s) (PSR, PSR/PR, DPR, PR, etc.)."

(b) "In the absence of STATE funding, the level of LOCAL FEDERAL funding and all required non-STATE matching funds identified in this Exhibit is subject to change(s) pursuant to any applicable Local Assistance Master Agreement and PROJECT specific Program Supplemental Agreement(s) between STATE and CITY. Said change(s) will not require an amendment to this Agreement, but must be identified in changes to the appropriate PROJECT approval document(s) (PSR, PSR/PR, DPR, PR, etc.)."

(c) " In the absence of STATE funding, the level of LOCAL FUNDS funding identified in this Exhibit is subject to change(s) pursuant to Local budgeting authority. Said changes will not require an amendment to this Agreement, but must be identified in changes to the appropriate PROJECT approval document(s) (PSR, PSR/PR, DPR, PR, etc.)."

STATE's estimated cost of PROJECT IQA is approximately \$1,500,000.