

CITY OF MOUNTAIN VIEW  
RESOLUTION NO.  
SERIES 2019

A RESOLUTION APPROVING COOPERATIVE AGREEMENT NO. 04-2716 BETWEEN THE CITY OF MOUNTAIN VIEW AND THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR IMPROVEMENTS TO THE STATE HIGHWAY SYSTEM PER THE CALIFORNIA STREETS AND HIGHWAYS CODE SECTIONS 114 AND 130 FOR CALTRANS TO PERFORM QUALITY MANAGEMENT WORK, INCLUDING INDEPENDENT QUALITY ASSURANCE AND APPROVALS OF THE PLANS, SPECIFICATIONS, AND ENGINEERING ESTIMATE (PS&E), RIGHT-OF-WAY, AND CONSTRUCTION FOR THE SHORELINE BOULEVARD/101 NB OFF-RAMP REALIGNMENT, PROJECT 19-59, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City desires to realign the northbound U.S. 101 off-ramp to intersect with La Avenida, which currently intersects Shoreline Boulevard, to improve traffic circulation in the North Bayshore Precise Plan Area, and this project is the Shoreline Boulevard/101 NB Off-Ramp Realignment, Project 19-59, in Santa Clara County; and

WHEREAS, Caltrans is the owner/operator of the State Highway System and, therefore, has review and approval authority over PS&E, Right-of-Way, and Construction for the Shoreline Boulevard/101 NB Off-Ramp Realignment, Project 19-59; and

WHEREAS, Caltrans requires the City to enter into that certain Cooperative Agreement No. 04-2716, containing terms and conditions requiring the City to complete the design, right-of-way acquisition, and construction of the realignment project, and for Caltrans to perform quality management work, including independent quality assurance and approvals for those portions of the realignment project within the existing and proposed State highway system right-of-way; and

WHEREAS, Caltrans requires the City to adopt a resolution to approve the Cooperative Agreement;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Mountain View hereby approves the attached Cooperative Agreement No. 04-2716 and authorizes the City Manager to Execute this agreement on behalf of the City.

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TS/3/RESO  
943-04-30-19r

Exhibit: A. Agreement No. 04-2716

## 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 Mountain View, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

### RECITALS

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per the California Streets and Highways Code sections 114 and 130.
2. For the purpose of this AGREEMENT, *US 101 Northbound Off-Ramps/Shoreline Boulevard/La Avenida Modifications Project proposes to realign the northbound US 101 Shoreline Boulevard off-ramp to intersect with La Avenida to improve traffic operations at the interchange and local circulation in the North Bayshore Precise Plan area*, will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g. Project Study Report, Permit Engineering Evaluation Report, or Project Report).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENTS will be referred to hereinafter as WORK:
  - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)
  - RIGHT-OF-WAY
  - CONSTRUCTION

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

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

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

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

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

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

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

5. The following work associated with this PROJECT has been completed:
  - CALTRANS signed the Categorical Exemption on July 31, 2018 (Cooperative Agreement No. 04-2646).
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

## **RESPONSIBILITIES**

### **Sponsorship**

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

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

### **Implementing Agency**

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

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

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

- CITY is the RIGHT OF WAY IMPLEMENTING AGENCY

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

- CITY is the Construction IMPLEMENTING AGENCY.

CONSTRUCTION work includes construction contract administration, surveying/staking, inspection, quality assurance, and assuring regulatory compliance. The CONSTRUCTION component budget identifies the capital costs of the construction contract/furnished materials (CONSTRUCTION CAPITAL) and the cost of the staff work in support of the construction contract administration (CONSTRUCTION SUPPORT).

11. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for the WORK in that component. The Quality Management Plan describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The Quality Management Plan will include a process for resolving disputes between the PARTIES at the team level. The Quality Management Plan is subject to CALTRANS review and approval.
12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

### **Funding**

13. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary attachment of this AGREEMENT.

PARTIES will amend this AGREEMENT by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.

14. PARTIES will not be reimbursed for costs beyond the funds obligated in this AGREEMENT.
15. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
16. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
17. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

### **CALTRANS' Quality Management**

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

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

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

### **CEQA Lead Agency**

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

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

23. PARTIES will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTIES responsibilities in this AGREEMENT.
24. 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.
25. The PROJECT will not require environmental permits/approvals.

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

26. As the PS&E IMPLEMENTING AGENCY, CITY is responsible for all PS&E WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
27. CALTRANS will be responsible for completing the following PS&E activities:

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

28. 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.

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

**RIGHT-OF-WAY**

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

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



32. The selection of personnel performing RIGHT-OF-WAY WORK will be in accordance with federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements.
33. 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.
34. 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.
35. 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.
36. Acquisition of right-of-way will not occur prior to the approval of the environmental document without written approval from CALTRANS since CALTRANS is the CEQA Lead Agency.
37. CITY will hear and adopt Resolutions of Necessity when authorized to do so by law or will work with local agencies having jurisdiction and authorized under the law to hear and adopt Resolutions of Necessity.

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

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

If CALTRANS acquires any right-of-way, CALTRANS will first acquire in CITY's name.

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

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

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

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

40. Physical and legal possession of the right-of-way must be completed prior to advertising the construction contract, unless PARTIES mutually agree to other arrangements in writing.
41. 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.
42. Right-of-way conveyances must be completed prior to WORK completion unless PARTIES mutually agree to other arrangements in writing.

### **CONSTRUCTION**

43. As the CONSTRUCTION IMPLEMENTING AGENCY, CITY is responsible for all CONSTRUCTION WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
44. CALTRANS will be responsible for completing the following CONSTRUCTION SUPPORT activities:

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

45. CALTRANS will not issue an Encroachment Permit to CITY for construction work until the following conditions are met:
- CALTRANS accepts the final plans, specifications, and estimate
  - CALTRANS accepts the Right-of-Way Certification

- Any new or amended Maintenance Agreement required for the WORK are executed.
46. 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.
  47. 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.
  48. It is understood between the PARTIES that CITY may reject all bids and choose not to proceed to construction if the lowest bid is higher than the construction funding amount shown in the attached Funding Summary table unless City Council approves additional funding.
  49. 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
  50. The CONSTRUCTION QMP 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.
  51. The CONSTRUCTION QMP will address the radiation safety requirements of the California Code of Regulations 17 CCR § 30346 when the work requires Gamma-Gamma Logging acceptance testing for Cast in Drilled Hole (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.
  52. 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.
  53. 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).
54. CITY will administer and process all construction contract claims pursuant to the requirements set forth under *Public Contract Code*, Sections 9204 and 20104. CALTRANS will provide Independent Quality Assurance for the claims process.
55. 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.
56. CITY will submit a written request to CALTRANS for any Department Furnished Material (DFM) identified in the PROJECT plans, specifications, and estimate a minimum of sixty (60) working days prior to the construction start of work. CITY will submit a written request to CALTRANS for any additional Department Furnished Materials deemed necessary during the PROJECT construction.
- CALTRANS will make the Department Furnished Materials available at a CALTRANS-designated location.
57. 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 State Highway System 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.
58. Upon WORK completion, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the State Highway System within State Highway System 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 State Highway System right-of-way.

59. Within one hundred eighty (180) calendar days following the completion and acceptance of the WORK, CITY will 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, will contain the filing information provided by the county in which filed.

### **Schedule**

60. 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.
61. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with a final report of the WORK completed.

### **Additional Provisions**

#### **Standards**

62. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; FHWA standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:

- CADD Users Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual (PDPM)
- Workplan Standards Guide
- Standard Environmental Reference
- Highway Design Manual
- Right of Way Manual
- Construction Manual
- Construction Manual Supplement for Local Agency Resident Engineers
- Local Agency Structure Representative Guidelines

Noncompliant Work

63. 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

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

Consultant Selection

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

### Encroachment Permits

66. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System right-of-way. CITY, their contractors, consultants, agents and utility owners will not work within the State Highway System right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to CITY, their contractors, consultants, agents, and utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
67. 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

68. 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

69. 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.

70. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public documents. PARTIES will consult with each other prior to the release of any public documents related to the WORK.

Hazardous Materials

71. 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.

72. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
73. 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.

74. 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.

75. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.
76. 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

77. 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.



78. 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.
79. 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

80. 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.
81. 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.

82. 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.

83. 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.
84. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with Chapter 10 of the Local Assistance Procedures Manual.

#### Interruption of Work

85. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
86. If WORK stops for any reason, each PARTY will continue to implement the obligations of this AGREEMENT, including the commitments and conditions included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

#### Penalties, Judgements and Settlements

87. The cost of awards, judgments, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
88. Any PARTY who action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

#### Project Files

89. 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 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.

### Environmental Compliance

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

## **GENERAL CONDITIONS**

### **Venue**

91. 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**

92. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming of funds by the California Transportation Commission (CTC) and the allocation thereof by the CTC.
93. All CITY's obligations under this AGREEMENT including the attached Funding Summary table are subject to the appropriations of resources and funding by the City Council.

### **Indemnification**

94. Neither CALTRANS nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

95. Neither CITY nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

### **Non-parties**

96. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
97. 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**

98. Neither CITY nor CALTRANS will interpret any ambiguity contained in this AGREEMENT against each other. Both CITY and CALTRANS waives the provisions of California Civil Code section 1654.

A waiver of a PARTIES's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

99. 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**

100. 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**

101. 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.

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

### **Prevailing Wage**

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

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

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

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

## **DEFINITIONS**

PARTY – Any individual signatory party to this AGREEMENT.

PARTIES – The term that collectively references all of the signatory agencies to this AGREEMENT.

WORK BREAKDOWN STRUCTURE (WBS) – A WBS is a standardized hierarchical listing of project work activities/products in increasing levels of detail. The CALTRANS WBS defines each PROJECT COMPONENT as a group of work activities/products. The CALTRANS Work Breakdown Structure is defined in the CALTRANS Workplan Standards Guide.

### **Contact Information**

#### **CALTRANS**

Kathy Karroubi, Project Manager  
111 Grand Ave  
Oakland, CA 94612  
Office Phone: 510-286-5876  
Email: kathy.karroubi@dot.ca.gov

#### **CITY OF MOUNTAIN VIEW**

Sayed Fakhry, City Traffic Engineer  
500 Castro Street  
Mountain View, CA 94041  
Office Phone: (650) 903-6311  
Email: Sayed.Fakhry@mountainview.gov

**SIGNATURES**

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

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


**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Helena (Lenka) Culik-Caro  
Deputy District Director, Design

**VERIFICATION OF FUNDS AND  
AUTHORITY:**

\_\_\_\_\_  
Jeffrey Armstrong  
District Budget Manager

**CERTIFIED AS TO FINANCIAL TERMS  
AND POLICIES:**

  
\_\_\_\_\_  
Tamara Warren  
HQ Accounting Supervisor

**CITY OF MOUNTAIN VIEW**

\_\_\_\_\_  
Daniel H. Rich  
City Manager

**ATTEST:**

\_\_\_\_\_  
Lisa Natusch  
City Clerk

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Michael A. Fuller  
Public Works Director

**FINANCIAL APPROVAL:**

\_\_\_\_\_  
Jesse Takahashi  
Finance and Administrative Services Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jannie Quinn  
City Attorney

**FUNDING SUMMARY NO. 01**

IMPLEMENTING AGENCY →		<b><u>FUNDING TABLE</u></b>						
		CITY		CITY		CITY		
Source	Party	Fund Type	PS&E	R/W SUPPORT	R/W CAPITAL	CONST. SUPPORT	CONST. CAPITAL	Totals
LOCAL	CITY	Local	1,800,000	100,000	4,000,000	2,200,000	11,900,000	20,000,000
Totals			1,800,000	100,000	4,000,000	2,200,000	11,900,000	20,000,000

IMPLEMENTING AGENCY →		<b><u>SPENDING SUMMARY</u></b>										
		PS&E		R/W Support		R/W CAPITAL		CONST. SUPPORT		CONST. CAPITAL		
Fund Type	CITY	CALTRANS	CITY	CALTRANS	CITY	CITY	CALTRANS	CITY	CALTRANS	CITY	DFM CALTRANS	Totals
Local	0	1,800,000	0	100,000	4,000,000	0	2,200,000	11,850,000	50,000	20,000,000		
<b>Totals</b>	0	1,800,000	0	100,000	4,000,000	0	2,200,000	11,850,000	50,000	20,000,000		



**Funding**

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

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

2. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTY accepts responsibility to fund their respective WORK until such time as PARTIES amend this AGREEMENT.

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

3. Caltrans acknowledges that Shoreline Community financed acquisition and construction of the off-ramp with tax-exempt bonds and covenants that it will not use the off-ramp or any property transferred to Caltrans as a part of the project in a manner that would cause the bonds to satisfy the private business tests of section 141(b) of the Internal Revenue Code of 1986, as amended.

**ICRP Rate**

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

**Invoicing and Payment**

5. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice 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.
6. 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.
7. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

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

8. No invoicing or reimbursement will occur for the PS&E PROJECT COMPONENT.

**RIGHT-OF-WAY Support**

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

**RIGHT-OF-WAY Capital**

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

**CONSTRUCTION Support**

11. No invoicing or reimbursement will occur for the CONSTRUCTION SUPPORT PROJECT COMPONENT.

**CONSTRUCTION Capital**

12. No invoicing or reimbursement will occur for the CONSTRUCTION CAPITAL PROJECT COMPONENT.

*Department Furnished Materials (DFM)*

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