

07-LA-110 KP 0.41/1.36
John S. Gibson Interchange
Improvement at I-110
07186-26060K

District Agreement No. 07-4781

Harbor Department
Agreement 08-2717
City of Los Angeles

COOPERATIVE AGREEMENT

This AGREEMENT, entered into effective on Nov. 25, 2008, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

PORT OF LOS ANGELES, a body politic and a municipal corporation of the City of Los Angeles, acting by and through its Board of Harbor Commissioners, referred to herein as "PORT".

RECITALS

1. STATE and PORT, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within the City of Los Angeles.
2. PORT desires State Highway improvements consisting of widening the State Route 47/I-110 connector from one to two lanes and northbound ramps at the I-110 and John S. Gibson Boulevard interchange in the City of Los Angeles, referred to herein as "PROJECT". PROJECT will help accommodate the expected traffic demands in the future.
3. PORT is willing to fund one hundred percent (100%) of all capital outlay and support costs for environmental, design and right of way, except that the costs of STATE's Independent Quality Assurance (IQA) of PROJECT development and STATE's costs incurred as the California Environmental Quality Act (CEQA) Lead Agency and National Environmental Policy Act (NEPA) Lead Agency, if applicable, in the review and approval if appropriate of the PROJECT environmental documentation prepared entirely by PORT, will be borne by STATE.
4. STATE funds will not be used to finance any of the PROJECT capital and support costs except as set forth in Recitals 3 above.
5. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
6. While this Agreement and any activities hereunder shall not be construed as indication by PORT or STATE that environmental documents may be certified or that the PROJECT will be approved, and in fact shall not commit STATE or PORT to certify any environmental documents or approve the PROJECT, the parties agree that PROJECT construction, if any, will be the subject of a separate future cooperative agreement.
7. This Agreement will define the roles and responsibilities of the CEQA Lead Agency and CEQA Responsible Agency regarding environmental documentation, studies and reports necessary for compliance with CEQA. This Agreement will also define roles and responsibilities for compliance with NEPA, if applicable.
8. The parties now define herein below the terms and conditions under which PROJECT is to be developed, designed, and financed.

SECTION I

PORT AGREES:

1. To fund one hundred percent (100%) of all PROJECT development costs except for costs of STATE's IQA, STATE's review, comment, and approval if appropriate, of the PROJECT environmental documentation for CEQA, and NEPA, if applicable.
2. To not use STATE funds for any PROJECT capital and support costs.
3. All PROJECT work performed by PORT, or performed on PORT's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies and 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 stages of development.

4. All PROJECT work, except as set forth in this Agreement, is to be performed by PORT. Should PORT request that STATE perform any portion of PROJECT work, except as otherwise set forth in this Agreement, PORT shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
5. To have a Project Report (PR) and detailed Plans, Specifications, and Estimates (PS&E) prepared, at no cost to STATE, and to submit each to STATE for STATE's review and concurrence at appropriate stages of development. The PR, and the final PS&E for PROJECT shall be signed on behalf of PORT by a Civil Engineer registered in the State of California. PORT agrees to provide landscape plans prepared and signed by a licensed California Landscape Architect.
6. To have all necessary right of way maps and documents used to acquire right of way by PORT prepared by or under the direction of a person authorized to practice land surveying in the State of California. Each right of way map and document shall bear the appropriate professional seal, certificate number, expiration date of registration certification and signature of the licensed person in Responsible Charge of Work.
7. To permit STATE to monitor, participate, and oversee in the selection of personnel who will prepare the PR, prepare environmental documentation, including the investigative studies and technical environmental reports, prepare the PS&E, provide right of way engineering services, and provide right of way acquisition services. PORT agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, conflict of interest, failure to perform, and/or other pertinent criteria.
8. To submit to STATE for review and concurrence all Right of Way Engineering Land-Net Maps and Right of Way Appraisal Maps, Records of Survey, and Right of Way Record Maps in accordance with STATE's Right of Way Manual, Chapter 6, Right of Way Engineering, STATE's Plans Preparation Manual, STATE's Surveys Manual, applicable State laws, and other pertinent reference materials and examples as provided by STATE.
9. Personnel who prepare the PS&E and environmental documentation, including the 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 the PS&E, right of way acquisition, construction, and/or to make design revisions for contract change orders.
10. Personnel who prepare right of way maps, documents, and related materials shall be made available to STATE, at no cost to STATE, during and after construction of PROJECT until completion and acceptance by STATE of Right of Way Record Maps, Records of survey, and title to any property intended to be transferred to STATE.
11. To make written application to STATE for necessary encroachment permits authorizing entry of PORT onto the SHS right of way to perform surveying and other investigative activities required for preparation of the PR, environmental documentation, and/or PS&E.
12. To identify and locate all utility facilities within the area of PROJECT as part of the design responsibility for PROJECT. All utility facilities not relocated or removed in advance of construction shall be identified on the PS&E for PROJECT.

13. If any existing utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, PORT shall make all the necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.

The costs for the PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside STATE's right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies and procedures, standards, practices, and applicable agreements, including, but not limited to, Freeway Master Contracts.

14. 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 right of way 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.
15. To acquire and furnish all right of way, if any, outside of the existing SHS right of way and to perform all right of way 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 and title to property acquired for PROJECT is acceptable for incorporation into the SHS right of way.
16. To utilize the services of a qualified public agency or a qualified consultant, as determined by STATE's Right of Way Project Delivery Manager, Los Angeles Office, in all matters related to the acquisition of right of way in accordance with STATE's procedures as published in STATE's current Right of Way Manual. Whenever personnel other than personnel of a qualified public agency, or a qualified consultant, are utilized, administration of the personnel contract shall be performed by a qualified Right of Way person employed or retained by PORT.
17. To certify legal and physical control of right of way ready for construction and that all right of way 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.
18. To deliver to STATE legal title to the right of way, 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 SHS 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 PORT.
19. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside the existing SHS right of way that could impact PROJECT as part of performing any preliminary engineering work. If PORT discovers hazardous material or contamination within the PROJECT study area during said investigation, PORT shall immediately notify STATE.
20. If PORT desires to have STATE advertise, award, and administer the construction contract for PROJECT, PORT shall provide STATE with plans in a format acceptable to STATE. Reimbursement to STATE for costs incurred by STATE to advertise, award, and administer the construction contract for PROJECT will be covered in the separate Cooperative Agreement referred to in Article 19 of Section III of this Agreement.

21. All aerial photography and photogrammetric mapping shall conform to STATE's current standards.
22. A copy of all original survey documents resulting from surveys performed for PROJECT, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, 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.
23. All original recorded land title documents created by PROJECT shall be delivered to STATE and become property of STATE.
24. To submit to STATE a list of STATE horizontal and vertical control monuments, which will be used to control surveying activities for PROJECT.

SECTION II

STATE AGREES:

1. At no cost to PORT, to complete STATE's review as CEQA Lead Agency and NEPA Lead Agency, if applicable, of the environmental documents prepared and submitted by PORT and to provide IQA of all PORT work necessary for completion of the PR and PS&E for PROJECT done by PORT, including, but not limited to, investigation of potential hazardous material sites and all right of way activities undertaken by PORT or its designee, and provide prompt reviews and concurrence, as appropriate, of submittals by PORT, while cooperating in timely processing of documents necessary for completion of the environmental documentation, PR, and PS&E for PROJECT.
2. Upon proper application by PORT and by PORT's contractor, to issue, at no cost to PORT and PORT's contractor, the necessary encroachment permits for required work within the SHS right of way, as more specifically defined elsewhere in this Agreement.

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, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC). Additionally, this Agreement is subject to the provisions of the Los Angeles City Charter, which, among other things, precludes PORT from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefore. The Board of Harbor Commissioners in approving this Agreement is expected to appropriate sufficient funds to meet the estimated expenditures through June 30 of the fiscal year in which its approval is given and to make further appropriations in each succeeding fiscal year during the term of this Agreement. However, it is under no obligation to do so. If, in any fiscal year following approval of this Agreement funds are not appropriated for work required by this Agreement, this Agreement shall be terminated. However, such termination shall not relieve either STATE or PORT of liability for any obligations previously incurred.

2. The parties to this Agreement understand and agree that STATE's IQA is defined as, providing STATE policy and procedural guidance through to completion of the PROJECT preliminary engineering, PS&E, and right of way phases administered by PORT. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by PORT conform with then existing 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 to verify and recheck any work performed by PORT and/or its contractors and no liability will be assignable to STATE, its officers and employees by PORT under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and PORT will pay or authorize STATE to reimburse itself from then available PROJECT funds.
3. The Project Study Report (PSR) for PROJECT, approved on January 23, 2007, is by this reference, made an express part of this agreement.
4. The basic design features shall comply with those addressed in the approved PSR, unless modified as required for completion of the PROJECT's environmental documentation and/or if applicable, requested by the Federal Highway Administration (FHWA).
5. The design, right of way acquisition, and preparation of environmental documentation and related investigative studies and technical environmental reports 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 PORT in a timely manner regarding the effect of proposed and/or required changes on PROJECT.
6. STATE will be the CEQA Lead Agency and PORT will be a CEQA Responsible Agency. STATE will be the Federal Lead Agency for NEPA, if applicable. PORT will assess PROJECT impacts on the environment and PORT will prepare the appropriate level of environmental documentation and necessary associated supporting investigative studies and technical environmental reports in order to meet the requirements of CEQA and NEPA. If applicable, PORT will submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. The environmental document and/or categorical exemption/exclusion determination, including the administrative draft, draft, administrative final, and final environmental documentation, as applicable, will require STATE's review, comment, and approval prior to public availability.

If, during preparation of preliminary engineering, preparation of the PS&E, performance of right of way activities, or performance of PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and/or NEPA if applicable, this Agreement will be amended to include completion of those additional tasks by PORT.

7. PORT agrees to obtain, as a 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 permits, agreements, and/or approvals, those said costs shall be paid by PORT, as a PROJECT cost.

8. PORT 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.
9. 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 legal challenges shall be a PROJECT cost.
10. STATE, as a PROJECT cost, shall be responsible for preparing, submitting, publicizing and circulating all public notices related to the CEQA environmental process and NEPA environmental process if applicable, including, but not limited to, notice(s) of availability of the environmental document and/or determinations and notices of public hearings. Public notices shall comply with all State and Federal laws, regulations, policies and procedures. STATE will work with the appropriate Federal agency to publish notices in the Federal Register, if applicable.

STATE, as a PROJECT cost, shall be responsible for the planning, scheduling and holding all public meetings/hearings related to the CEQA environmental process and NEPA environmental process if applicable, including, but not limited to, public meetings/hearings on the environmental document. STATE shall provide PORT the opportunity to provide comments on any meeting exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other material to be used at the public meetings/hearings.

11. In the event, PORT would like to hold separate and/or additional public meetings regarding the PROJECT, PORT must clarify in any meeting notices, exhibits, handouts or other material that STATE is the CEQA Lead Agency and if applicable, the NEPA Lead Agency, and PORT is the CEQA Responsible Agency. Such notices, handouts and other materials shall also specify that public comments gathered at such meetings are not part of the CEQA and if applicable, NEPA, public review process. PORT shall provide STATE the opportunity to provide comments on any meeting exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE will maintain final editorial control of exhibits, handouts or other materials to be used at public meeting/hearing solely with respect to text or graphics that could lead to public confusion over CEQA and if applicable, NEPA, related roles and responsibilities.
12. All administrative reports, studies, materials, 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). The 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.
13. PORT's share of all changes in development and construction costs associated with modifications to the basic design features as described above shall be in the same

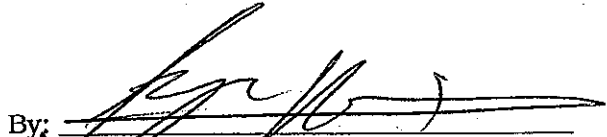
proportion as described in this Agreement, unless mutually agreed to the contrary by STATE and PORT in a subsequent amendment to this Agreement.

14. If unanticipated cultural, archaeological, paleontological or other protected materials are encountered during construction of PROJECT, STATE 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.
15. 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 PORT. 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 PORT's decision to proceed with PROJECT, that additional cost identified by STATE shall be borne by PORT. PORT shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the 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, PORT will have the option to either delay PROJECT until STATE is able to provide that corrective funding or PORT may proceed with the remedy or remedial action as a PROJECT expense without any subsequent reimbursement by STATE.
16. 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 PORT, 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 PORT right of way shall be the responsibility of PORT who shall sign the HM-2 manifest and management of HM-2 will be at PORT's cost, if the PROJECT proceeds. For the purposes of this Agreement, any hazardous material or contamination of an HM-2 category shall be 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.
17. 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 PORT for PROJECT, PORT shall be responsible, at PORT'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.
18. Remedial actions proposed by PORT on SHS right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and practices mandated by those Federal and State regulatory agencies.
19. A separate Cooperative Agreement will be required to cover responsibilities and funding for the PROJECT construction phase.
20. Nothing within 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 development, design construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.

21. 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 PORT under or in connection with any work, authority or jurisdiction conferred upon PORT and arising under this Agreement. It is understood and agreed that PORT shall fully defend, indemnify and save harmless STATE and all 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 PORT under this Agreement.
22. Neither PORT 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 conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless PORT 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.
23. Prior to commencement of any work pursuant to this Agreement, either STATE or PORT may terminate this Agreement by written notice to the other party.
24. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
25. This Agreement shall terminate upon the satisfactory completion of all post-PROJECT construction obligations of PORT and the delivery of required PROJECT construction documents, with concurrence of STATE, or on June 30, 2011, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles 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 or other claims are settled, dismissed or paid.

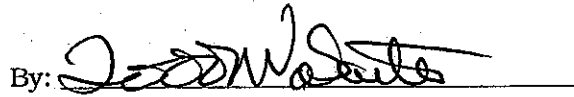
STATE OF CALIFORNIA
Department of Transportation

WILL KEMPTON
Director

By: 

Douglas R. Failing
District Director

Approved as to Form and Procedure:

By: 

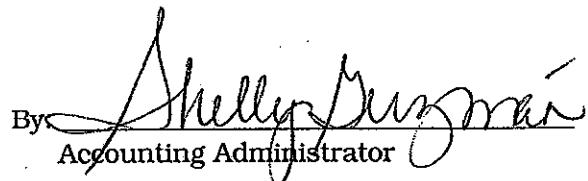
Attorney
Department of Transportation

Certified as to Funds:

By: 

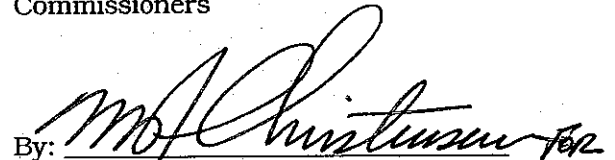
District Budget Manager

Certified as to Financial Terms and Conditions:

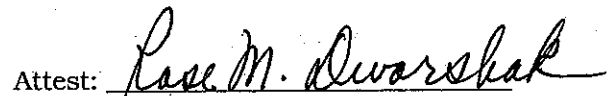
By: 

Accounting Administrator

PORT OF LOS ANGELES, acting by
and through its Board of Harbor
Commissioners

By: 

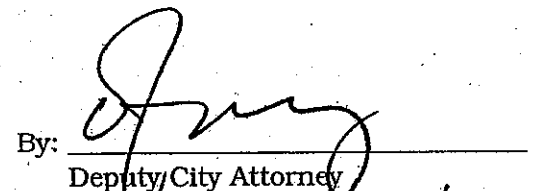
Executive Director
Board of Harbor Commissioners

Attest: 

Executive Secretary
Board of Harbor Commissioners

Approved as to Form:

By: _____
City Attorney

By: 

Deputy City Attorney
STEVEN Y. OTERA 9/29/08