

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 LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners, referred to herein as "CITY". (CITY had been previously referred to as 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.)

For the purpose of this Agreement, the term PARTNERS collectively refers to CALTRANS and CITY (all signatory parties to this Agreement). The term PARTNER refers to any one of those signatory parties individually.

RECITALS

1. California Streets and Highways Code sections 114 and 130 authorize PARTNERS to enter into a cooperative agreement for performance of work within the State Highway System (SHS) right of way.
2. For the purpose of this Agreement, CITY desires a SHS improvement consisting of widening the State Route 47/ Interstate 110 (SR 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, will be referred to hereinafter as "PROJECT". All responsibilities assigned in this Agreement to complete Construction, will be referred to hereinafter as "OBLIGATIONS".
3. This Agreement is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding, including all amendment(s), between PARTNERS regarding PROJECT.
4. Prior to this Agreement, CITY developed the PA&ED, PS&E and R/W on Cooperative Agreement No. 07-4781.
5. In this Agreement capitalized words represent defined terms and acronyms. The Definitions section contains a complete definition for each capitalized term.
6. PARTNERS hereby set forth the terms, covenants and conditions of this Agreement under which they will accomplish OBLIGATIONS.

RESPONSIBILITIES

7. CITY is SPONSOR for 100% of PROJECT.
8. CITY is IMPLEMENTING AGENCY for CONSTRUCTION.
9. CITY is the only FUNDING PARTNER for this Agreement.
10. CALTRANS is the CEQA lead agency for PROJECT.
11. CITY is the CEQA responsible agency for PROJECT.
12. CALTRANS is the NEPA lead agency for PROJECT.
13. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.

Per NEPA delegation and CEQA statutes, CALTRANS will perform its QC/QAP process review for environmental documentation.

SCOPE

Scope: General

14. CITY will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
15. CITY will ensure that all of its personnel participating in OBLIGATIONS are appropriately qualified, and if necessary licensed, to perform the tasks assigned to them.
16. CITY will invite CALTRANS to participate in the selection and retention of any consultants who participate in OBLIGATIONS.
17. If WORK is done under contract (not completed by CITY's own employees) and is governed by the California Labor Code's definition of "public works" (section 1720(a)(a)), CITY will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations.
18. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right of way.

Contractors and/or agents, and utility owners will not perform activities without an encroachment permit issued in their name.

19. If CITY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and CITY will notify CALTRANS

within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.

20. PARTNERS will hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) will govern the disclosure of such documents in the event that PARTNERS share said documents with each other.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.

21. If any PARTNER receives a public records request, pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within 5 working days of receipt and make PARTNERS aware of any disclosed public records. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
22. If HM-1 or HM-2 is found during a PROJECT COMPONENT, CITY will immediately notify CALTRANS.
23. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
24. CITY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside the existing SHS right of way. CITY will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
25. If HM-2 is found within PROJECT limits, CITY will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
26. 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.
27. CITY will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to CITY's responsibilities in this Agreement.
28. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right of way as part of WORK become the property of CALTRANS.

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

29. CITY will accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do the WORK.
30. If WORK stops for any reason, CITY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.
31. If WORK stops for any reason, CITY will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to CITY's responsibilities in this Agreement in order to keep PROJECT in environmental compliance until WORK resumes.

Scope: Construction

32. CITY will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code.

CITY will not advertise the construction contract until CALTRANS completes or accepts the final plans, specifications, and estimate package; CALTRANS approves the Right of Way Certification.

By accepting responsibility to advertise and award the construction contract, CITY also accepts responsibility to administer the construction contract.
33. CITY will provide a RESIDENT ENGINEER and CONSTRUCTION SUPPORT staffs that are independent of the design engineering company and construction contractor.
34. CITY will provide a landscape architect.
35. 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 specifications.
36. CITY will submit a written request for any SFM identified in the PROJECT plans, specifications, and estimate a minimum of 45 days prior to the bid advertisement date for PROJECT construction contract. CITY will submit a written request to CALTRANS for any additional SFM deemed necessary during PROJECT construction.
37. CALTRANS will make SFM available at a CALTRANS-designated location after CITY requests SFM and pays CALTRANS' invoice for estimated SFM cost.
38. CITY will prepare a QMP which will include a description of how source inspection will be performed and will submit the QMP to CALTRANS for review and approval by the State Materials Engineer.

CALTRANS will issue the parent permit to CITY upon submittal of a complete encroachment permit application. The parent permit will cite approval of the QMP by CALTRANS as a condition of issuing the double permit.

CALTRANS will issue the double permit to the contractor upon submittal of a complete encroachment permit application and all conditions cited in the parent permit have been met.

CITY will provide, or cause to provide, source inspection services.

39. CITY may request CALTRANS to complete portions of WORK as engineering services. CALTRANS must agree to perform engineering services in writing. Such an arrangement does not change CITY's responsibilities to complete the PROJECT.
40. Within 180 days following the completion and acceptance of the PROJECT construction contract, CITY shall furnish CALTRANS with a complete set of "As-Built" plans (hard copy and electronic formats) in accordance with CALTRANS' then current CADD Users Manual, Plans Preparation Manual, and CALTRANS practice. The submittal must also include all CALTRANS requested contract records, including land survey documents. These documents include monument preservation documents and Records of Surveys prepared to satisfy the requirements of the California Land Surveyors Act (Business and Professions Code sections 8700 – 8805). Copies of survey documents and Records of Surveys filed in accordance with Business & Professions Code, including sections 8762 and 8771, shall contain the filing information provided by the county in which it was filed. CITY shall also submit corrected full-sized hardcopy structure plans.
41. CITY is responsible for maintenance within PROJECT limits as part of the construction contract.
42. PARTNERS confirm that maintenance will be handled through an existing maintenance agreement.

COST

Cost: General

43. CITY will pay invoices within 30 calendar days of receipt of invoice.
44. CALTRANS, independent of PROJECT, will pay or cause to be paid all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
45. CITY, independent of PROJECT, will pay or cause to be paid all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside of the existing SHS right of way.
46. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
47. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS cost.
48. The cost to ensure-that PROJECT remains in environmental compliance is an OBLIGATIONS cost.

49. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS cost.
50. Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.

Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its QC/QAP process review for environmental documentation.
51. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at no cost.
52. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS cost.
53. Fines, interest, or penalties levied against CITY will be paid, independent of OBLIGATIONS cost, by CITY whose actions or lack of action caused the levy.
54. 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 are subject to the current Program Functional Rate. Local funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and the Administration Rate are adjusted periodically.
55. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS cost.
56. If there are insufficient funds in this Agreement to implement applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, CITY accepts responsibility to fund these activities.

Cost: Construction Capital

57. The cost of all SFM is a CONSTRUCTION CAPITAL cost.

CALTRANS will invoice CITY for the actual cost of any SFM as a CONSTRUCTION CAPITAL cost.

After PARTNERS agree that all WORK is complete, CALTRANS will submit a final accounting for all SFM costs. Based on the final accounting, PARTNERS will refund or invoice as necessary in order to satisfy the financial commitments of this Agreement.

SCHEDULE

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

GENERAL CONDITIONS

59. PARTNERS understand that this Agreement is in accordance with and governed by the Constitution and laws of the State of California. This Agreement will be enforceable in the State of California. Any PARTNER initiating legal action arising from this Agreement will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this Agreement resides, or in the Superior Court of the county in which PROJECT is physically located.

60. All OBLIGATIONS of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.

61. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this Agreement.

It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this Agreement.

62. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this Agreement.

It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY and/or its agents under this Agreement.

63. PARTNERS do not intend this Agreement to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. PARTNERS do not intend this Agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.

64. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this Agreement.

65. PARTNERS will not interpret any ambiguity contained in this Agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.

66. A waiver of a CITY's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this Agreement does not constitute an amendment to or negate all other articles or sections of this Agreement.
67. 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.
68. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within 30 calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.
69. PARTNERS will first attempt to resolve agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of CITY will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

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

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

PARTNERS will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this Agreement resides. The prevailing PARTNER will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this Agreement or to enforce the provisions of this article including equitable relief.

70. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
71. If any provision in this Agreement is deemed 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 PARTNERS will automatically sever those provisions from this Agreement.
72. PARTNERS intend this Agreement to be their final expression and supersede any oral understanding or writings pertaining to OBLIGATIONS.
73. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this Agreement to include completion of those additional tasks.
74. PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.

75. This Agreement will terminate upon OBLIGATION COMPLETION or an amendment to terminate this Agreement, whichever occurs first.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

DEFINITIONS

CALTRANS – The California Department of Transportation

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

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

CONSTRUCTION CAPITAL – See PROJECT COMPONENT.

CONSTRUCTION SUPPORT – See PROJECT COMPONENT.

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

FHWA – Federal Highway Administration

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at www.fhwa.dot.gov/topics.htm.

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

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

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

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

IQA (Independent Quality Assurance) – Ensuring that IMPLEMENTING AGENCY's quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan (QMP). IQA does not include any work necessary to

actually develop or deliver WORK or any validation by verifying or rechecking work performed by another partner.

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

OBLIGATION COMPLETION – PARTNERS have fulfilled all OBLIGATIONS included in this Agreement, and all amendments to this Agreement, and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

OBLIGATIONS – All responsibilities included in this Agreement.

PA&ED (Project Approval and Environmental Document) – See PROJECT COMPONENT.

PARTNER – Any individual signatory party to this Agreement.

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

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

- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right of Way) SUPPORT** – The activities required to obtain all property interests for PROJECT.
- **R/W (Right of Way) CAPITAL** – The funds for acquisition of property rights for PROJECT.
- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

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

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

QC/QAP (QUALITY CONTROL/QUALITY ASSURANCE PROGRAM) - Caltrans quality control and quality assurance procedures for all environmental documents as described in the Jay Norvell Memos dated July 2, 2007. This also includes the independent judgment analysis and determination under CEQA that the environmental documentation meets CEQA Guideline requirements.

QMP (Quality Management Plan) – An integral part of the Project Management Plan that describes IMPLEMENTING AGENCY's quality policy and how it will be used.

RESIDENT ENGINEER – A civil engineer licensed in the State of California who is responsible for construction contract administration activities. Said engineer must be independent of the design engineering company and the construction contractor.

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

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

SAFETEA-LU – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

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

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

SFM (State Furnished Materials) – Any materials or equipment supplied by CALTRANS

WORK – All scope activities included in this Agreement.

CONTACT INFORMATION

The information provided below indicates the primary contact data for each PARTNER to this Agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this Agreement.

The primary agreement contact person for CALTRANS is:

Name: Gabe Hamidi, Project Manager

Address: 100 South Main Street

Los Angeles, CA 90012

Office Phone: (213) 897-5354

Email: gabe_hamidi@dot.ca.gov

The primary agreement contact person for CITY is:

Name: Mehrdad Emami

Address: 425 S. Palos Verdes Street

San Pedro, CA 90731

Office Phone: (310) 732-3967

Email: MEmami@portla.org

SIGNATURES

PARTNERS declare that:

1. Each PARTNER is an authorized legal entity under California state law.
2. Each PARTNER has the authority to enter into this Agreement.
3. The people signing this Agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF LOS ANGELES

By: _____
District 07 Director

By: _____
Executive Director
Board of Harbor Commissioners

APPROVED AS TO FORM AND PROCEDURE:

Attest: _____
Executive Secretary
Board of Harbor Commissioners

By: _____
Attorney

APPROVED AS TO FORM:

CERTIFIED AS TO FUNDS:

By: _____
City Attorney

By: _____
Paul Kwong
District Budget Manager

By: _____
Deputy City Attorney