

STAFF REPORT

DATE: April 23, 2019

TO: City Council

FROM: Robert A. Clarke, Director of Public Works
Dianna Jensen, City Engineer

SUBJECT: Pole Line Road-Olive Drive Connection/Montgomery Walk/Bike Audit Report
(WBAR) Improvements, CIP No. 8313 Caltrans Cooperative Agreement

Recommendation

Approve the attached resolution approving a Cooperative Agreement with Caltrans for the Pole Line Road – Olive Drive bike connection.

Fiscal Impact

There are no fiscal impacts with this action.

Council Goal(s)

This project supports the Council's Goal to Fund, Maintain and Improve Infrastructure.

Background and Analysis

The Transportation Implementation Plan (TIP) identified the Pole Line Road-Olive Drive Connection/Montgomery WBAR Improvements, CIP No. 8313, as a high priority project. This project was studied as part of the Richards/Olive Corridor Study (ROCS), and presented to City Council in November 2016.

This project was submitted for regional and/or state grant funding four times in four years, the last time in 2017 for ATP Augmentation Round. On August 31st, the CTC released its list of recommended projects, including the City's Pole Line Road / Olive Drive Connection project for \$3,540,000 in funding available beginning in 2018.

On October 30, 2018, City Council approved a task order with Wood Rodgers for Final Design Professional Services as part of their On-Call Services Agreement. In order to move forward and finalize design, we need to have an agreement with Caltrans for them to review the environmental documentation as well as the Plans, Specifications and Estimate.

Construction for the Pole Line Road / Olive Drive Connection (CIP No. 8313) is anticipated to bid in late Fall of 2019 with a Spring 2020 start of construction schedule. This MOU addresses the roles and responsibilities for each agency to accomplish project approval and the ability to bid the project later this year.

Attachments

1. Resolution
2. Cooperative Agreement

RESOLUTION NO. 19-XXX, SERIES 2019
RESOLUTION APPROVING COOPERATIVE AGREEMENT WITH CALTRANS FOR
POLE LINE ROAD – OLIVE DRIVE PATH CONNECTION CIP NO. 8313

WHEREAS, the General Plan Transportation Element sets a policy to provide Complete Streets to meet the needs of drivers, public transportation vehicles and riders, bicyclists, and pedestrians of all ages and abilities in all transportation planning, programming, design, construction, reconstruction retrofit, operations, and maintenance activities and products; and

WHEREAS, the Transportation Element identifies the Pole Line Road to Olive Drive multi-use path as a necessary connection to provide safe routes to schools; and

WHEREAS, Caltrans requires a Cooperative Agreement and deposit for its review of a Project Study Report for a project affecting a Caltrans facility.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Davis that it hereby approves the attached Cooperative Agreement with Caltrans.

AND BE IT FURTHER RESOLVED that the City Manager is directed and authorized to execute the agreement, including any minor technical or clarifying changes as necessary.

PASSED AND ADOPTED by the City Council of the City of Davis on this 23th day of April, 2019 by the following vote:

AYES:

NOES:

ABSENT:

Brett Lee
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

Draft 03-0681 03.26.19

Work Description

CONSTRUCTING NEW BIKE AND PEDESTRIAN FACILITY ON POLE LINE RD
OVERCROSSING AT I-80

Contact Information

CALTRANS

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CITY OF DAVIS

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Please note:

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

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

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

RECITALS

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, constructing new bike and pedestrian facility on Pole Line Rd overcrossing at I-80 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:
 - PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT (PA&ED)
 - 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. No PROJECT deliverables have been completed prior to this AGREEMENT.
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 Project Approval and Environmental Document (PA&ED) IMPLEMENTING AGENCY.

PA&ED includes the completion of the Final Environmental Document and the Project Report (documenting the project alternative selection).

- 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 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 QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and approval.

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. The WORK does not use funds administered by CALTRANS. PARTIES will amend this AGREEMENT should this condition change.
14. Each PARTY is responsible for the costs they incur in performing the WORK unless otherwise stated in this AGREEMENT.

CALTRANS' Quality Management

15. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Independent Quality Assurance (IQA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
16. 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.

17. 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.
18. Per National Environmental Policy Act (NEPA) assignment and California Environmental Quality Act (CEQA) statutes, CALTRANS will perform environmental document quality control and NEPA assignment review procedures for environmental documentation. CALTRANS quality control and quality assurance procedures for all environmental documents are described in the NEPA Assignments memorandums, available at http://www.dot.ca.gov/ser/memos.htm#LinkTarget_705. This also includes the independent judgement analysis and determination under CEQA that the environmental documentation meets CEQA requirements.
19. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

20. CITY, including any employee, agent, consultant or sub-consultant retained by the CITY, shall implement uniform document control policies necessary to retain all records and electronically stored information associated with the WORK, including but not limited to those records identified in California Public Resources Code, Section 21167.6, and including email and attachments, in a manner consistent with the CALTRANS Uniform Filing System and the “Final Caltrans Environmental Records Retention Policy”, available at <http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/pdf/cal-env-rec-retention-policy.pdf>. These records, along with an index of the records, shall be provided to CALTRANS within 60 days of CALTRANS’ written request.
21. The cost of CALTRANS’ quality management work is to be borne by CALTRANS.

CEQA/NEPA Lead Agency

22. CITY is the CEQA Lead Agency for the PROJECT.
23. CALTRANS is a CEQA Responsible Agency for the PROJECT.
24. CALTRANS is the NEPA Lead Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

25. CITY 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 CITY’s responsibilities in this AGREEMENT.
26. 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.
27. It is expected that the PROJECT will not require environmental permits/approvals.

Project Approval and Environmental Document (PA&ED)

28. As the PA&ED IMPLEMENTING AGENCY, CITY is responsible for all PA&ED WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.

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

CALTRANS Work Breakdown Structure Identifier (If Applicable)
100.10.10.xx Quality Management
165.15.15.xx Essential Fish Habitat Consultation
165.15.15.xx Section 7 Consultation
165.25.25 Approval to Circulate Resolution
180.10.05.45 Section 7 Consultation
180.15.05 Record of Decision (NEPA)

30. Any PARTY preparing environmental documentation, including studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that the PROJECT remains in environmental compliance.
31. CITY will provide written notice of the initiation of environmental studies to the NEPA Lead Agency prior to completing any other PA&ED phase work.

California Environmental Quality Act (CEQA)

32. The CEQA Lead Agency will determine the type of CEQA documentation and will cause that documentation to be prepared in accordance with CEQA requirements.
33. Any PARTY involved in the preparation of CEQA documentation will prepare the documentation to meet CEQA requirements and follow the CEQA Lead Agency's standards that apply to the CEQA process.
34. CALTRANS is a CEQA Responsible Agency for the PROJECT and will review, comment, and concur on all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.
35. Any PARTY preparing any portion of the CEQA documentation, including any studies and reports, will submit that portion of the documentation to the CEQA Lead Agency for review, comment, and approval at appropriate stages of development prior to public availability.

36. If the CEQA Lead Agency makes any changes to the CEQA documentation, the CEQA Lead Agency will allow CALTRANS to review, comment, and concur on those changes prior to the CEQA Lead Agency's approval at appropriate stages of development prior to public availability.
37. If the CEQA Lead Agency makes any changes to CEQA-related public notices, then the CEQA Lead Agency will allow CALTRANS to review, comment, and concur on those changes prior to publication and circulation.
38. The CEQA Lead Agency will attend all CEQA-related public meetings.
39. If a PARTY who is not the CEQA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the CEQA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the CEQA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The CEQA Lead Agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities.

National Environmental Policy Act (NEPA)

40. Pursuant to Chapter 3 of Title 23, United States Code (23 U.S.C. 326) and 23 U.S.C. 327, CALTRANS is the NEPA Lead Agency for the PROJECT. CALTRANS is responsible for NEPA compliance, will determine the type of NEPA documentation, and will cause that documentation to be prepared in accordance with NEPA requirements.

CALTRANS, as the NEPA Lead Agency for PROJECT, will review, comment, and approve all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination and obtain, renew, or amend approvals pursuant to the Federal Endangered Species Act, and Essential Fish Habitat.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination approvals pursuant to Section 106 of the National Historic Preservation Act.

41. Any PARTY involved in the preparation of NEPA documentation will follow FHWA and CALTRANS standards that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook (available at www.fhwa.dot.gov/hep/index.htm) and the CALTRANS Standard Environmental Reference.
42. Any PARTY preparing any portion of the NEPA documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.
43. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.
- CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.
44. The NEPA Lead Agency will attend all NEPA-related public meetings.
45. CITY will submit all NEPA-related public meeting materials to CALTRANS for CALTRANS' review, comment, and approval at least ten (10) working days prior to the public meeting date.

46. If a PARTY who is not the NEPA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the NEPA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the NEPA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the NEPA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the NEPA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The NEPA Lead Agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

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

Plans, Specifications, and Estimate (PS&E)

48. 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.
49. CALTRANS will be responsible for completing the following PS&E activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)
100.15.10.xx Quality Management

50. 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.

51. 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

52. 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.

53. CALTRANS will be responsible for completing the following RIGHT-OF-WAY activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)
100.25.10.xx Quality Management

54. 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.
55. 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.
56. 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.
57. 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.

58. 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.

59. 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.

60. 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.

61. 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.
62. 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.
63. Right-of-way conveyances must be completed prior to WORK completion unless PARTIES mutually agree to other arrangements in writing.

CONSTRUCTION

64. 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.

65. CALTRANS will be responsible for completing the following CONSTRUCTION SUPPORT activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)
100.20.10.xx Quality Management

66. 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.
67. 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.
68. 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.
69. 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
70. The CONSTRUCTION Quality Management Plan (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 QMP is subject to review and approval by the State Materials Engineer.
71. The CONSTRUCTION Quality Management Plan 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.

72. 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.
73. 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).
74. CITY will administer and process all construction contract claims pursuant to the requirements set forth under Public Contract Code, Section 9204. CALTRANS will provide Independent Quality Assurance for the claims process.
75. 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.
76. As the CONSTRUCTION IMPLEMENTING AGENCY, CITY is responsible for maintenance of the State Highway System (SHS) 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 SHS 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.
77. PARTIES confirm that upon WORK completion, no maintenance agreement will be necessary.

78. 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 (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.

79. Within one hundred eighty (180) calendar days following the completion and acceptance of the PROJECT construction contract, 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, Sections 8762 and 8771, will contain the filing information provided by the county in which filed.

Schedule

80. 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.

Additional Provisions

Standards

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

- CADD 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

Qualifications

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

Consultant Selection

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

Encroachment Permits

84. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. CITY, their contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to CITY, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
85. 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

86. 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

87. 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.

88. 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

89. 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.

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

91. 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, independent of the PROJECT will pay, or cause to be paid, the cost of HM-1 MANAGEMENT related to HM-1 found within the existing State Highway System right-of-way.

92. 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, independent of the PROJECT, 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.

93. CITY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and CITY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. CITY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.
94. 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

95. CITY may accept, reject, compromise, settle, or litigate claims of any consultants or contractors hired to complete WORK without concurrence from the other PARTY.
96. 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.
97. 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.
98. 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.
99. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

Interruption of Work

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

Penalties, Judgements and Settlements

102. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

Project Files

103. 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.

GENERAL CONDITIONS

Venue

104. 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

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

Indemnification

106. 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.
107. 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

108. 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.
109. 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

110. CITY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. CITY waives the provisions of California Civil Code, Section 1654.

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

111. 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

112. 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

113. 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.

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

Prevailing Wage

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

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

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

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

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**

Nadarajah Suthahar
Acting Deputy District Director
District 3 Program / Project Management

**VERIFICATION OF FUNDS AND
AUTHORITY:**

Mundeep Takher
District Project Control Officer

CITY OF DAVIS

Mike Webb
City Manager

Attest:

Zoe S. Mirabile
City Clerk

Approved as to form and procedure:

Harriet Steiner
City Attorney

CLOSURE STATEMENT INSTRUCTIONS

1. Did PARTIES complete all scope, cost and schedule commitments included in this AGREEMENT and any amendments to this AGREEMENT?

YES / NO

2. Did CALTRANS accept and approve all final deliverables submitted by other PARTIES?

YES / NO

3. Did the CALTRANS HQ Office of Accounting verify that all final accounting for this AGREEMENT and any amendments to this AGREEMENT were completed?

YES / NO

4. If construction is involved, did the CALTRANS District Project Manager verify that all claims and third party billings (utilities, etc.) have been settled before termination of the AGREEMENT?

YES / NO

5. Did PARTIES complete and transmit the As-Built Plans, Project History File, and all other required contract documents?

YES / NO

If ALL answers are “YES”, this form may be used to TERMINATE this AGREEMENT.

CLOSURE STATEMENT

PARTIES agree that they have completed all scope, cost, and schedule commitments included in Agreement 03-0681 and any amendments to the agreement. The final signature date on this document terminates agreement 03-0681 except survival articles. All survival articles in agreement 03-0681 will remain in effect until expired by law, terminated or modified in writing by the PARTIES' mutual agreement, whichever occurs earlier.

The people signing this agreement have the authority to do so on behalf of their public agencies.

CALTRANS

SAMPLE

Name

Date

Acting Deputy District Director, District 3 Program / Project Management

CITY OF DAVIS

Name

Date

City Manager