

**Work Description**

PURPOSE IS TO WIDEN STATE ROUTE 59 FROM 2-LANE TO 4-LANE IN THE CITY OF  
MERCED

**Contact Information**

**CALTRANS**

Charlie Do, Project Manager  
1976 E. Dr. Martin Luther King Jr., Blvd  
Stockton, CA 95205  
Office Phone: 2099483803  
Email: charlie.do@dot.ca.gov

**CITY OF MERCED**

Michael Beltran, City Engineer  
678 W. 18th Street  
Merced, CA 95340  
Office Phone: (209) 385-6846  
Email: beltranm@cityofmerced.org

**Table of Contents**

COOPERATIVE AGREEMENT ..... 1

RECITALS ..... 1

RESPONSIBILITIES ..... 3

    Sponsorship ..... 3

    Implementing Agency ..... 3

    Funding ..... 3

    CALTRANS’ Quality Management ..... 4

    CEQA/NEPA Lead Agency ..... 5

    Environmental Permits, Approvals and Agreements ..... 5

    Project Approval and Environmental Document (PA&ED) ..... 6

        California Environmental Quality Act (CEQA) ..... 6

        National Environmental Policy Act (NEPA) ..... 8

    Schedule ..... 9

    Additional Provisions ..... 10

        Standards ..... 10

        Qualifications ..... 10

        Consultant Selection ..... 10

        Encroachment Permits ..... 10

        Protected Resources ..... 11

        Disclosures ..... 11

        Hazardous Materials ..... 11

        Claims ..... 12

        Interruption of Work ..... 13

        Penalties, Judgements and Settlements ..... 13

        Project Files ..... 13

GENERAL CONDITIONS ..... 14

    Venue ..... 14

    Exemptions ..... 14

    Indemnification ..... 14

Non-parties..... 15  
Ambiguity and Performance ..... 15  
Defaults ..... 15  
Dispute Resolution..... 15  
Prevailing Wage ..... 16  
SIGNATURES..... 17  
CLOSURE STATEMENT..... 19

## **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 Merced, 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, *purpose is to widen State Route 59 from 2-lane to 4-lane in the City of Merced* 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 COMPONENT will be referred to hereinafter as WORK:
  - PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT (PA&ED)

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

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

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

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

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

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

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

5. The following work associated with this PROJECT has been completed or is in progress:
  - CALTRANS completed the Project Study Report Document on November 28, 2000.
  - CALTRANS completed a Supplemental Project Report Document on May 24, 2006.
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).

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 Quality Management Assessment (QMA), environmental document quality control, and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
16. CALTRANS' Quality Management Assessment (QMA) 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). QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

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

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 [https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos#LinkTarget\\_705](https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos#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 <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/nepa-recordretention-policy-final-ally.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. CALTRANS is the CEQA Lead Agency for the PROJECT.
23. CALTRANS is the NEPA Lead Agency for the PROJECT.

**Environmental Permits, Approvals and Agreements**

24. 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.
25. 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.
26. It is expected that the PROJECT requires the following environmental permits/approvals:

<b>ENVIRONMENTAL PERMITS/REQUIREMENTS</b>
404, US Army Corps Of Engineers
401, Regional Water Quality Control Board
1602 California Department of Fish and Wildlife

**Project Approval and Environmental Document (PA&ED)**

- 27. 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.
- 28. 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
175.20 Project Preferred Alternative
180.10.05.05.xx CEQA Lead Final Env. Doc QA/QC and Approval
180.10.05.45 Section 7 Consultation
180.15.05 Record of Decision (NEPA)
180.15.10 Notice of Determination (CEQA)

- 29. 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.
- 30. CITY will provide written notice of the initiation of environmental studies to the CEQA and NEPA Lead Agencies prior to completing any other PA&ED phase work.

**California Environmental Quality Act (CEQA)**

- 31. Environmental documentation will be prepared in compliance with the California Public Resources Code §§ 21080.3.1(d)(e). CALTRANS will provide, and CITY will use, a letter template and a list of California Native American tribes requesting notification. CITY will prepare consultation documentation for CALTRANS' signature and transmittal in compliance with the statutorily required time frames.
- 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. 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.
35. CITY will submit CEQA-related public notices to CALTRANS for review, comment, and approval prior to publication and circulation.
36. CITY will submit all CEQA-related public meeting materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to the public meeting date.

If the CEQA Lead Agency makes any changes to the materials, then the CEQA Lead Agency will allow CITY to review, comment, and concur on those changes at least three (3) working days prior to the public meeting date.

37. The CEQA Lead Agency will attend all CEQA-related public meetings.
38. 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)

39. 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.

40. 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 <http://environment.fhwa.dot.gov/index.asp>) and the CALTRANS Standard Environmental Reference.
41. 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.
42. 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.
43. The NEPA Lead Agency will attend all NEPA-related public meetings.
44. 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.

45. 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.

46. 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.

### **Schedule**

47. 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**

48. 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

### **Qualifications**

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

### **Consultant Selection**

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

### **Encroachment Permits**

51. 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.

52. 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

53. 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

54. 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.

55. 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 records.

Hazardous Materials

56. 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.

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

58. 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.

59. 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.

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

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.

61. 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

62. CITY may accept, reject, compromise, settle, or litigate claims of any consultants or contractors hired to complete WORK without concurrence from the other PARTY.

63. 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.
64. 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.
65. 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.
66. 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

67. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
68. 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

69. 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

70. 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**

71. 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**

72. 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**

73. 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.
74. 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**

75. 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.
76. 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**

77. Neither PARTY will interpret any ambiguity contained in this AGREEMENT against the other PARTY. PARTIES waive 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.

78. 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**

79. 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**

80. 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.

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

### **Prevailing Wage**

82. 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.

This AGREEMENT may be executed and delivered in counterparts, and by each PARTY in a separate counterpart, each of which when so executed and delivered shall constitute an original and all of which taken together shall constitute one and the same instrument.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or electronic mail (E-Mail), and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Dan McElhinney  
District Director

**CITY OF MERCED**

\_\_\_\_\_  
Steven S. Carrigan  
City Manager

APPROVED AS TO FORM:

 6/30/2020  
PHAEDRA A. NORTON      Date  
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

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

YES / NO

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

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

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 10-509 and any amendments to the agreement. The final signature date on this document terminates agreement 10-509 except survival articles. All survival articles in agreement 10-509 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**

---

Dan McElhinney  
District Director

---

Date

---

**CITY OF MERCED**

---

Steven S. Carrigan  
City Manager

---

Date