

**NORTH COUNTY CORRIDOR
TRANSPORTATION EXPRESSWAY AUTHORITY**

ITEM: 3c

SUBJECT:

Approval of the North County Corridor (SR 99 to SR 120) Cooperative Agreement 10-360 (SR 99 to SR 120)

STAFF RECOMMENDATIONS:

By motion, consent to the NCC TEA Chair and Authority Manager's approval of the attached NCC Project Cooperative Agreement (SR 99 to SR 120) between the NCC TEA and the Department of Transportation, District 10.

FISCAL IMPACT:

The cooperative agreement commits the NCC TEA to funding the work associated with the PA&ED phase of the project. The current NCC budget reflects the obligation. Approval of the Agreement allows the NCC TEA to invoice against the \$6.2 M allocation in the State Transportation Improvement Program/Regional Improvement Program.

DISCUSSION:

The North County Corridor (SR 99 to SR 120) Cooperative Agreement between the NCC TEA and Caltrans defines the roles and responsibilities of each agency to perform the work required in support of achieving project approval and environmental documentation (PA&ED) for the project. In general, it defines the NCC TEA as the implementing agency for the project approval and environmental document phase of the PA&ED phase of the project; however, Caltrans will be the California Environmental Quality Act (CEQA) lead agency as well as the National Environmental Protection Act (NEPA) lead. Subsequent phases of work will be covered by additional cooperative agreements to be brought before the Board for approval.

COOPERATIVE AGREEMENT

This agreement, effective on _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

North County Corridor Transportation Expressway Authority, a California Joint Powers Authority, referred to as AUTHORITY.

For the purpose of this agreement, the term PARTNERS collectively refers to CALTRANS and AUTHORITY (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. This agreement outlines the terms and conditions of cooperation between PARTNERS to complete a CEQA EIR and NEPA EIS environmental document for PROJECT.
3. For the purpose of this agreement PROJECT is defined as preservation of an alignment from SR 99 to McHenry with the first buildable phase to be an expressway on a new alignment from McHenry to SR 108/120 east of Oakdale. All responsibilities assigned in this agreement to complete PA&ED phase of PROJECT will be referred to as OBLIGATIONS.
4. This agreement supersedes Agreement # 10-325 dated April 23, 2009, between PARTNERS regarding PROJECT.
5. A CEQA Program Level EIR and Project Report were completed on May 20, 2010 that resulted in the Route Adoption of SR 108 between SR 120 east of Oakdale and McHenry Avenue.
6. The estimated date for OBLIGATION COMPLETION is June 30, 2014.
7. In this agreement capitalized words represent defined terms and acronyms. The Definitions section contains a complete definition for each capitalized term.
8. From this point forward, PARTNERS define in this agreement the terms and conditions under which they will accomplish OBLIGATIONS.

RESPONSIBILITIES

9. AUTHORITY is SPONSOR for 100% of PROJECT.
10. 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.
11. AUTHORITY may provide IQA for the portions of WORK outside existing and proposed SHS right of way.
12. AUTHORITY is the only FUNDING PARTNER for this agreement. AUTHORITY's funding commitment is defined in the FUNDING SUMMARY.
13. CALTRANS is the CEQA lead agency for PROJECT.
14. CALTRANS is the NEPA lead agency for PROJECT.
15. AUTHORITY is IMPLEMENTING AGENCY for PA&ED.

SCOPE

Scope: General

16. PARTNERS will perform all OBLIGATIONS in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
17. IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for that component as part of the PROJECT MANAGEMENT PLAN.
18. Any PARTNER may, at its own expense, have representatives observe any OBLIGATIONS performed by another PARTNER. Observation does not constitute authority over those OBLIGATIONS.
19. Each PARTNER will ensure that all of its personnel participating in OBLIGATIONS are appropriately qualified, and if necessary licensed, to perform the tasks assigned to them.
20. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in OBLIGATIONS.
21. If WORK is done under contract (not completed by a PARTNER's own employees) and is governed by the California Labor Code's definition of a "public work" (section 1720(a)(a)), that PARTNER 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.

22. IMPLEMENTING AGENCY for each PROJECT COMPONENT included in this agreement will be available to help resolve problems generated by that component for the entire duration of PROJECT.
23. 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 WORK without an encroachment permit issued in their name.

24. If any PARTNER discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTNER will notify all PARTNERS 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.
25. 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.

26. If any PARTNER receives a public records request, pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (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. (S.a.33)
27. If HM-1 or HM-2 is found during a PROJECT COMPONENT, IMPLEMENTING AGENCY for that PROJECT COMPONENT will immediately notify PARTNERS.
28. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way. CALTRANS will undertake HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
29. AUTHORITY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside the existing SHS right of way. AUTHORITY will undertake or cause to be undertaken HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.

30. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
31. 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.
32. PARTNERS 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 each PARTNER's responsibilities in this agreement.
33. IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTNERS with written monthly progress reports during the implementation of OBLIGATIONS in that component.
34. Upon OBLIGATION COMPLETION, ownership and 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 of title to any materials or equipment constructed or installed outside SHS right of way.
35. IMPLEMENTING AGENCY for a PROJECT COMPONENT will accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do WORK in that component.
36. PARTNERS will confer on any claim that may affect OBLIGATIONS or PARTNERS' liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No PARTNER will prejudice the rights of another PARTNER until after PARTNERS confer on claim.
37. PARTNERS will maintain, and will ensure that any party hired by PARTNERS to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs, and provide billing and payment support.
38. PARTNERS will comply with the appropriate federal cost principles and administrative requirements outlined in the Applicable Cost Principles and Administrative Requirements table below. These principals and requirements apply to all funding types included in this agreement.

39. PARTNERS will ensure that any party hired to participate in OBLIGATIONS will comply with the appropriate federal cost principles and administrative requirements outlined in the Applicable Cost Principles and Administrative Requirements table below.

Applicable Cost Principles and Administration Requirements		
The federal cost principles and administrative requirements associated with each organization type apply to that organization.		
Organization Type	Cost Principles	Administrative Requirements
Federal Governments	2 CFR Part 225	OMB A-102
State and Local Government	2 CFR, Part 225	49 CFR, Part 18
Educational Institutions	2 CFR, Part 220	2 CFR, Part 215
Non-Profit Organizations	2 CFR, Part 230	2 CFR, Part 215
For Profit Organizations	48 CFR, Chapter 1, Part 31	49 CFR, Part 18
CFR (Code of Federal Regulations)		
OMB (Office of Management and Budget)		
Related URLs:		
• Various OMB Circular:	http://www.whitehouse.gov/omb/grants_circulars	
• Code of Federal Regulations:	http://www.gpoaccess.gov/CFR	

40. PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this agreement.
41. PARTNERS will retain all OBLIGATIONS-related records for three (3) years after the final voucher.
42. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA, and AUTHORITY will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within 30 calendar days of receipt.

Upon completion of the final audit, PARTNERS have 30 days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to dispute resolution. Any costs arising out of the dispute resolution process will be paid within 30 calendar days of the final audit or dispute resolution findings.

- 43. Any PARTNER that hires another party to participate in OBLIGATIONS will conduct a pre-award audit of that party in accordance with the *Local Assistance Procedures Manual*.
- 44. PARTNERS will not incur costs beyond the funding commitments in this agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, IMPLEMENTING AGENCY will promptly notify SPONSOR.

IMPLEMENTING AGENCY has no obligation to perform WORK if funds to perform WORK are unavailable.

- 45. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.
- 46. If WORK stops for any reason, each PARTNER 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 each PARTNER’s responsibilities in this agreement, in order to keep PROJECT in environmental compliance until WORK resumes.
- 47. Each PARTNER accepts responsibility to complete the activities that it selected on the SCOPE SUMMARY. Activities marked with “N/A” on the SCOPE SUMMARY are not included in the scope of this agreement.

Scope: Environmental Permits, Approvals and Agreements

- 48. Each PARTNER identified in the Environmental Permits table below accepts the responsibility to complete the assigned activities.

Environmental Permits						
Permit	Coordinate	Prepare	Obtain	Implement	Renew	Amend
404 USACOE	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS
401 RWQCB	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS
NPDES SWRCB	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS
State Waste Discharge Requirements (Porter Cologne) RWQCB	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS
FESA Section 7 USFWS	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS

FESA Section 10 USFWS	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS
1602 DFG	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS
2080.1 DFG	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS
2081 DFG	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS
Air Quality Permits	CALTRANS	AUTHORITY	CALTRANS	AUTHORITY	CALTRANS	CALTRANS

Scope: Project Approval and Environmental Document (PA&ED)

49. CALTRANS is the CEQA lead agency for PROJECT. CALTRANS will determine the type of environmental documentation required and will cause that documentation to be prepared.
50. Any PARTNER involved in the preparation of CEQA environmental documentation will follow the CALTRANS STANDARDS that apply to the CEQA process including, but not limited to, the guidance provided in the Standard Environmental Reference available at www.dot.ca.gov/ser.
51. Pursuant to SAFETEA-LU Section 6004 and/or 6005, CALTRANS is the NEPA lead agency for PROJECT. CALTRANS will assume responsibility for NEPA compliance and will prepare any needed NEPA environmental documentation or will cause that documentation to be prepared.
52. Any PARTNER involved in the preparation of NEPA environmental documentation will follow the Standard Environmental Reference (SER) and FHWA 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.
53. AUTHORITY will prepare the appropriate CEQA environmental documentation to meet CEQA requirements.
54. AUTHORITY will prepare the appropriate NEPA environmental documentation to meet NEPA requirements.
55. Any PARTNER preparing any portion of the CEQA environmental 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.
56. Any PARTNER preparing any portion of the NEPA environmental 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.

57. AUTHORITY will prepare, publicize, and circulate all CEQA-related public notices and will submit said notices to the CEQA lead agency for review, comment, and approval prior to publication and circulation.
58. AUTHORITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. AUTHORITY 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.

59. The CEQA lead agency will attend all CEQA-related public meetings.
60. AUTHORITY will plan, schedule, prepare materials for, and host all CEQA-related public meetings and will submit all materials to the CEQA lead agency for review, comment, and approval at least 10 working days prior to the public meeting date.
61. The NEPA lead agency will attend all NEPA-related public meetings.
62. AUTHORITY will plan, schedule, prepare materials for, and host all NEPA-related public meetings. AUTHORITY will submit all materials to CALTRANS for CALTRANS' review, comment, and approval at least 10 working days prior to the public meeting date.
63. If a PARTNER who is not the CEQA or NEPA lead agency holds a public meeting about PROJECT, that PARTNER must clearly state its role in PROJECT and the identity of the CEQA and NEPA lead agencies 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 or NEPA public review process.

That PARTNER will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the appropriate lead agency for review, comment, and approval at least 10 working days prior to publication or use. If that PARTNER makes any changes to the materials, it will allow the appropriate 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. 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.

64. The PARTNER preparing the environmental documentation, including the studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that PROJECT remains in environmental compliance.

COST**Cost: General**

65. The cost of any awards, judgments, or settlements generated by OBLIGATIONS is an OBLIGATIONS COST.
66. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right of way.
67. AUTHORITY, 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.
68. HM MANAGEMENT ACTIVITIES costs related to HM-2 are CONSTRUCTION SUPPORT and CONSTRUCTION CAPITAL costs.
69. The cost to comply with and implement the commitments set forth in the environmental documentation is an OBLIGATIONS COST.
70. The cost to ensure that PROJECT remains in environmental compliance is an OBLIGATIONS COST.
71. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is an OBLIGATIONS COST.
72. 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.
73. Independent of OBLIGATIONS COST, AUTHORITY will fund the cost of its own IQA for WORK done outside existing or proposed future SHS right of way.
74. CALTRANS will provide encroachment permits at no cost.
75. Fines, interest, or penalties levied against a PARTNER will be paid, independent of OBLIGATIONS COST, by the PARTNER whose actions or lack of action caused the levy. That PARTNER will indemnify and defend each other PARTNER.
76. Travel, per diem, and third-party contract reimbursements are an OBLIGATIONS COST only after those hired by PARTNERS to participate in OBLIGATIONS incur and pay those costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Personnel Administration (DPA) rules current at the effective date of this agreement.

If AUTHORITY invoices for rates in excess of DPA rates, AUTHORITY will fund the cost difference and reimburse CALTRANS for any overpayment.

77. If any PARTNER reimburses another PARTNER for any costs later determined to be unallowable, the PARTNER that received the reimbursement will reimburse those funds.
78. If AUTHORITY does not reimburse CALTRANS, CALTRANS has the authority to intercept future payments due AUTHORITY from the State of California.
79. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is an OBLIGATIONS COST.
80. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this agreement to place the right of way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

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

81. 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, each PARTNER implementing commitments or conditions accepts responsibility to fund these activities, as they apply to each PARTNER's responsibilities, until such time as PARTNERS amend this agreement.

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

82. PARTNERS will pay invoices within 30 calendar days of receipt of invoice.

Cost: Environmental Permits, Approvals and Agreements

83. The cost of coordinating, obtaining, complying with, implementing, and if necessary renewing and amending resource agency permits, agreements, and/or approvals is an OBLIGATIONS COST.

Cost: Project Approval and Environmental Document (PA&ED)

84. The costs to prepare, publicize, and circulate all CEQA and NEPA-related public notices is an OBLIGATIONS COST.
85. The cost to plan, schedule, prepare, materials for, and host all CEQA and NEPA-related public hearings is an OBLIGATIONS COST.

86. Each PARTNER listed below may submit invoices for PA&ED:
- AUTHORITY may invoice CALTRANS

87. PARTNERS will exchange funds for actual costs.

AUTHORITY will not invoice CALTRANS for an initial deposit upon execution of this agreement.

AUTHORITY will submit to CALTRANS monthly invoices for estimated monthly costs based on the prior month's actual expenditures.

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

SCHEDULE

88. PARTNERS will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

GENERAL CONDITIONS

89. 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
90. 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.
91. Any PARTNER performing IQA does so for its own benefit. No one can assign liability to that PARTNER due to its IQA activities.
92. Neither AUTHORITY 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 under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this agreement.

It is understood and agreed that CALTRANS will fully defend, indemnify, and save harmless AUTHORITY 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 under this agreement. (L.I.42)

93. 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 AUTHORITY under or in connection with any work, authority, or jurisdiction conferred upon AUTHORITY under this agreement.

It is understood and agreed that AUTHORITY will fully 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 AUTHORITY under this agreement.

94. 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.
95. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this agreement.
96. PARTNERS will not interpret any ambiguity contained in this agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
97. A waiver of a PARTNER'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.
98. 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.
99. 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.
100. 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 AUTHORITY 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.

101. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
102. If any provisions in this agreement are 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.
103. PARTNERS intend this agreement to be their final expression and supersede any oral understanding or writings pertaining to OBLIGATIONS.
104. 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.
105. PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.
106. 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.

107. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY.

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.

CFR (Code of Federal Regulations) – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government

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.

COST – The responsibility for cost responsibilities in this agreement can take one of three assignments:

- **OBLIGATIONS COST** – A cost associated with fulfilling OBLIGATIONS that will be funded as part of this agreement. The responsibility is defined by the funding commitments in this agreement.
- **PROJECT COST** – A cost associated with PROJECT that can be funded outside of OBLIGATIONS. A PROJECT COST may not necessarily be part of this agreement. This responsibility is defined by the PARTNERS' funding commitments at the time the cost is incurred.
- **PARTNER cost** – A cost that is the responsibility of a specific PARTNER, independent of PROJECT.

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.

FUNDING PARTNER – A PARTNER that commits a defined dollar amount to fulfill OBLIGATIONS. Each FUNDING PARTNER accepts responsibility to provide the funds identified on the FUNDING SUMMARY under its name.

FUNDING SUMMARY – The table that designates an agreement's funding sources, types of funds, and the PROJECT COMPONENT in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are "not-to-exceed" amounts for each FUNDING PARTNER.

GAAP (Generally Accepted Accounting Principles) – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

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.

OBLIGATIONS COST – See COST.

OMB (Office of Management and Budget) – The federal office that oversees preparation of the federal budget and supervises its administration in Executive Branch agencies.

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 – The undertaking to an expressway on a new alignment between State Route (SR) 99 and SR 132.

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).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.
- **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 COST – See COST.

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

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.

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

SCOPE SUMMARY – The attachment in which each PARTNER designates its commitment to specific scope activities within each PROJECT COMPONENT as outlined by the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.

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.

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:
James Hammer, Project Manager
1976 E. Charter Way
Stockton, California 95205
Office Phone: (209) 948-3748
Fax Number: (209) 948-7666
Email: james_r_hammer@dot.ca.gov

The primary agreement contact person for AUTHORITY is:
Matt Machado, Authority Manager
1010 Tenth Street, Suite 3500
Modesto, California 95351
Office Phone: (209) 525-7581
Fax Number: (209) 525-7505
Email: machadom@stancounty.com

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

NORTH COUNTY CORRIDOR
TRANSPORTATION EXPRESSWAY
AUTHORITY

APPROVED

APPROVED

By: _____
Carrie L. Bowen
District 10 Director

By: _____
William O'Brien
Chairman NCC

Date: _____

Date: _____

CERTIFIED AS TO FUNDS:

By: _____
Matthew Machado
Authority Manager

By: _____
Liz Berg
Acting District Budget Manager

Date: _____

Date: _____

APPROVED AS TO FORM AND PROCEDURE

By: _____
Thomas E. Boze
Deputy County Council

Date: _____

SCOPE SUMMARY

4	5	6	7	8	Description	CALTRANS	AUTHORITY	N/A
2	160				Perform Preliminary Engineering Studies and Draft Project Report	X	X	
		05			Updated Project information		X	
		10			Engineering Studies		X	
		15			Draft Project Report		X	
		20			Engineering and Land Net Surveys		X	
		30			Environmental Study Request (ESR)		X	
		40			NEPA Delegation	X		
		45			Base Maps and Plan Sheets for Project Report and Environmental Studies		X	
2	165				Perform Environmental Studies and Prepare Draft Environmental Document	X	X	
		05			Environmental Scoping of Alternatives Identified for Studies in Project Initiation Document	X		
		10			General Environmental Studies		X	
		15			Biological Studies		X	
		20			Cultural Resource Studies		X	
			05		Archaeological Survey		X	
			05		Area of Potential Effects/Study Area Maps		X	
			10		Native American Consultation		X	
			15		Records and Literature Search		X	
			20		Field Survey		X	
			25		Archaeological Survey Report		X	
			99		Other Archaeological Survey Products		X	
			10		Extended Phase I Archaeological Studies		X	
			05		Native American Consultation		X	
			10		Extended Phase I Proposal		X	
			15		Extended Phase I Field Investigation		X	
			20		Extended Phase I Materials Analysis		X	
			25		Extended Phase I Report		X	
			99		Other Phase I Archaeological Study Products		X	
			15		Phase II Archaeological Studies		X	
			05		Native American Consultation		X	
			10		Phase II Proposal		X	
			15		Phase II Field Investigation		X	
			20		Phase II Materials Analysis		X	
			25		Phase II Report		X	
			99		Other Phase II Archaeological Study Products		X	
			20		Historical and Architectural Resource Studies		X	
			05		Preliminary Area of Potential Effects/Study Area Maps for Architecture		X	

			10	Historic Resources Evaluation Report - Archaeology		X	
			15	Historic Resource Evaluation Report - Architecture (HRER)		X	
			20	Bridge Evaluation		X	
			99	Other Historical and Architectural Resource Study Products		X	
		25		Cultural Resource Compliance Consultation Documents		X	
			05	Final Area of Potential Effects/Study Area Maps		X	
			10	PRC 5024.5 Consultation		X	
			15	Historic Property Survey Report/Historic Resources Compliance Report		X	
			20	Finding of Effect		X	
			25	Archaeological Data Recovery Plan/Treatment Plan		X	
			30	Memorandum of Agreement		X	
			99	Other Cultural Resources Compliance Consultation Products		X	
		25		Draft Environmental Document or Categorical Exemption/Exclusion	X	X	
			10	Section 4(F) Evaluation	X		
			20	Environmental Quality Control and Other Reviews	X		
			25	Approval to Circulate Resolution	X		
			30	Environmental Coordination		X	
			99	Other Draft Environmental Document Products		X	
		30		NEPA Delegation	X		
2	170			Permits, Agreements, and Route Adoptions during PA&ED component	X	X	
		05		Required permits		X	
		15		Railroad Agreements		X	
		20		Freeway Agreements		X	
		25		Agreement for Material Sites		X	
		30		Executed Maintenance Agreement		X	
		40		Route Adoptions		X	
		45		MOU From Tribal Employment Rights Office (TERO)		X	
		55		NEPA Delegation	X		
2	175			Circulate Draft Environmental Document and Select Preferred Project Alternative Identification	X	X	
		05		DED Circulation		X	
		10		Public Hearing		X	
		15		Public Comment Responses and Correspondence		X	
		20		Project Preferred Alternative	X		
		25		NEPA Delegation	X		
2	180			Prepare and Approve Project Report and Final Environmental Document	X	X	
		05		Final Project Report		X	
		10		Final Environmental Document	X	X	
			05	Approved Final Environmental Document	X		
			05	Draft Final Environmental Document Review	X		
			10	Revised Draft Final Environmental Document	X		
			15	Section 4(F) Evaluation	X		
			20	Findings	X		
			25	Statement of Overriding Considerations	X		
			30	CEQA Certification	X		
			40	Section 106 Consultation and MOA	X		

			45	Section 7 Consultation	X		
			50	Final Section 4(F) Statement	X		
			55	Floodplain Only Practicable Alternative Finding	X		
			60	Wetlands Only Practicable Alternative Finding	X		
			65	Section 404 Compliance	X		
			70	Mitigation Measures	X		
		10		Public Distribution of Final Environmental Document and Respond To Comments	X		
		15		Final Right of Way Relocation Impact Document		X	
		99		Other Final Environmental Document Products		X	
	15			Completed Environmental Document	X	X	
		05		Record of Decision (NEPA)	X		
		10		Notice of Determination (CEQA)	X		
		20		Environmental Commitments Record		X	
		99		Other Completed Environmental Document Products		X	
	20			NEPA Delegation	X		

FUNDING SUMMARY

Funding Source	Funding Partner	Fund Type	PA&ED	Subtotal Support	Subtotal Capital	Subtotal Funds Type
STATE	AUTHORITY	STIP/RIP	\$6,200,000	\$6,200,000	\$0	\$6,200,000
		Subtotals by Component	\$6,200,000	\$6,200,000	\$0	\$6,200,000