



RESOLUTION No. 19-400

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION APPROVING COOPERATIVE AGREEMENT 03-0692 WITH THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION – DISTRICT 2 AND AUTHORIZING THE CHAIR OF THE BOARD OF SUPERVISORS TO EXECUTE THE AGREEMENT

WHEREAS, the developers of the proposed Higgins Marketplace Project, per conditions of approval and mitigation measures of Tentative Parcel Map 04-0420 and Use Permit 04-019, are required to complete improvements on State Route 49 (SR 49) at its intersection with Woodridge Drive; and

WHEREAS, upon submittal of an Encroachment Permit (Permit) application to the State of California Department of Transportation (Caltrans), Caltrans required additional steps to occur before approving the permit including the County entering into a Cooperative Agreement (Coop); and

WHEREAS, the 2019 Board Objectives include supporting job-enhancing economic development of which this agreement will assist; and

WHEREAS, the developer, KKP - Lake of the Pines LLC, a California Limited Liability Corporation, is solely responsible for doing the intersection improvements and all costs associated with the work and, as such, will also obtain its own permit from Caltrans and agree to assume responsibility for complying with the Permit and Coop via the Subdivision Improvement Agreement for Parcel Map 04-0420.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Nevada County Board of Supervisors approves Cooperative Agreement 03-0692 between the County of Nevada and the State of California, Department of Transportation in substantially the form attached hereto and authorizes the Chair of the Board of Supervisors to execute the Agreement on behalf of the County of Nevada.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 9th day of July, 2019, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 



Richard Anderson, Chair

7/9/2019 cc: DPW*
Planning*
AC* (Hold)

7/23/2019 cc: DPW*
Planning*
AC* (Release)

Work Description

MODIFICATION OF EXISTING CONNECTION AT SR49/WOODRIDGE DRIVE

Contact Information

CALTRANS

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COUNTY OF NEVADA

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COOPERATIVE AGREEMENT

This AGREEMENT, effective on JULY 23, 2019, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

County of Nevada, a political subdivision of the State of California, referred to hereinafter as COUNTY.

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, modification of existing connection at SR49/Woodridge Drive will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the PROJECT's Permit Engineering Evaluation Report (PEER).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:

- 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. The following work associated with this PROJECT will be covered in the PEER process:
 - COUNTY is developing the Categorical Exemption.
 - COUNTY is developing the R/W Certification.
 - COUNTY is developing the Plans, Specifications and Estimate.

6. Following completion of PROJECT, and until CALTRANS constructs a median barrier as part of their highway system, but no later than six months after completion of the PROJECT and acceptance and approval of all final deliverables, COUNTY will monitor queue lengths for the southbound left turn lane into Woodridge Drive when either;
 - 1) CALTRANS receives a complaint of a safety concern regarding operations at the intersection, and is validated by evaluation of Caltrans engineering staff, or
 - 2) The CALTRANS collision monitoring system (Table C, Wet Table C, Annual Monitoring program, etc.) identifies the Woodridge Drive intersection as requiring investigation.

In the event of either condition listed above, COUNTY will conduct traffic monitoring of queue lengths at the southbound left turn to Woodridge Drive and northbound left turns to Wolf Road. The one-day study shall be conducted:

- On a Tuesday, Wednesday, or Thursday
- During a week that does not contain a holiday
- While local schools are in session
- For both the AM and PM peak periods

A technical memo describing COUNTY's methodology and findings will be delivered to CALTRANS (Branch Chief, Office of Highway Operations, 703 B Street, Marysville, CA 95901) within 90 days of such notification of a valid safety concern raised by CALTRANS. If there are subsequent valid safety concerns raised by CALTRANS, additional follow-up traffic monitoring of queue lengths may be required as frequently as once per year.

Modification of the southbound left-turn lane into Woodridge Drive will be required if it is determined that traffic queues in the southbound left-turn lane into Woodridge Drive reach or exceeds 95% of the available storage length (239' queue of 265' available), COUNTY will immediately initiate development of a traffic impact mitigation measure to either:

- a) Lengthen the southbound left-turn lane into Woodridge Drive and shorten the northbound left-turn lane into Wolf Road by removing existing striping, pavement markings, recessed pavement markers, and rumble strips; then place new striping, pavement markings, recessed pavement markers, and rumble strips as appropriate. Or,
- b) Create a painted island that prohibits southbound left-turn movements to Woodridge Drive by removing existing striping, pavement markings, recessed pavement markers, and rumble strips; then place new striping, pavement markings, recessed pavement markers, and rumble strips consistent with the new painted island configuration.

If COUNTY chooses the left turn lengthening (option a) and CALTRANS identifies that Woodridge Drive intersection requires an investigation by means of their collision monitoring system (Table C, Wet Table C, Annual Monitoring Program, etc.), and makes findings that the

left turn into Woodridge Drive is causing or contributing to the cause of collisions, then option b above will be initiated by the COUNTY.

CALTRANS will make the final determination as to which modification option is allowable. COUNTY will begin to construct the CALTRANS approved traffic mitigation measure within 24 months of the final determination and issuance of an encroachment permit by CALTRANS.

7. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
8. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

RESPONSIBILITIES

Sponsorship

9. 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.

10. COUNTY is the SPONSOR for the WORK in this AGREEMENT.

Implementing Agency

11. 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.
 - COUNTY 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).

12. 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.
13. 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

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

CALTRANS' Quality Management

16. 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.
17. CALTRANS' Independent Quality Assurance (IQA) efforts are to ensure that COUNTY'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.

18. 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.
19. COUNTY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.
20. The cost of CALTRANS' quality management work is to be borne by CALTRANS.

CEQA Lead Agency

21. CALTRANS is the CEQA Lead Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

22. COUNTY 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 COUNTY's responsibilities in this AGREEMENT.
23. 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.
24. It is expected that the PROJECT will not require environmental permits/approvals.

CONSTRUCTION

25. As the CONSTRUCTION IMPLEMENTING AGENCY, COUNTY 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.
26. CALTRANS will be responsible for completing the following CONSTRUCTION SUPPORT activities:

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

27. 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.
28. Right-of-way conveyances must be completed prior to WORK completion, unless PARTIES mutually agree to other arrangements in writing.

29. CALTRANS will not issue an encroachment permit to COUNTY for construction work until the following conditions are met:
 - CALTRANS accepts the final plans, specifications, and estimate
 - CALTRANS accepts the Right-of-Way Certification
30. With respect to the portion of the Work in paragraph above, COUNTY will require the construction contractor to furnish payment and performance bonds naming COUNTY as obligee, and CALTRANS as additional obligee, and to carry liability insurance in accordance with CALTRANS Standard Specifications.
31. COUNTY will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code as applicable. By accepting responsibility to advertise and award the construction contract, COUNTY also accepts responsibility to administer the construction contract for all construction work performed by the COUNTY's construction contractor.
32. CALTRANS will not issue an encroachment permit to COUNTY's construction contractor until CALTRANS accepts:
 - The payment and performance bonds
 - The CONSTRUCTION Quality Management Plan
33. 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.
34. COUNTY 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.

35. 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).
36. COUNTY 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.
37. COUNTY 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. COUNTY is required to comply with the CALTRANS MS4 National Pollutant Discharge Elimination System (NPDES) permit for all work within the State Highway System.
38. As the CONSTRUCTION IMPLEMENTING AGENCY, COUNTY 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 COUNTY for relief from maintenance of the PROJECT or a portion thereof.
39. PARTIES confirm that upon WORK completion, no maintenance agreement will be necessary.
40. 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.

41. Within one hundred eighty (180) calendar days following the completion and acceptance of the PROJECT construction contract, COUNTY 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, COUNTY 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

42. 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

43. 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
 - Construction Manual
 - Construction Manual Supplement for Local Agency Resident Engineers

Qualifications

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

Consultant Selection

45. COUNTY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

46. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. COUNTY, 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 COUNTY, 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.

47. 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

48. 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

49. 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.

50. 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

51. 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.

52. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
53. 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.

54. COUNTY, 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. COUNTY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

COUNTY, 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.

55. COUNTY 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 COUNTY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. COUNTY 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.
56. 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

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

58. 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.
59. 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.
60. 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.
61. 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

62. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
63. 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

64. 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

65. COUNTY 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. COUNTY 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.

Environmental Compliance

66. If during performance of WORK additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTIES will amend this AGREEMENT to include completion of those additional tasks.

GENERAL CONDITIONS

Venue

67. 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

68. 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

69. 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 COUNTY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon COUNTY under this AGREEMENT. It is understood and agreed that COUNTY, 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 COUNTY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

70. Neither COUNTY 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 COUNTY 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

71. 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.
72. 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

73. COUNTY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. COUNTY 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.

74. 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

75. 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

76. 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 COUNTY 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.

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

Prevailing Wage

78. 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

Sumantha L. Balhar

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

VERIFICATION OF FUNDS AND AUTHORITY:

Mundeep Takher *for*

Mundeep Takher
District Project Control Officer

COUNTY OF NEVADA

Richard Anderson

Richard Anderson
Chair of the Board

Attest:

Julie Patterson-Hunter

Julie Patterson-Hunter
Clerk of the Board

Approved as to form and procedure:

Allison Barratt-Green

Allison Barratt-Green
County Counsel

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 03-0692 and any amendments to the agreement. The final signature date on this document terminates agreement 03-0692 except survival articles. All survival articles in agreement 03-0692 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

COUNTY OF NEVADA

Name

Date

Title TBD