

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY

SPECIAL MEETING AGENDA
February 8, 2018 8:30 A.M.

Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California

Addressing the Agency:

- ▶ **Agenda Items:** *Members of the public may address the Successor Agency on any matter listed on the Agenda. In order to conduct a timely meeting, there will be a three-minute time limit per person for any matter listed on the Agenda. Anyone wishing to speak to the Successor Agency is asked to complete a Speaker's Card which can be found at the back of the room and at each podium. The completed card should be submitted to the Secretary prior to the Agenda item being called and prior to the individual being heard by the Successor Agency.*
- ▶ **Public Comments (Agenda Items Only):** *During oral communications, if you wish to address the Agency Board during this Special Meeting, under Government Code Section 54954.3(a), you may only address the Agency Board concerning any item that has been described in the notice for the Special Meeting.*

Americans with Disabilities Act:

- ▶ *In compliance with the ADA, if you need special assistance to participate in any meeting (including assisted listening devices), please contact the Office of the Secretary to the Successor Agency (626) 333-2211. Notification of at least 72 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.*

Agendas and other writings:

- ▶ *In compliance with Government Code Section 54957.5(b), staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the Secretary of the Successor Agency during regular business hours, Monday through Friday, 9:00 a.m. to 5:00 p.m.*

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1. Call to Order
 2. Flag Salute
 3. Roll Call
 4. Public Comment
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5. **BOARD MATTERS**

- 5.1 Consideration of the First Amendment to the Memorandum of Understanding for the Lemon Avenue Partial Diamond Interchange Project between the City of Industry and the Successor Agency to the Industry Urban-Development Agency

RECOMMENDED ACTION: Approve the Amendment.

- 5.2 Consideration of Amendment No. 1 to Cooperative Agreement 07-4919 between the Successor Agency to the Industry Urban-Development Agency, the City of Diamond Bar, and Caltrans for the Lemon Avenue Interchange Project

RECOMMENDED ACTION: Approve the Amendment.

- 5.3 Consideration of Cooperative Agreement 07-5100 between the Successor Agency to the Industry Urban-Development Agency and Caltrans for Caltrans to perform Independent Quality Assurance (IQA) on the Lemon Avenue Interchange Project

RECOMMENDED ACTION: Approve the Agreement.

6. Adjournment. Next regular Successor Agency meeting will be on Thursday, February 22, 2018, at 8:30 a.m.

SUCCESSOR AGENCY

ITEM NO. 5.1



SUCCESSOR AGENCY TO THE
**INDUSTRY URBAN - DEVELOPMENT
AGENCY**

MEMORANDUM

TO: Honorable Chairman Radecki and Members of the Successor Agency to the Industry Urban-Development Agency Board

FROM: Paul J. Philips, Executive Director *Paul J. Philips*

STAFF: Alex Gonzalez, Director of Development Services and Administration *ag*
Lisette Calleros, Funding Program Consultant, Avant-Garde, Inc.
Joshua Nelson, Project Manager, CNC Engineering *JN*

DATE: February 8, 2018

SUBJECT: Consideration of the First Amendment to the Memorandum of Understanding for the Lemon Avenue Partial Diamond Interchange Project between the City of Industry and the Successor Agency to the Industry Urban-Development Agency (MP 03-10)

Background:

On October 9, 2012, the Successor Agency entered a Memorandum of Understanding ("MOU") with the City of Industry defining the terms and conditions under which the Lemon Avenue Interchange Project's right-of-way ("ROW") capital and support activities are performed and financed. The scope of work for this project includes: construction of an eastbound on- and off-ramp; construction of a westbound on-ramp; and removal of the existing eastbound off- and hook on-ramps at Brea Canyon Road. The project is located within the City of Diamond Bar, but is part of the mitigations for the Industry Business Center.

The ROW capital cost for the Project has increased beyond the authorized cost in the MOU due to the increased number of parcels and required easements that were originally identified in the ROW Data Sheet prepared on September 27, 2011. The ROW support costs have also increased due to additional hours spent on survey work to identify and stake out the existing and proposed ROW lines including the temporary easements. The total increase in ROW costs has been estimated to be \$1.3 million.

Due to a previous funding shortfall and schedule constraints, the Cities of Industry and Diamond Bar entered into a Betterment Agreement with Alameda Corridor-East Construction Authority ("ACE") on August 22, 2016 to construct and manage the Project as a construction contract change order to the ongoing Fairway Drive Grade Separation project. The Betterment Agreement defined the improvements to be constructed and the

obligations of each city to reimburse ACE for construction and construction management costs totaling \$19 million.

The City of Diamond Bar secured a total of \$9.57 million in funding for construction which included \$7.46 million in Federal SAFETEA-LU funds that were de-federalized and repurposed through Metro in June 2016, and \$2.1 million in Metro Call for Projects Proposition C grant funds. Metro charges a 3% administrative fee to repurpose and de-federalize the SAFETEA-LU funds. ACE has committed to reimburse the Cities for this administrative fee. The City of Industry was able to secure an additional \$5.3 million in Measure M funds which helped fill the financial gap for the Project.

In August 2017, the Cities sent Metro a Concurrence Letter allowing Metro to transfer the project sponsorship from the City of Diamond Bar to the City of Industry. In doing so, the existing local funds that were originally awarded to the City of Diamond Bar will transfer to Industry. The option of transferring City of Diamond Bar's secured funds to the City of Industry will ease the cash requirement for the Project because the funds work on a reimbursement basis. Metro sent a new agreement to the City of Industry which details the terms and conditions under which the Project's activities are performed and financed by Metro.

The City of Diamond Bar secured a total of \$9.57 million in funding for construction which included \$7.46 million in Federal SAFETEA-LU funds that were de-federalized and repurposed through Metro in June 2016, and \$2.1 million in Metro Call for Projects.

Discussion:

In connection with the Project, it is necessary for the Successor Agency to enter and amend the MOU with the City of Industry to account for an increase in ROW capital and support costs and incorporate the definition of terms and conditions under which the Project's construction activities are performed and financed. The First Amendment will allow the City of Industry to use Successor Agency funds to cover the cost of construction. The First Amendment accounts for the transfer of grant funds to Industry who will now be the responsible party in paying all Project invoices and will seek reimbursement from the granting agencies and the Successor Agency.

Fiscal Impact:

The current cost to construct this project, including construction management, is estimated to be \$20,795,000. The Successor Agency's share of the project costs is estimated to be \$7,258,526 and will be paid using agency bond proceeds. This is the same amount that the Successor Agency has been planning to pay. Despite all these changes, there will be no increase to the City or Successor Agency share of costs.

The following table summarizes the breakdown of the funding sources for the Project:

Current Funding Sources

Local Funds to be provided by Metro's exchange program	\$7,242,434.56
Metro Call for Projects	\$2,103,393.00
Measure M	\$5,300,000.00
Industry Successor Agency	\$7,258,526.00
	<hr/>
	\$21,904,353.56
3% metro admin fee for exchange (ACE to cover costs)	\$223,992.82
	<hr/>
Total Funds Available	\$22,128,346.38

Recommendation:

- 1) Staff recommends that the Successor Agency approve and execute the First Amendment.

Exhibits:

- A. First Amendment to the Memorandum of Understanding for the Lemon Avenue Partial Diamond Interchange Project between the City of Industry and the Successor Agency to the Industry Urban-Development Agency

PJP/AG/LC/JN:jv

EXHIBIT A

First Amendment to the Memorandum of Understanding for the Lemon Avenue Partial Diamond Interchange Project between the City of Industry and the Successor Agency to the Industry Urban-Development Agency

[Attached]

**FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING
FOR THE LEMON AVENUE PARTIAL DIAMOND INTERCHANGE PROJECT**

This First Amendment to the Memorandum of Understanding (“MOU”) for the Lemon Avenue Partial Diamond Interchange Project (“First Amendment”) is made and entered into this 8th day of February, 2018, (“Effective Date”) by and between the City of Industry, a municipal corporation (the “City”) and the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (the “Successor Agency”). City and Successor Agency are collectively referred to herein as the “Parties”.

RECITALS

A. The Parties entered into a Memorandum of Understanding (“MOU”) on October 9, 2012, defining the terms and conditions under which the (i) preliminary engineering and environmental impact assessments, (ii) plans, specifications and estimates, and (iii) right-of-way (“ROW”) capital and support costs for the construction of a partial diamond interchange on State Route 60 at the existing Lemon Avenue undercrossing (“Project”) was financed and who would perform the work.

B. The ROW capital cost for the Project has increased beyond the authorized cost in the MOU due to the increased number of parcels and required easements that were identified in the latest ROW Data Sheet prepared on September 27, 2011. The ROW support cost has also increased due to additional hours spent on survey work to identify and stake out the existing and proposed right of way lines including the temporary easements.

C. The City of Diamond Bar and the City entered a Betterment Agreement on August 22, 2016 with Alameda Corridor-East Construction Authority (“ACE”) to construct the Lemon Avenue interchange improvements as a construction contract change order to the ongoing Fairway Drive Grade Separation Project. The Betterment Agreement defined the improvements to be constructed and the obligations of each city to reimburse ACE for construction and construction management costs totaling \$19 million.

D. City and Successor Agency now wish to amend the MOU to revise the estimated cost of ROW capital and support costs; and incorporate construction costs and payment procedures for the Project.

E. Total cost to complete the Project is currently estimated at \$22.09 million which includes \$18.2 million for construction by ACE, \$800,000 for construction management by ACE, \$376,000 for work performed under the AAA Cooperative Agreement, \$916,000 for current construction claims on projected change orders, \$500,000 allowance for contingency and \$1.3 million for remaining utility relocation costs and ROW support.

F. The City of Diamond Bar has secured a total of \$9.57 million in funding for construction which includes \$7.46 million in Federal SAFETEA-LU funds that have been de-federalized through the Los Angeles County Metropolitan Transit Authority (“Metro”) and \$2.1 million in Metro Prop C funds.

G. Approximately \$7.26 million coming from the Successor Agency has been committed toward the construction of the Project. In addition, the City has secured \$5.3 million in Metro Measure M funds to fully close the Project's funding gap, in anticipation of future costs increases and change orders.

H. The City and the City of Diamond Bar met with Metro on July 19, 2017 to discuss project funding appropriation options. Under a Concurrence Letter addressed to Metro in August 2017, the City and Diamond Bar agreed to allow Metro to transfer the project sponsorship and secured funds from Diamond Bar to Industry. The amount of funds to be transferred is \$9.57 million.

I. A Call for Projects Proposition C Funding Agreement ("Funding Agreement") was entered into on December 6, 2017, between the City and Metro, to transfer the grant sponsorship and secured funds from the City of Diamond Bar to the City. The transferred funds are in the amounts of \$2,103,393 of Proposition C 25% funds under Metro's Call for Projects Program and \$7,242,435 of Proposition C 25% funds under the LACMTA Federal Transportation Earmark Exchange Program. The Funding Agreement details the terms, project funding, reporting requirements and expenditure guidelines.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

Section 1. Request, Receipt and Use of Funds is hereby amended to read in its entirety as follows:

Payment of Project Costs. The City shall pay all Project costs associated with the Betterment Agreement and Cooperative Agreements. City agrees to promptly submit payments directly to ACE and Caltrans upon receipt of such invoices.

Section 2. Use of Funds of the MOU is hereby amended to read in its entirety as follows:

Use of Funds. The City agrees that it shall use all Funds solely for the purpose of paying invoices submitted to the City by Caltrans or ACE in conformance with the requirements of the Cooperative Agreement or Betterment Agreement, and for no other purpose.

Section 3. Reimbursement to Successor Agency is hereby amended to read in its entirety as follows:

Reimbursement to City. The City shall invoice the Successor Agency on a quarterly basis for all Project costs incurred above the amount of Project funds provided by Metro or ACE in an amount not to exceed \$7,258,526. Successor Agency agrees to promptly reimburse City upon receipt of such invoice.

1. **Section 4. Performance of City's Obligations and Enforcement of City's Rights and Remedies Under Cooperative Agreement and Project MOU** is hereby amended to read in its entirety as follows:

Performance of City's Obligations and Enforcement of City's Rights and Remedies Under the Cooperative Agreement, Project MOU, and Betterment Agreement. Without the requirement of notice or demand on the part of the Successor Agency, the City shall perform all of its obligations for accounting and reporting under any grant programs and use all commercially reasonable efforts to enforce all of its rights and remedies under the MOU, Cooperative Agreement, and Betterment Agreement.

Section 5. Accounting of Funds of the MOU is hereby amended to read in its entirety as follows:

Accounting of Funds. The City shall provide to the Successor Agency at least once every three (3) months, and/or within ten (10) working days following a written request from the Successor Agency, a written statement showing (i) the amount of Funds disbursed by the City to Caltrans or ACE; (ii) the purposes for which the Funds were disbursed, and the Caltrans or ACE invoices paid with such disbursements; (iii) the Funds received by the City from Metro in reimbursement for such disbursements as described in their Funding Agreement effective December 6, 2017; (iv) the amount of all then outstanding reimbursements owed but unpaid by the Successor Agency; and (v) all such other information with respect to the matters described in this Section 5 as the Successor Agency shall reasonably request.

Section 6. Term of the MOU is hereby amended to read in its entirety as follows:

Term. This MOU shall terminate upon completion of the Project.

IN WITNESS WHEREOF, the City and Successor Agency have caused this First Amendment to be executed by their respective officers, duly authorized, on the Effective Date.

“CITY”
CITY OF INDUSTRY

“SUCCESSOR AGENCY”
SUCCESSOR AGENCY TO THE
INDUSTRY URBAN-DEVELOPMENT
AGENCY

By: _____
Mark D. Radecki, Mayor

By: _____
Mark D. Radecki, Chairman

Attest:

Attest:

By: _____
Diane M. Schlichting, Chief Deputy City Clerk

By: _____
Diane M. Schlichting, Agency Secretary

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
James M. Casso, City Attorney

By: _____
James M. Casso, Agency General Counsel

SUCCESSOR AGENCY

ITEM NO. 5.2



SUCCESSOR AGENCY TO THE
**INDUSTRY URBAN - DEVELOPMENT
AGENCY**

MEMORANDUM

TO: Honorable Chairman and Members of the Successor Agency to the Industry Urban-Development Agency Board

FROM: Paul J. Philips, Executive Director *Paul J. Philips*

STAFF: Alex Gonzalez, Director of Development Services and Administration *AG*
Lisette Calleros, Funding Program Consultant, Avant Garde, Inc.
Joshua Nelson, Project Manager, CNC Engineering *JN*

DATE: February 8, 2018

SUBJECT: Consideration of Amendment No. 1 to Cooperative Agreement No. 07-4919 between the Successor Agency to the Industry Urban-Development Agency, the City of Diamond Bar, and Caltrans for the Lemon Avenue Interchange Project (MP 03-10)

Background:

On December 16, 2014, the Successor Agency and the City of Diamond Bar entered Cooperative Agreement 07-4919 ("Cooperative Agreement") with Caltrans, defining the terms and conditions under which Caltrans would advertise the Lemon Avenue Interchange Project for contractor's bids, award the Project to the successful bidder, and administer the contract in terms of construction administration services.

Due to a previous funding shortfall and scheduling constraints, the Cities of Industry and Diamond Bar entered into a Betterment Agreement with Alameda Corridor-East Construction Authority ("ACE") on August 22, 2016 to construct and manage the Project. The Betterment Agreement was a construction contract change order to the ongoing Fairway Drive Grade Separation project. This Betterment Agreement defined the improvements to be constructed and the obligations of each city to reimburse ACE for construction and construction management costs, totaling \$19 million.

Discussion:

The Cities of Industry and Diamond Bar decided to award and administer the construction contract through the Betterment Agreement instead of requesting Caltrans to do so. Given this change, it is necessary for the Successor Agency to enter into an amendment which will terminate the Cooperative Agreement and reimburse Caltrans for all work performed under the Agreement. The Amendment will recover the Caltrans

Office Engineer's expenditures that included review and approval of the PS&E package and subsequent Ready-to-List (RTL) of the Project.

The Successor Agency is also considering a new Cooperative Agreement with Caltrans on this agenda which will define the terms and conditions to perform Independent Quality Assurance (IQA).

Fiscal Impact:

The total charges from Caltrans are \$375,340.40. The current total project cost is \$22,092,000. This includes all construction and construction management related items estimated at \$20,792,000 and additional ROW costs is \$1,300,000. The Successor Agency's share of the project costs is \$7,258,526 and will be paid using Agency bond proceeds. The remaining costs will be funded by the City of Industry who is receiving \$5.3 million in Los Angeles County Metropolitan Transportation Authority ("Metro") Measure M funds and a transfer of funds from the City of Diamond Bar who secured \$9.35 million from several Metro local funding sources including Proposition C grant funds.

Recommendation:

- 1) Staff recommends that the Successor Agency approve and execute Amendment No. 1. Upon approval by the Successor Agency, this agreement will be forwarded to the City of Diamond Bar for signature.

Exhibits:

- A. Amendment No. 1 to Cooperative Agreement No. 07-4919 between the Successor Agency to the Industry Urban-Development Agency, the City of Diamond Bar, and Caltrans for the Lemon Avenue Interchange Project

PJP/AG/LC/JN:jv

EXHIBIT A

Amendment No. 1 to Cooperative Agreement No. 07-4919 between the Successor Agency to the Industry Urban-Development Agency, the City of Diamond Bar, and Caltrans for the Lemon Avenue Interchange Project

[Attached]

AMENDMENT NO. 1 TO COOPERATIVE AGREEMENT 07-4919

THIS AMENDMENT NO. 1 (AMENDMENT 1) TO AGREEMENT 07-4919 (AGREEMENT), entered into and effective on February 8, 2018, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Diamond Bar, a municipal corporation of the State of California, referred to hereinafter as CITY, and

Successor Agency to the Industry Urban-Development Agency, a public body and successor by operation of law to the Industry Urban-Development Agency, referred to hereinafter as AGENCY.

RECITALS

1. CALTRANS and CITY and AGENCY collectively referred to as PARTIES, entered into AGREEMENT on December 16, 2014, defining the terms and conditions for the Construction phase of a partial interchange at Lemon Avenue and removal of the existing eastbound off and on-ramps at Brea Canyon Road and construction of an auxiliary lane from the proposed eastbound on-ramp to the southbound connector to State Route 57, referred to as PROJECT.
2. Under AGREEMENT, CITY and AGENCY are SPONSORS and FUNDING PARTNERS. CALTRANS was IMPLEMENTING AGENCY for Construction. CALTRANS is the CEQA and NEPA lead agency for PROJECT.
3. CALTRANS reviewed and approved the consultant's PS&E package and subsequently Ready to Listed (RTL'd) the project on June 27, 2016 as part of the AGREEMENT.
4. Due to funding shortfall and scheduling constraints, CITY and AGENCY decided to award and administer the construction contract, instead of requesting CALTRANS to do so. Therefore, PARTIES wish to enter into AMENDMENT 1 to terminate the AGREEMENT to discharge the PARTIES of their WORK obligations except the obligations to reimburse CALTRANS for all work it performed so far, under the AGREEMENT and as stated herein below. CALTRANS and AGENCY intend to enter into a new Cooperative Agreement- 07-5100 to define the terms and conditions for PROJECT construction phase with AGENCY as the IMPLEMENTING AGENCY and CALTRANS performing INDEPENDENT QUALITY ASSURANCE (IQA).

5. CALTRANS has performed work under the AGREEMENT for which it is entitled to reimbursement. CITY and AGENCY agree to reimburse CALTRANS for that portion of the work performed as part of the AGREEMENT. This AMENDMENT 1 will recover the Office Engineer's expenditures that included review and approval of the PS&E package and subsequent RTL of the project. The expenditures amount has been determined to be \$375,340.40. This amount includes all direct labor and applicable indirect costs.

IT IS THEREFORE MUTUALLY AGREED

6. PARTIES hereby terminate the AGREEMENT by mutual consent. The final signature date on AMENDMENT 1 terminates AGREEMENT except survival articles 90-92, articles 6 -9 of AMENDMENT 1 and all rights and obligations under AGREEMENT by their nature, do not terminate with the termination of this AGREEMENT and shall remain in effect until terminated by statute of limitation. All such survival articles in AGREEMENT and articles 6-9 on of AMENDMENT 1 will remain in effect until expired by law, terminated or modified by mutual consent in writing by the PARTIES, whichever occurs earlier.
7. CALTRANS will be reimbursed for the total expenditures in the amount of \$375,340.40 within 30 working days of executing AMENDMENT 1.
8. The closeout of this AGREEMENT will occur after the total expenditures are paid and CITY and AGENCY shall thereupon have no further obligation to reimburse CALTRANS for CALTRANS work performed under the AGREEMENT.
9. PARTIES will set forth the terms, covenants, and conditions for IQA work for construction to be described under Cooperative agreement 07-5100.

CONTACT INFORMATION

The information provided below indicates the primary contact information for each PARTNER to this Agreement. PARTIES 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:

Zareh Shahbazian, Project Manager
100 South Main Street, Suite 100
Los Angeles, CA 90012
Office Phone: (213) 897-4255
Mobile Phone: (213) 792-3315
Fax Number: (213) 897-4611
Email: zareh_shahbazian@dot.ca.gov

The primary Agreement contact person for CITY is:

Kimberly Young, Senior Civil Engineer
21810 Copley Drive
Diamond Bar, CA 91765
Office Phone: 909-839-7044
Email: kyoung@diamondbarca.gov

Billing Contact Information for CITY is:

David G Liu, Director of Public Works/City Engineer
21810 Copley Drive
Diamond Bar, CA 91765
Office Phone: 909-839-7040
Email: dliu@diamondbarca.gov

The primary Agreement contact person for AGENCY is:

Alex Gonzalez, Director of Development Services and Administration
15625 E. Stafford Street, Suite 100
City of Industry, CA 91744
Office Phone: 626-333-2211
Email: alex@cityofindustry.org

Billing Contact Information for AGENCY

Paul Phillips, City Manager
15625 East Stafford Street, Suite 100
City of Industry, CA 91744
Office Phone: 626-333-2211
Email: admin@cityofindustry.org

SIGNATURES

PARTNER 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.

Signatories may execute through individual signature pages provided that each signature is an original. AMENDMENT 1 is not fully executed until all original signatures are attached.


STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Carrie L. Bowen
District 07 Director

VERIFICATION OF FUNDS & AUTHORITY:

Paul Kwong
District Budget Manager

**APPROVED AS TO FORM &
PROCEDURE:**



Meera Danday
Deputy Attorney

**CERTIFIED AS TO FINANCIAL TERMS
AND POLICIES:**



Accounting Administrator

CITY OF DIAMOND BAR

Ruth M. Low
Mayor

ATTEST:

Tommye Cribbins
City Clerk

APPROVED AS TO FORM:

David A. DeBerry
City Attorney

**SUCCESSOR AGENCY TO THE INDUSTRY
URBAN-DEVELOPMENT AGENCY**

Mark D. Radecki
Chairman

ATTEST:

Diane M. Schlichting
Secretary

APPROVED AS TO FORM:

James M. Casso
Agency General Counsel

SUCCESSOR AGENCY

ITEM NO. 5.3



SUCCESSOR AGENCY TO THE
**INDUSTRY URBAN - DEVELOPMENT
AGENCY**

MEMORANDUM

TO: Honorable Chairman and Members of the Successor Agency to the Industry Urban-Development Agency Board

FROM: Paul J. Philips, Executive Director 

STAFF: Alex Gonzalez, Director of Development Services and Administration 
Lisette Calleros, Funding Program Manager, Avant-Garde
Joshua Nelson, Project Manager, CNC Engineering 

DATE: February 8, 2018

SUBJECT: Consideration of Cooperative Agreement 07-5100 between the Successor Agency to the Industry Urban-Development Agency and Caltrans to perform Independent Quality Assurance (IQA) on the Lemon Avenue Interchange Project (MP 03-10)

Background:

On December 16, 2014, the Successor Agency and City of Diamond Bar entered Cooperative Agreement 07-4919 ("Cooperative Agreement") with Caltrans defining the terms and conditions under which Caltrans would advertise the Lemon Avenue Interchange Project for contractors' bids, award the Project to the successful bidder, and administer the contract in terms of construction administrative services.

Due to a previous funding shortfall and scheduling constraints, the Cities of Industry and Diamond Bar entered into a Betterment Agreement with Alameda Corridor-East Construction Authority ("ACE") on August 22, 2016 to construct and manage the Project. The Betterment Agreement was a construction contract change order to the ongoing Fairway Drive Grade Separation project. This Betterment Agreement defined the improvements to be constructed and the obligations of each city to reimburse ACE for construction and construction management costs totaling \$19 million.

Discussion:

Now that the Project is being constructed and managed by ACE, the Cooperative Agreement is being terminated. This termination makes it necessary for the Successor Agency to enter the Cooperative Agreement No. 07-5100 ("2018 Cooperative Agreement") with Caltrans. The 2018 Cooperative Agreement specifies the terms, project funding, and quality management activities to be performed. Caltrans will

provide quality management work including Independent Quality Assurance (IQA) services and owner/operator approvals for the portions of the work within the existing and proposed State Highway System right-of-way. These IQA efforts are to ensure the Successor Agency's quality assurance results in work that is in accordance with the applicable standards and the Project's quality management plan (QMP). IQA does not include any efforts necessary to develop or deliver Project work. IQA is done for Caltrans' own benefit.

Fiscal Impact:

There are no costs associated with the services to be provided under Cooperative Agreement 07-5100.

Recommendation:

- 1) Staff recommends that the Successor Agency approve and execute the Agreement.

Exhibits:

- A. Cooperative Agreement 07-5100 between the Successor Agency to the Industry Urban-Development Agency and Caltrans to perform Independent Quality Assurance (IQA) on the Lemon Avenue Interchange Project

PJP/AG/LC/JN:jv

EXHIBIT A

Cooperative Agreement 07-5100 between the Successor Agency to the Industry Urban-Development Agency and Caltrans to perform Independent Quality Assurance (IQA) on the Lemon Avenue Interchange Project

[Attached]

COOPERATIVE AGREEMENT COVER SHEET

Work Description

CONSTRUCT NEW PARTIAL INTERCHANGE AT EXISTING LEMON AVENUE
UNDERCROSSING

Contact Information

CALTRANS

Zareh Shahbazian, Project Manager
100 South Main Street, Suite 100
Los Angeles, CA 90012
Office Phone: (213) 897-4255
Mobile Phone: (213) 792-3315
Fax Number: (213) 897-4611
Email: zareh_shahbazian@dot.ca.gov

SUCCESSOR AGENCY TO THE INDUSTRY-URBAN DEVELOPMENT AGENCY

Alex Gonzalez, Director of Development Services and Administration
15625 E. Stafford Street
City of Industry, CA 91744-0366
Office Phone: (626) 333-2211
Email: alex@cityofindustry.org

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COOPERATIVE AGREEMENT

This AGREEMENT, effective on February 8, 2018, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

Successor Agency to the Industry Urban-Development Agency, a public body and successor by operation of law to the Industry Urban-Development Agency, referred to hereinafter as AGENCY

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, *to construct new partial interchange at existing Lemon Avenue Undercrossing*, 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:
 - 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 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:
- CITY OF INDUSTRY completed the Environmental Document (Negative Declaration/Finding of No Significant Impact) on October 12, 2010 (Cooperative Agreement No. 07-4758).
 - CALTRANS completed the R/W Certification on October 19, 2015 (Cooperative Agreement No. 07-4832-A1).
 - CITY OF INDUSTRY completed the Plans, Specifications and Estimate (PS&E) on June 27, 2016 (Cooperative Agreement No. 07-4809).
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. AGENCY 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.

- AGENCY is the Construction IMPLEMENTING AGENCY.

CONSTRUCTION work includes construction contract administration, surveying/staking, inspection, quality assurance, and assuring regulatory compliance. The CONSTRUCTION component budget identifies the capital costs of the construction contract/furnished materials (CONSTRUCTION Capital) and the cost of the staff work in support of the construction contract administration (CONSTRUCTION Support).

11. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for the WORK in that component. The Quality Management Plan describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The Quality Management Plan will include a process for resolving disputes between the PARTIES at the team level. The Quality Management Plan 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. AGENCY is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the WORK in accordance with this AGREEMENT.

14. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.

PARTIES will amend this AGREEMENT by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.

15. Unless otherwise documented in the Funding Summary, all fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.
16. Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.
17. Each PARTY is responsible for the costs they incur in performing the WORK unless otherwise stated in this AGREEMENT. Notwithstanding the foregoing, any WORK costs of AGENCY are subject to review and approval by the AGENCY's Oversight Board and the California Department of Finance.

AGENCY's WORK costs are to be paid from the funds shown in the Funding Summary.

CALTRANS' Quality Management

18. CALTRANS, as the owner/operator of the State Highway System, will perform quality management work including independent quality assurance and owner/operator approvals for the portions of WORK within the existing and proposed State Highway System right-of-way.
19. CALTRANS' independent quality assurance efforts are to ensure that AGENCY's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's quality management plan (QMP). Independent quality assurance does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs independent quality assurance it does so for its own benefit. No one can assign liability to CALTRANS due to its independent quality assurance.

20. 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.
21. AGENCY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

22. The cost of CALTRANS' quality management work is to be borne by CALTRANS independent of any funds obligated in this AGREEMENT.

CEQA/NEPA Lead Agency

23. CALTRANS is the CEQA Lead Agency for the PROJECT.
 24. CALTRANS is the NEPA Lead Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

25. AGENCY 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 AGENCY's responsibilities in this AGREEMENT.
26. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
27. The PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS
404, US Army Corps Of Engineers
401, Regional Water Quality Control Board
1602 California Department of Fish and Wildlife
2080.1 California Department of Fish and Wildlife
2080 (B) California Department of Fish and Wildlife
State Waste Discharge Requirements (Porter Cologne), Regional Water Quality Control Board
Air Quality Permits
National Pollutant Discharge Elimination System (NPDES), State Water Resources Control Board
U.S Fish and Wildlife Service (Section 10 FESA)
U.S. Fish and Wildlife Service (Section 7 FESA)
U.S. Fish and Wildlife Service (Section 7 BO)

CONSTRUCTION

28. As the CONSTRUCTION IMPLEMENTING AGENCY, AGENCY 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.
29. CALTRANS will be responsible for completing the following CONSTRUCTION SUPPORT activities:

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

30. 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.
31. Right-of-way conveyances must be completed prior to WORK completion, unless PARTIES mutually agree to other arrangements in writing.
32. CALTRANS will not issue an Encroachment Permit to AGENCY for construction work until the following conditions are met:
- CALTRANS accepts the final plans, specifications, and estimate
 - CALTRANS accepts the Right-of-Way Certification
 - Any new or amended Maintenance Agreement required for the WORK are executed.
33. AGENCY will require the construction contractor to furnish payment and performance bonds naming AGENCY as obligee, and CALTRANS as additional obligee, and to carry liability insurance in accordance with CALTRANS Standard Specifications.

34. AGENCY will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code. By accepting responsibility to advertise and award the construction contract, AGENCY also accepts responsibility to administer the construction contract.
35. CALTRANS will not issue an Encroachment Permit to AGENCY's construction contractor until CALTRANS accepts:
 - The payment and performance bonds
 - The CONSTRUCTION Quality Management Plan
36. The CONSTRUCTION Quality Management Plan 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 Quality Management Plan is subject to review and approval by the State Materials Engineer.
37. The CONSTRUCTION Quality Management Plan will address the radiation safety requirements of the California Code of Regulations 17 CCR § 30346 when the work requires Gamma-Gamma Logging acceptance testing for Cast in Drilled Hole (CIDH) pile or whenever else it is applicable. In accordance with these regulations AGENCY, as the "well operator", will have a written agreement with any consultant or external entity performing these tests.
38. AGENCY 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.
39. 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).
40. If CONSTRUCTION CAPITAL is funded with state or federal funds then AGENCY will administer and process all construction contract claims using a CALTRANS-approved process. CALTRANS will provide Independent Quality Assurance for the claims process.

41. AGENCY 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. AGENCY is required to comply with the CALTRANS MS4 National Pollutant Discharge Elimination System (NPDES) permit for all work within the State Highway System.
42. As the CONSTRUCTION IMPLEMENTING AGENCY, AGENCY is responsible for maintenance of the State Highway System 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 State Highway System for which relief of maintenance is to be granted.
 - CALTRANS approves a request from AGENCY for relief from maintenance of the PROJECT or a portion thereof.
43. PARTIES confirm that upon WORK completion, no maintenance agreement will be necessary.
44. 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 within State Highway System 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 State Highway System right-of-way.

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

Schedule

46. 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

47. PARTIES will perform all WORK in accordance with all applicable laws, regulations, and standards; including, but not limited to, FHWA standards, and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:
- CALTRANS policies and directives
 - Project Development Procedures Manual (PDPM)
 - Workplan Standards Guide
 - Construction Manual
 - Construction Manual Supplement for Local Agency Resident Engineers
 - Local Agency Structure Representative Guidelines
48. CALTRANS retains the right to reject noncompliant WORK. AGENCY agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.
49. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.
50. AGENCY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.
51. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System right-of-way. Contractors and/or agents, and utility owners will not work within the State Highway System right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to PARTIES, their contractors, consultants and agents 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.
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.
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 documents. PARTIES will consult with each other prior to the release of any public documents related to the WORK.
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 will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the existing State Highway System right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

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

AGENCY 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 with funds that are independent of the funds obligated in this AGREEMENT.

60. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.
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.
62. AGENCY will accept, reject, compromise, settle, or litigate claims of any consultants or contractors hired to complete WORK.
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 Chapter 10 of the Local Assistance Procedures Manual.

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 to implement the obligations of this AGREEMENT, including the commitments and conditions 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.
69. The cost of awards, judgments, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
70. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
71. Any PARTY who 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.
72. AGENCY 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. AGENCY 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

73. 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.
74. All CALTRANS' obligations under 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.

75. 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 AGENCY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon AGENCY under this AGREEMENT. It is understood and agreed that AGENCY, 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 AGENCY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
76. Neither AGENCY 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 AGENCY 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.
77. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights in PARTIES 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.
78. PARTIES will not assign or attempt to assign obligations to PARTIES not signatory to this AGREEMENT without an amendment to this AGREEMENT.
79. AGENCY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. AGENCY 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.
80. 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.
81. 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.

82. 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 AGENCY 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.

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

83. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
84. 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.
85. 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 found in 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. § 276(a).

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.

DEFINITIONS

AGREEMENT – This agreement including any attachments, exhibits, and amendments.

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

PARTY – Any individual signatory party to this AGREEMENT.

PARTIES – The term that collectively references all of the signatory agencies to this AGREEMENT.

PROJECT COMPONENT – A distinct portion of the planning and project development process as defined in the CALTRANS Workplan Standards Guide.

WORK BREAKDOWN STRUCTURE (WBS) – A WBS is a standardized hierarchical listing of project work activities/products in increasing levels of detail. The CALTRANS WBS defines each PROJECT COMPONENT as a group of work activities/products. The CALTRANS Work Breakdown Structure is defined in the CALTRANS Workplan Standards Guide.

WORK – All obligations and responsibilities to complete the project component identified in the AGREEMENT.

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**

Carrie L. Bowen
District 07 Director

Certified as to funds:

Paul Kwong
District Budget Manager

APPROVED AS TO FORM AND
PROCEDURE:



Attorney
Department of Transportation

**SUCCESSOR AGENCY TO THE
INDUSTRY URBAN-DEVELOPMENT
AGENCY**

By: _____
Mark D. Radecki
Chairman

Attest:

By: _____
Diane M. Schlichting
Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso
Agency Counsel

FUNDING SUMMARY NO. 01

<u>FUNDING TABLE</u>					
Party	<u>IMPLEMENTING AGENCY</u> → Fund Type	Fed Share (%)	<u>AGENCY</u>		Totals
		OR Non-fed Match (flex/yes)	CONST. SUPPORT	CONST. CAPITAL	
	Local Funds				
AGENCY	Industry Successor Agency		400,000	6,858,526	7,258,526
AGENCY	Industry Local		400,000	8,913,027	9,313,027
AGENCY	Measure M		400,000	3,600,000	4,000,000
AGENCY	Local			223,993	233,993
Totals			1,200,000	19,595,546	20,795,546

Invoicing and Payment

1. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

CONSTRUCTION Support

2. No invoicing or reimbursement will occur for the CONSTRUCTION SUPPORT PROJECT COMPONENT.

CONSTRUCTION Capital

3. No invoicing or reimbursement will occur for the CONSTRUCTION CAPITAL PROJECT COMPONENT.

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 Funding Summary on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Funding Summary.

Signatories may execute this Funding Summary through individual signature pages provided that each signature is an original. This Funding Summary is not fully executed until all original signatures are attached.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Carrie L. Bowen
District Director

Date _____

Paul Kwong
District Budget Manager

**SUCCESSOR AGENCY TO THE
INDUSTRY URBAN-DEVELOPMENT
AGENCY**

APPROVED

By: _____
Mark D. Radecki
Chairman

Date _____

ATTEST:

By: _____
Diane M. Schlichting
Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso
Agency Counsel