

Cooperative Agreement

THIS AGREEMENT **08A3173**, ENTERED INTO ON **July 1, 2020**, is between the State of California, acting by and through its Department of Transportation, referred to herein as **CALTRANS** and the **San Bernardino County, Department of Agriculture/Weights & Measures**, hereinafter referred to as **LOCAL AGENCY**.

Recitals

1. **CALTRANS** and **LOCAL AGENCY**, (together referred to as parties) pursuant to Streets and Highways Code Section 114(a), are authorized to enter in this Agreement affecting State highways within the jurisdiction of **LOCAL AGENCY**.
2. **LOCAL AGENCY** has agreed to implement **Noxious Weed Control**, hereinafter the Project, subject to the terms and conditions of this Agreement. The Project Description (Scope of Work, Location, Project Components, and Cost Estimate) is attached hereto as **Attachment II**.
3. This Agreement will commence on **July 1, 2020** or upon approval by **CALTRANS**, whichever is later, and no work shall begin before that time. This Agreement is of no effect unless approved by **CALTRANS**. The **LOCAL AGENCY** shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Caltrans Contract Manager. This Agreement shall expire on **June 30, 2023**. The parties may amend this Agreement as permitted by law.
4. If the Project is not performed by **LOCAL AGENCY** staff and employees, **LOCAL AGENCY** through its contract with its contractor or agent (subcontractor) will establish and ensure subcontractor shall, including, but not limited to, provide Work Crews and Work Crew Supervisors as described in **Attachment II**.
5. The governing body of the **LOCAL AGENCY**, under the authority of local ordinances, if applicable, is authorized to provide services or funding as described and specified herein pursuant to the **LOCAL AGENCY** resolution attached hereto as **Attachment I**. **LOCAL AGENCY** agrees to attach a copy of the resolution, order, motion, ordinance, or other similar document from the governing body of the **LOCAL AGENCY** authorizing execution of this Agreement.
6. All services performed by **LOCAL AGENCY** pursuant to this Agreement are intended to be performed in accordance with all applicable Federal, State, and **LOCAL AGENCY** laws, ordinances, regulations, and **CALTRANS** encroachment permits, published manuals, policies, and procedures.
7. Project funding is as follows:

FUND TITLE	FUND SOURCE	DOLLAR AMOUNT
SHA	STATE	\$120,000
8. This Agreement is exempt from legal review and approval by the Department of General Services (DGS), pursuant to Public Contract Code Section 10295.
9. The term Agreement, as used herein, includes this document and any attachments, exhibits, and amendments.
10. 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.

11. Parties intend this Agreement to be their final expression that supersedes any oral understanding or writings pertaining to the Project. The requirements of this Agreement will preside over any conflicting requirements in any documents that are made an express part of this Agreement.
12. 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.
13. Except as otherwise provided in the Agreement, parties will execute a written amendment if there are any changes to the terms of this Agreement.
14. All Sections of this Agreement, including the Recitals, are enforceable.

Section I

LOCAL AGENCY AGREES:

To take responsibilities towards satisfactorily completing all Project Work described in **Attachment II**.

Section II

CALTRANS AGREES:

To reimburse **LOCAL AGENCY** subject to the terms of this Agreement.

Section III

IT IS MUTUALLY AGREED:

In consideration of the foregoing and the mutual promises of the parties hereto, **LOCAL AGENCY** and **CALTRANS** agree as follows:

1. Notification of Parties

- A. **LOCAL AGENCY's** Project Manager is **Emilo Lopez (909) 387-2131**
- B. **CALTRANS'** Contract Manager is **Michael Odonnell (909) 801-5563**
- C. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at their respective addresses:

San Bernardino County, Department of Agriculture/Weights & Measures
Attention: **Emilo Lopez**
Contract Manager
777 E. Rialto Avenue
San Bernardino, CA 92415-072

California Department of Transportation
08/Maintenance
Attention: **Michael Odonnell**
1910 Orange Tree Lane Suite 300
Redlands, CA 92374

2. Changes in Terms/Amendment

This Agreement may only be amended or modified by mutual written agreement of the parties.

3. Termination

This Agreement may be terminated by either party for any reason by giving written notice to the other party at least 30 days in advance of the effective date of such termination. In the event of termination by said notice, funds reimbursed to **LOCAL AGENCY** will include all authorized non-cancelable obligations and prior costs incurred.

4. Cost Limitation

- A. The total amount payable to **LOCAL AGENCY** pursuant to this Agreement by **CALTRANS** shall not exceed **\$120,000.00**
- B. It is understood and agreed that this Agreement fund limit is an estimate and that **CALTRANS** will only reimburse the cost of services actually rendered as authorized by the **CALTRANS** Contract Manager or its designee at or below the fund limitation amount set forth in the provision above.

5. Budget Contingency Clause

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the State of California by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. Pursuant to Government Code Section 927.13, no late payment penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a Federally-mandated program or that is directly dependent upon the receipt of Federal funds by a State agency.
- E. Caltrans has the option to terminate the Agreement under the 30-day termination clause or to amend the Agreement to reflect any reduction of funds.

6. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code, Chapter 4.5, commencing with Section 927.

7. Invoicing and Payment

- A. For services satisfactorily rendered and approved by the Caltrans Contract Manager, and upon receipt and approval of the invoices, Caltrans agrees to compensate the **LOCAL AGENCY** in accordance with the Scope of Work, Schedule, and Costs,

Attachment II. Incomplete or disputed invoices shall be returned to the **LOCAL AGENCY**, unpaid, for correction.

- B. Invoices shall be itemized in accordance with **Attachment II** and shall be signed and submitted in triplicate not more frequently than monthly in arrears of the service.

8. Allowable Costs

- A. The method of payment for this Agreement will be based on actual allowable costs. **CALTRANS** will reimburse **LOCAL AGENCY** for expended actual allowable direct and indirect costs, including, but not limited to, labor costs, in performance of the Project Work, not to exceed the cost reimbursement limitation set forth in "Cost Limitation" provision, above. Actual costs shall not exceed the estimated wage rates, labor costs, travel, and other estimated costs and fees set forth in **Attachment II** without prior written agreement between **CALTRANS** and **LOCAL AGENCY**.
- B. Reimbursement of **LOCAL AGENCY** expenditures will be authorized only for those allowable costs actually paid to **LOCAL AGENCY** in the performance of the Project Work. **LOCAL AGENCY** must not only have incurred the expenditures on or after the Effective Date of this Agreement and before the Termination Date, but must have also paid for those costs to claim any reimbursement.
- C. Payments to **LOCAL AGENCY** for Project-related travel and subsistence (per diem) expenses of **LOCAL AGENCY** forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid to rank and file State employees under current California Department of Human Resources (CalHR) rules. If the rates invoiced by **LOCAL AGENCY** are in excess of CalHR rates, **LOCAL AGENCY** is responsible for the cost difference, and any overpayments inadvertently paid by **CALTRANS** shall be reimbursed to **CALTRANS** by **LOCAL AGENCY** on demand.
- D. **CALTRANS** will reimburse **LOCAL AGENCY** for all allowable Project costs no more frequently than monthly in arrears as promptly as **CALTRANS** fiscal procedures permit upon receipt of itemized signed invoices in triplicate. Invoices shall reference this Agreement Number and shall be signed and submitted to the Contract Manager at the following address:

Department of Transportation
District 8 / Maintenance
Attention: **Michael Odonnell**
Email address: michael.odonnell@dot.ca.gov
1910 Orange Tree Lane Suite 300
Redlands, CA 92374

- E. Invoices shall include the following information:
- 1) Names of the **LOCAL AGENCY** Personnel performing work
 - 2) Dates of Service
 - 3) Locations of Service (**LOCAL AGENCY**–address)

9. Reports

- A. **LOCAL AGENCY** shall submit written progress reports and expenditure reports with each set of invoices to allow the **CALTRANS** Contract Manager to determine if **LOCAL**

AGENCY is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.

- B. Any document or written report prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of those documents or reports.
- C. **LOCAL AGENCY** will provide five (5) copies and one (1) electronic version of the final written report to the **CALTRANS** Contract Manager.

10. Audit

- A. Parties have the right to audit each other in accordance with generally accepted governmental audit standards. **CALTRANS**, the California State Auditor, Federal Highway Administration (FHWA) (if the Project utilizes Federal funds), and **LOCAL AGENCY** will have access to all Project-related records of each party, and any consultant party hired by a **LOCAL AGENCY** to participate in Project , for audit, examination, excerpt, or transcription. The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract. The auditing party will be permitted to make copies of any Project-related records needed for the audit. The audited party will review the draft audit, findings, and recommendations, and provide written comments within 30 calendar days of receipt. Upon completion of the final audit, parties have 45 calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.
- B. If the Project 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.

11. Cost Principles

- A. **LOCAL AGENCY** shall comply with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. **LOCAL AGENCY** agrees, and will require that their contractors, subcontractors, and other subrecipients will be obligated to agree, that 48 CFR Part 31, 23 CFR Parts 40, 172, 645, and 646, and 2 CFR Part 200 shall be used to determine the allowability of individual Project cost items, and shall comply with Federal administrative procedures set forth in 2 CFR Part 200.
- C. Any Project costs for which **LOCAL AGENCY** has received payment or credit that are determined by subsequent audit to be unallowable under 48 CFR Part 31, 23 CFR, or 2 CFR Part 200, are subject to repayment by **LOCAL AGENCY** to **CALTRANS**. Should **LOCAL AGENCY** fail to reimburse moneys due **CALTRANS** within 30 days of discovery or demand, or within such other period as may be agreed in writing between the parties hereto, **CALTRANS** is authorized to intercept and withhold future payments due **LOCAL AGENCY** from **CALTRANS** or any third-party source, including, but not limited to, the State Treasurer, the State Controller or any other funding source.

- D. **LOCAL AGENCY** agrees to include Project in the schedule of projects to be examined in **LOCAL AGENCY's** annual audit and in the schedule of projects to be examined under its single audit prepared in compliance with 2 CFR Part 200.
- E. Prior to **LOCAL AGENCY** seeking reimbursement of indirect costs, **LOCAL AGENCY** must: prepare an indirect cost rate proposal and a central service costs allocation plan (if any); or request the use of the de minimis rate, or request an extension of a negotiated indirect rate, in compliance with 2 CFR Part 200, Cost Principles for State, Local, and Indian Tribal Governments, and Chapter 5 Local Assistance Program Procedures Manual which may be accessed at: <https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm>. Proposals and requests must be submitted to, and in accordance with, **CALTRANS** Independent Office of Audits and Investigations requirements which may be accessed at: <https://iq.dot.ca.gov/resources>.
- F. Prior to contractor(s) seeking reimbursement of indirect costs, **LOCAL AGENCY** must ensure: the contractor(s) prepared an indirect cost rate(s) approved or accepted by a cognizant agency or **CALTRANS** or request the use of the safe harbor rate in compliance with the 23 CFR Part 172, Procurement, Management, and Administration of Engineering and Design Related Services. Chapter 10 of the Local Assistance Procedures Manual may be accessed at: <https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm>. Proposals and requests must be submitted to, and in accordance with **CALTRANS** Independent Office of Audits and Investigations requirements, which may be accessed at: <https://iq.dot.ca.gov/resources>.
- G. **LOCAL AGENCY** agrees and shall require that all of its agreements with consultants and subrecipients contain provisions requiring adherence to this section in its entirety, except for **Section D, above**.

12. Americans with Disabilities Act

By signing this Agreement, **LOCAL AGENCY** assures **CALTRANS** that it complies with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 USC Section 12101 et seq.).

13. Legal Relations and Responsibilities:

Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement, or affect the legal liability of either party to this Agreement by imposing any standard of care respecting the Project different from the standard of care imposed by law.

14. Indemnification

- A. Nothing in the provisions of the Agreement is intended to create duties or obligations to or rights in third parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the operation, maintenance, and repair of State highways different from the standard of care imposed by law.
- B. Neither **CALTRANS** nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by **LOCAL AGENCY** under or in connection with any work, authority, or conduct conferred

upon **LOCAL AGENCY** under this Agreement. It is understood and agreed that, **LOCAL AGENCY** shall fully defend, indemnify, and save harmless **CALTRANS** and all of its officers and employees from all claims, suits, or actions of every name, kind, and description arising out of this Agreement, including, but not limited to, any tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by **LOCAL AGENCY** and/or its contractors/consultants, under or in connection with any work, authority or conduct delegated to **LOCAL AGENCY** under this Agreement.

- C. **LOCAL AGENCY** shall ensure in its contract with its contractors/consultants that the latter shall defend, indemnify, and save harmless **CALTRANS** and all of its respective 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 contractors/consultants of **LOCAL AGENCY**, its employees, and/or agents towards the Project.

15. Insurance

LOCAL AGENCY shall require all its subcontractors to furnish a Certificate of Insurance for Commercial General Liability Insurance, automobile liability insurance, and evidence of valid Workers' Compensation coverage, in effect for the term of this Agreement, which names **CALTRANS** as an additional insured in an amount of \$1 million per person and \$2 million in aggregate. In addition, **LOCAL AGENCY** shall require its subcontractors to indemnify, defend, and hold harmless **CALTRANS** to the same extent as they do under their contracts with **LOCAL AGENCY**.

16. Nondiscrimination Clause (2 Cal. Code Regs. 11105 Clause b)

- A. During the performance of this Agreement, the **LOCAL AGENCY**, and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. **LOCAL AGENCY** shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. **LOCAL AGENCY** shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., Title 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by **CALTRANS** to implement such article.
- C. **LOCAL AGENCY** shall permit access by representatives of the Department of Fair Employment and Housing (DFEH) and **CALTRANS** upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of

its books, records, accounts, and all other sources of information and its facilities as DFEH or **CALTRANS** shall require to ascertain compliance with this clause.

- D. **LOCAL AGENCY** and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. **LOCAL AGENCY** shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

17. Funding Requirements

- A. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement was executed only after ascertaining the availability of a congressional or legislative appropriation of funds.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to **CALTRANS** by the United States Government and/or the California State Legislature for the purpose of this Project. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program and Project, this Agreement shall be amended to reflect any reduction in funds.
- D. **CALTRANS** has the option to void this Agreement under the 30-day termination clause or to amend this Agreement to reflect any reduction of funds. In the event of an unscheduled termination, the **CALTRANS** Contract Manager may reimburse **LOCAL AGENCY** in accordance with the provisions of Article 4 of this Section III.

18. Records Retention

- A. **LOCAL AGENCY**, its contractors, and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of **LOCAL AGENCY**, its contractors, and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **LOCAL AGENCY**, its contractors, and subcontractors connected with Project performance under this Agreement shall be maintained for a minimum of three (3) years from the date of final payment to **LOCAL AGENCY** and shall be held open to inspection, copying, and audit by representatives of **CALTRANS**, the California State Auditor, and auditors representing the Federal government. Copies thereof will be furnished by **LOCAL AGENCY**, its contractors, and its subcontractors upon receipt of any request made by **CALTRANS** or its agents. In conducting an audit of the costs and match credits claimed under this Agreement, **CALTRANS** will rely to the maximum extent possible on any prior audit of **LOCAL AGENCY** pursuant to the provisions of Federal and State law. In the absence of such an audit, any acceptable audit work performed by external and internal auditors of **LOCAL AGENCY** may be relied upon and used by **CALTRANS** when planning and conducting additional audits.

- B. For the purpose of determining compliance with Title 21, California Code of Regulations, Sections 2500 et seq., when applicable, and other matters connected with the performance of **LOCAL AGENCY's** contracts with third parties pursuant to Government Code Section 8546.7, **LOCAL AGENCY**, **LOCAL AGENCY's** contractors and subcontractors, and **CALTRANS** shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three years from the date of final payment to **LOCAL AGENCY** under this Agreement. **CALTRANS**, the California State Auditor, or any duly authorized representative of **CALTRANS** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and **LOCAL AGENCY** shall furnish copies thereof if requested.
- C. **LOCAL AGENCY**, its contractors, and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **CALTRANS**, for the purpose of any investigation to ascertain compliance with this Agreement.

19. Administrative Remedy for Disputes

- A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the **CALTRANS** Contract Officer, who may consider any written or verbal evidence submitted by **LOCAL AGENCY**.
- B. Neither the pendency of a dispute nor its consideration by the **CALTRANS** Contract Officer will excuse **LOCAL AGENCY** from full and timely performance in accordance with the terms of the Agreement.

20. Subcontractors

LOCAL AGENCY shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the **CALTRANS** Contract Manager, unless expressly included (subcontractor identified) in **Attachment II**.

21. Third-Party Contracting

- A. **LOCAL AGENCY** shall not award a construction contract more than \$10,000 or other contracts more than \$25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Gov. Code Sections 4525(d), (e), and (f)) on the basis of a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of **CALTRANS**.
- B. Any subcontract entered into by **LOCAL AGENCY** as a result of this Agreement shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

22. Drug-Free Workplace Certification

By signing this Agreement, **LOCAL AGENCY** hereby certifies under penalty of perjury under the laws of the State of California that **LOCAL AGENCY** will comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code Section 8350 et seq.) and will provide a Drug-Free workplace by doing all of the following:

- A. Publish a Statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- B. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - 1) The dangers of drug abuse in the workplace,
 - 2) The person's or organization's policy of maintaining a Drug-Free workplace,
 - 3) Any available counseling, rehabilitation, and employee assistance programs, and
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide as required by Government Code Section 8355(a)(3), that every employee who works on the proposed contract or grant:
 - 1) Will receive a copy of the company's Drug-Free policy Statement, and
 - 2) Will agree to abide by the terms of the company's Statement as a condition of employment on the contract or grant.

Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both, and **LOCAL AGENCY** may be ineligible for the award of any future State contracts if **CALTRANS** determines that any of the following has occurred: (1) **LOCAL AGENCY** has made a false certification or, (2) **LOCAL AGENCY** violates the certification by failing to carry out the requirements as noted above.

23. Relationship of Parties

It is expressly understood that this is an agreement and is executed by and between two independent governmental entities and that this is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or association, or any other relationship whatsoever other than that of an independent party.

24. No Common Law Employee Relationship

- A. **CALTRANS** does not possess authority and responsibility to employ, retain, enroll, and/or contract with, or discharge, all personnel. However, **CALTRANS** may request **LOCAL AGENCY** not to bring within **CALTRANS** right of way certain personnel to perform services which shall be considered by **LOCAL AGENCY** in good faith.
- B. **CALTRANS** does not require personnel working under this contract to be exclusively engaged in work under this Agreement or **CALTRANS** projects.
- C. **LOCAL AGENCY** shall provide all of its own tools, equipment, and supplies for all work performed by **LOCAL AGENCY** pursuant to this Agreement, and **LOCAL AGENCY** shall not rely on **CALTRANS** to provide any of such tools, equipment, and/or supplies.

- D. **LOCAL AGENCY** shall provide its own training to all **LOCAL AGENCY** personnel, and **LOCAL AGENCY** shall not rely upon **CALTRANS** to provide any such training.
- E. **LOCAL AGENCY** shall be solely responsible for **LOCAL AGENCY** personnel pay and benefits, and the custody, care, and supervision of all **LOCAL AGENCY** personnel performing work in connection with this Agreement. No personnel performing any work in connection with this Agreement shall be considered employees of **CALTRANS** of any type, including, but not limited to, common law employees, at any time during the term of this Agreement.
- F. Permission for **LOCAL AGENCY** personnel to perform work on lands owned and/or controlled by **CALTRANS** does not in any way convey to **LOCAL AGENCY**, or any personnel, employee status of any type, including, but not limited to, common law employee status, that would extend to any of such persons any of the benefits afforded to employees of **CALTRANS**.
- G. **LOCAL AGENCY** shall provide all **LOCAL AGENCY** personnel who perform any work on this Agreement with Workers' Compensation coverage and benefits that are administered by the State Compensation Insurance Fund in accordance with the California Labor Code , during the entire term of this Agreement.
- H. **LOCAL AGENCY** shall advise all personnel performing any work in connection with this Agreement of all provisions of this section "No Common Law Employee Relationship," and **LOCAL AGENCY** shall advise all such personnel to report to **LOCAL AGENCY** any apparent or actual breaches of said provisions. **LOCAL AGENCY** shall immediately relay any such reports to the **CALTRANS** Contract Manager or designee.
- I. In the event that any personnel is injured on the job while performing any work pursuant to this Agreement, **LOCAL AGENCY** shall be solely responsible for ensuring, and shall ensure, that such injured person receives the appropriate level of medical care and transportation to a medical facility. **LOCAL AGENCY** shall also be solely responsible for the administration of any claims made by such injured person due to any such injury as well as all treatment of and for any such injury. **LOCAL AGENCY** shall notify the **CALTRANS** Contract Manager within twenty-four (24) hours, or by the following work day, of any such injury sustained while working under this Agreement and the name of the injured person, the nature of the injury, and where, when, and how the injury occurred.
- J. A **LOCAL AGENCY** supervisor will direct all work crew operations and safety procedures. **CALTRANS** personnel shall not be required to be at any worksite where **LOCAL AGENCY** personnel are performing work pursuant to this Agreement, but **CALTRANS** personnel shall be in the general geographic area of each such worksite to respond to any emergencies. **CALTRANS** shall give daily pre-job technical instructions and safety information specific to each work location. **LOCAL AGENCY** agrees to ensure that all **LOCAL AGENCY** personnel are trained to follow and do follow all applicable safety guidelines of the Caltrans Safety Manual and all applicable regulations and/or standards issued by Cal/OSHA, including, but not limited to, Title 8, California Code of Regulations, Section 3203. **LOCAL AGENCY** shall train **LOCAL AGENCY** personnel on risks encountered in the workplace, including, but not limited to, how to avoid accidental hypodermic needle sticks.
- K. All **LOCAL AGENCY** Supervisors shall have a working communication device (e.g., cell phone) on their persons at all times for safety and technical direction.

- L. All **LOCAL AGENCY** van drivers that transport **LOCAL AGENCY** work crews shall possess a current and valid California Driver's License. **LOCAL AGENCY** shall provide each of its work crews with a safe, fully functional passenger van to transport all **LOCAL AGENCY** Personnel; a portable toilet; and sufficient drinking water, as required by Cal/OSHA regulations.
- M. **LOCAL AGENCY** personnel shall at no time operate any heavy equipment or other complex equipment while performing any work under this Agreement.

25. Equipment Purchase (By **LOCAL AGENCY**)

- A. Prior authorization in writing by the **CALTRANS** Contract Manager shall be required before **LOCAL AGENCY** enters into any non-budgeted purchase order or sub-agreement exceeding \$500 for supplies, equipment, or consultant services. **LOCAL AGENCY** shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For the purchase of any item, service, or consulting work not covered in the attached **Project Description (Attachment II)** and exceeding \$500, three (3) competitive quotations must be submitted with the request or the absence of bidding must be adequately justified, and prior authorization must be obtained from the **CALTRANS** Contract Manager.
- C. Any equipment purchased as a result of this Agreement is subject to the following: **LOCAL AGENCY** shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on sale, in accordance with established **CALTRANS** procedures, purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried is those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to **CALTRANS** upon request by **CALTRANS**.
- D. At the conclusion of the Agreement, or if the Agreement is terminated, **LOCAL AGENCY** may either keep the equipment and credit **CALTRANS** in an amount equal to its fair market value or sell such equipment at the best price obtainable at a public or private sale in accordance with established **CALTRANS** procedures and credit **CALTRANS** in an amount equal to the sales price. If **LOCAL AGENCY** elects to keep the equipment, fair market value shall be determined, at **LOCAL AGENCY** expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to **CALTRANS** and **LOCAL AGENCY**. If **LOCAL AGENCY** is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by **CALTRANS**.
- E. 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.
- F. Any sub-agreement entered into as a result of this Agreement shall contain all of the provisions of this Article.

26. Disabled Access Review

Disabled access review by DGS, Division of the State Architect, is required for the construction of all publicly funded buildings, structures, sidewalks, curbs and related facilities. No construction contract will be awarded by **LOCAL AGENCY** unless **LOCAL AGENCY** plans and specifications for such facilities conform to the provisions of Government Code Sections 4450 and 4454, if applicable. Further requirements and guidance are provided in Title 24 of the California Administrative Code and the Americans with Disabilities Act (42 USC 12101 et. seq.).

27. Fire Marshal Review

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any **CALTRANS** owned or **CALTRANS** occupied buildings per Health and Safety Code Section 13108. When applicable, **LOCAL AGENCY** must assure that any relevant Project plans meet the standards of the State Fire Marshal to ensure consistency with **CALTRANS** fire protection standards.

28. Environmental Clearance

Environmental clearance of Project by **LOCAL AGENCY** and/or **CALTRANS** is required prior to requesting funds for right of way purchase or construction. No department or agency shall request funds, nor shall any department/agency board or commission authorize expenditures of funds for any project, except feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied by an environmental impact report per California Public Resources Code Section 21102. The California Environmental Quality Act (Pub. Res. Code § 21080(b)(10)), does provide an exemption for rail projects which institute or increase passenger or commuter services on rail or highway rights-of-way already in use.

29. Labor Code Compliance: Prevailing Wages

If the work performed on this Project is done under contract and falls within Labor Code Section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, repair, or maintenance, **LOCAL AGENCY** must conform to the provisions of Labor Code Sections 1720 through 1815, all applicable regulations and coverage determinations issued by the Director of Industrial Relations. **LOCAL AGENCY** agrees to include prevailing wage requirements in its contracts for public works. Work performed by **LOCAL AGENCY's** own forces is exempt from the Labor Code's prevailing wage requirements.

30. Prevailing Wage Requirements in Subcontracts

LOCAL AGENCY shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a "public work" as defined in Labor Code Section 1720(a)(1). Subcontracts shall include all prevailing wage requirements set forth in **LOCAL AGENCY's** contracts.

If Project is paid for, in whole or part, with Federal funds and is of the type of work subject to Federal prevailing wage requirements, **LOCAL AGENCY** will conform to the provisions of the Davis-Bacon and Related Acts (40 USC Sections 3141-3148).

When applicable, **LOCAL AGENCY** will include Federal prevailing wage requirements in contracts for public works. Project work performed by employees of a **LOCAL AGENCY's** is exempt from any prevailing wage requirements.

31. Project Close Out

The Agreement Expiration Date refers to the last date for **LOCAL AGENCY** to incur valid Project costs or credits and is the date the Agreement expires. **LOCAL AGENCY** has 60 days after that Expiration Date to make final allowable payments to Project contractors or vendors, prepare the Project Closeout Report, and submit the final invoice to **CALTRANS** for reimbursement for allowable Project costs. Any unexpended Project funds not invoiced by that sixtieth (60th) day will be reverted and will no longer be accessible to reimburse late Project invoices.

32. Public Records Request

If a party receives a public records request pertaining to the Project, 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 Project.

33. Encroachment Permit

- A. **CALTRANS** will issue, upon proper application, the encroachment permits required for Project within State Highway System (SHS) right-of-way. **LOCAL AGENCY**, their contractors, consultants, agents' contractors and/or 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 **LOCAL AGENCY**, their contractors, consultants, agents, and utility owners at no cost to **LOCAL AGENCY**.
- B. **LOCAL AGENCY** will submit a one-time encroachment permit application for routine Project work as required by this Agreement. An Encroachment Permit rider may be required for any changes to the scope of work allowed by this Agreement or any work that is not regular maintenance, prior to the start of any work within **CALTRANS'** right of way.

34. State-Owned Data

- A. **LOCAL AGENCY** agrees to comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:
 - 1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect **CALTRANS** data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
 - 2) Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
 - 3) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.

- 4) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
- 5) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
- 6) Notify the Caltrans Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
- 7) Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.

B. To use the State-owned data only for State purposes under this Agreement.

C. To not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). Reference State Administrative Manual (SAM) Section 5335.1.

35. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to and not a limitation of the **LOCAL AGENCY's** indemnification obligations contained elsewhere in this Agreement, the **LOCAL AGENCY** hereby assumes all risks of the consequences of exposure of **LOCAL AGENCY's** employees, agents, subcontractors, subcontractors' employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind, or origin. **LOCAL AGENCY** also agrees to take all appropriate safety precautions to prevent any such exposure to **LOCAL AGENCY's** employees, agents, subcontractors, subcontractors' employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. **LOCAL AGENCY** also agrees to indemnify and hold harmless **CALTRANS**, the State of California, and each and all of their officers, agents, and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, **LOCAL AGENCY** also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of **CALTRANS**, the State of California, and/or any of their officers, agents, and/or employees.

36. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code Section 42649.8 et seq., if **LOCAL AGENCY** generates four (4) cubic yards or more of organic waste or commercial solid waste per week, the **LOCAL AGENCY** shall arrange for organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling. **LOCAL AGENCY** shall provide proof of compliance, i.e. organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from the **CALTRANS** Contract Manager.

37. ADA Compliance

All entities that provide electronic or information technology or related services that will be posted online by the California Department of Transportation must be in compliance with Government Code Sections 7405 and 11135 and the Web Content Accessibility Guidelines (WCAG) 2.0 or subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success. All entities will respond to and resolve any complaints/deficiencies regarding accessibility brought to their attention.

Attachments:

The following **Attachments** are incorporated into and are made a part of this Agreement by this reference and attachment.

- I. **LOCAL AGENCY** Resolution
- II. Scope of Work, Schedule, and Costs

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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first herein above written:

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SAN BERNARDINO COUNTY
DEPARTMENT OF AGRICULTURE /
WEIGHTS & MEASURES**

By: _____
Title: Contract Officer
Date: _____

By: _____
Curt Hagman,
Title: Chairman
Date: _____
By: _____
Title: _____
Date: _____
By: _____
Title: _____
Date: _____