

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 8

PROGRAM MANAGEMENT/AGREEMENTS  
464 WEST 4<sup>TH</sup> STREET, 6<sup>TH</sup> FLOOR (MS 1231)  
SAN BERNARDINO, CA 92401-1400  
PHONE (909) 338-4068



*Serious drought.  
Help save water!*

December 5, 2018

Mr. Remon Habib, P.E.  
Senior Engineer  
City of Lake Elsinore  
130 S. Main Street  
Lake Elsinore, CA 92530

08-Riv-15-PM 16.5/21.0  
I-15/Railroad Canyon Road  
Reconstruct Interchange  
EA 0A4400  
District Agreement No. 8-1416 A/2  
Project Number 0800000016

Dear Mr. Habib:

Enclosed for execution by the City of Lake Elsinore (City) is one (1) original cooperative agreement and two (2) additional signature pages for the above-referenced project.

Please have the appropriate parties for the City sign and return all original signature pages within the next two (2) months.

**Please leave the effective date blank.** The effective date will be the date the district director signs the agreement.

After the agreement is fully executed, we will return two (2) originals for your records.

Alterations of any kind made to the enclosed agreements will render them null and void and will require further review from the State's Legal Counsel.

If you need more information, please contact Mr. Emad Makar at (909) 383-4978, or I can be reached at (909) 383-4068.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Craig".

DENISE CRAIG  
Office Chief  
Agreements

Enclosures

c: Emad Makar, Program/Project Management

RECEIVED  
CITY OF LAKE ELSINORE

DEC 14 2018

ENGINEERING DIVISION

08-Riv-15-PM 16.5/21.0  
I-15/Railroad Canyon Road  
Reconstruct Interchange  
EA 0A4400  
District Agreement No. 8-1416-A/2

**REPLACEMENT  
COOPERATIVE AGREEMENT**  
(Amendment 2)

This AGREEMENT, entered into effective on \_\_\_\_\_, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “STATE,” and the

CITY OF LAKE ELSINORE, a body politic and a municipal corporation of the State of California, referred to herein as “CITY.”

**RECITALS**

1. STATE and CITY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within CITY’s jurisdiction.
2. The parties hereto entered into Agreement No. 8-1416 on December 22, 2008, defining the terms and conditions of a project for the reconstruction of Interstate 15 (I-15)/Railroad Canyon Road Interchange and other roadway improvements, in the city of Lake Elsinore, referred to herein as “PROJECT.”
3. The parties hereto also entered into Amendment No. 1 to AGREEMENT on September 23, 2014, to extend the termination date of said AGREEMENT.
4. AGREEMENT established that the CITY would develop, design and finance the Project Approval and Environmental Document (PA&ED), Plans, Specifications, and Estimate (PS&E) and Right of Way (R/W) phases of PROJECT.
5. The CITY has developed and financed the PA&ED phase of PROJECT. It has been determined that the CITY will not perform and finance the PS&E and R/W phases of PROJECT. The PS&E and R/W phases will be covered under a separate agreement. Therefore it is the intention of the parties to amend the Agreement No. 8-1416 by entering into a Replacement Agreement for removing all terms and conditions pertaining to PS&E and R/W from the AGREEMENT.

6. CITY is willing to fund one hundred percent (100%) of all capital outlay and support costs, except that the costs of STATE's Independent Quality Assurance (IQA) of PROJECT Project Approval and Environmental Document (PA&ED), hereinafter referred to as PROJECT DEVELOPMENT, and STATE's costs incurred as the California Environmental Quality Act (CEQA) Lead Agency and National Environmental Policy Act (NEPA) Lead Agency, if applicable, in the review, comment and approval, if appropriate, of the PROJECT environmental documentation prepared entirely by CITY, will be borne by STATE.
7. STATE funds will not be used to finance any of the PROJECT DEVELOPMENT capital and support costs except as set forth in this Agreement.
8. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
9. PROJECT PS&E, R/W, landscape maintenance and construction phases will be the subject of a separate future agreement or agreements.
10. This Agreement will define the roles and responsibilities of the CEQA Lead Agency and CEQA Responsible Agency regarding the environmental documentation, studies, and reports necessary for compliance with CEQA. This Agreement will also define roles and responsibilities for compliance with NEPA, if applicable.
11. The parties now define herein below the terms and conditions under which PROJECT PA&ED is to be developed and financed.

### **SECTION I**

#### **CITY AGREES:**

1. To fund one hundred percent (100%) of all PROJECT DEVELOPMENT capital and support costs except for costs of STATE's IQA and STATE's review, comment and approval if appropriate, of the PROJECT environmental documentation for CEQA, and NEPA if applicable. If it becomes necessary to obtain additional funds to complete PROJECT, these additional funds will be provided by CITY using a funding source other than STATE funds.
2. To not use STATE funds for any PROJECT capital and support costs except as set forth in this Agreement.
3. All PROJECT work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of development.

4. All PROJECT DEVELOPMENT work, except as set forth in this Agreement, is to be performed by CITY. Should CITY request that STATE perform any portion of PROJECT DEVELOPMENT work, except as otherwise set forth in this Agreement, CITY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.”
5. To have a Project Report (PR) prepared, at no cost to STATE, and to submit to STATE for STATE’s review and concurrence at appropriate stages of development. The PR for PROJECT shall be signed on behalf of CITY by a Civil Engineer registered in the State of California.
6. To permit STATE to monitor, participate, and oversee the selection of personnel who will prepare the PR, conduct environmental studies and prepare environmental documentation. CITY agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
7. Personnel who prepare the preliminary engineering and environmental documentation, including investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems which may arise during PS&E, Right of Way, and Construction phases of the PROJECT, and/or to make design revisions for contract change orders.
8. To make written application to STATE for necessary encroachment permits authorizing entry of CITY onto the SHS right of way to perform surveying and other investigative activities required for preparation of the PR and environmental documentation.

## SECTION II

### STATE AGREES:

1. At no cost to CITY, to complete STATE’s review, comment and approval, if appropriate, as the CEQA Lead Agency and NEPA Lead Agency, if applicable, of the environmental documentation prepared entirely by CITY and to provide IQA of all CITY PROJECT DEVELOPMENT work necessary for completion of the PR for PROJECT done by CITY, including, but not limited to, investigation of potential hazardous material sites undertaken by CITY or its designee, and provide prompt reviews, comments, concurrence, and/or approvals as appropriate, of submittals by CITY, while cooperating in timely processing of documents necessary for completion of the environmental documentation and PR for PROJECT.

**SECTION III**

**IT IS MUTUALLY AGREED:**

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT preliminary engineering phase administered by CITY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by CITY conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by CITY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by CITY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and CITY will pay or authorize STATE to reimburse itself from then available PROJECT funds pursuant to an amendment to this Agreement authorizing such services to be performed by STATE.
3. The Project Study Report (PSR) for PROJECT, approved on September 5, 2003, is by this reference, made an express part of this Agreement. If there is a conflict of terms between the PSR and this Agreement, the terms of this Agreement shall prevail.
4. The basic design features shall comply with those addressed in the approved PSR, unless modified as required for completion of the PROJECT's environmental documentation and/or if applicable, requested by the Federal Highway Administration (FHWA).
5. The preparation of environmental documentation and related investigative studies and technical environmental reports for PROJECT shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance.  
STATE will be the CEQA Lead Agency and CITY will be a CEQA Responsible Agency. STATE will be the NEPA Lead Agency, if applicable. CITY will assess PROJECT impacts on the environment and CITY will prepare the appropriate level of environmental documentation and necessary associated supporting investigative studies and technical environmental reports in order to meet the requirements of CEQA and if applicable, NEPA. CITY will submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. The environmental document and/or categorical exemption/exclusion determination, including the administrative draft, draft, administrative final, and final environmental documentation, as applicable, will require STATE's review, comment, and approval prior to public availability.

If, during preparation of preliminary engineering or environmental documentation new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and if applicable, NEPA, this AGREEMENT will be amended to include completion of those additional tasks by CITY.”

6. CITY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be paid by CITY, as a PROJECT cost.
7. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s) and/or approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
8. If there is a legal challenge to the environmental documentation, including investigative studies and/or technical environmental report(s), permit(s), agreement(s), and/or approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
9. CITY, subject to STATE’s prior review and approval, as a PROJECT cost, shall be responsible for preparing, submitting, publicizing and circulating all public notices related to the CEQA environmental process and if applicable, the NEPA environmental process, including, but not limited to, notice(s) of availability of the environmental document and/or determinations and notices of public hearings. Public notices shall comply with all State and Federal laws, regulations, policies and procedures. STATE will work with the appropriate Federal agency to publish notices in the Federal Register, if applicable.

STATE, as a PROJECT cost, shall be responsible for overseeing the planning, scheduling and holding of all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. CITY, to the satisfaction of STATE and subject to all of STATE’s and FHWA’s policies and procedures, shall be responsible for performing the planning, scheduling and details of holding all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. STATE will participate as CEQA Lead Agency and if applicable, the NEPA Lead Agency, in all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process, for PROJECT. CITY shall provide STATE the opportunity to provide comments on any public meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such public meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings.

10. In the event CITY would like to hold separate and/or additional public meetings/hearings regarding the PROJECT, CITY must clarify in any meeting/hearing notices, exhibits, handouts or other materials that STATE is the CEQA Lead Agency and if applicable, the

NEPA Lead Agency, and CITY is the CEQA Responsible Agency. Such notices, handouts and other materials shall also specify that public comments gathered at such meetings/hearings are not part of the CEQA and if applicable, NEPA, public review process. CITY shall provide STATE the opportunity to provide comments on any meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings solely with respect to text or graphics that could lead to public confusion over CEQA and if applicable, NEPA, related roles and responsibilities.

11. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.

12. The party that discovers hazardous materials (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

13. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

CITY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. CITY will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

14. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost related to HM-2 is a PROJECT construction cost.

15. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.

16. A separate Cooperative Agreement or agreements will be required to address PS&E, R/W and Landscape Maintenance, and to cover responsibilities and funding for the construction phase of PROJECT.
17. 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 to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
18. Neither STATE 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 CITY under or in connection with any work, authority, or jurisdiction conferred upon CITY or arising under this Agreement. It is understood and agreed that, CITY will fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
19. Neither CITY 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 STATE under or in connection with any work, authority, or jurisdiction conferred upon STATE or arising under this Agreement. It is understood and agreed that, STATE will fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
20. Prior to the commencement of any work pursuant to this Agreement, either STATE or CITY may terminate this Agreement by written notice to the other party.
21. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

PARTIES agree to sign a Closure Statement, which is a document signed by PARTIES verifying the completion of all obligations included in this Agreement, 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.



PARTIES declare that:

1. Each PARTY is an authorized legal entity under California state law.
2. Each PARTY has the authority to enter into AGREEMENT.
3. The people signing AGREEMENT have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

CITY OF LAKE ELSINORE

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Janice Benton  
Interim District Director

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Steve Manos  
Mayor

VERIFICATION OF FUND AND  
AUTHORITY:

ATTEST:

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Mary Risaliti  
District Budget Manager

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Mark Mahan  
Deputy City Clerk

APPROVED AS TO FORM AND  
PROCEDURE:

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Barbara Leibold  
City Attorney