

**PS&E COOPERATIVE AGREEMENT COVER SHEET**

**Work Description**

CONSTRUCT INTERCHANGE IMPROVEMENT ON INTERSTATE 805 (I-805) AT PALM AVENUE, IN SAN DIEGO COUNTY.

**Contact Information**

**CALTRANS**

Roger Carlin, Project Manager  
4050 Taylor Street, MS-340  
San Diego, CA 92110

Office Phone: (619) 688-6720  
Email: roger.carlin@dot.ca.gov

**CITY OF SAN DIEGO**

Daniel S. Nutter, Senior Civil Engineer  
525 B Street, Suite 750, MS 908A  
San Diego, CA 92101-4502

Office Phone: (619) 533-7492  
Email: dnutter@sandiego.gov

Table of Contents

RECITALS ..... 1

RESPONSIBILITIES ..... 2

    Sponsorship ..... 2

    Implementing Agency ..... 3

    Funding ..... 3

    CALTRANS’ Quality Management ..... 4

    CEQA/NEPA Lead Agency ..... 4

    Environmental Permits, Approvals and Agreements ..... 4

    PS&E ..... 5

    Schedule ..... 6

    Additional Provisions ..... 7

        Standards ..... 7

        Noncompliant Work ..... 7

        Qualifications ..... 7

        Consultant Selection ..... 7

        Encroachment Permits ..... 8

        Protected Resources ..... 8

        Disclosures ..... 8

        Hazardous Materials (HM) ..... 9

        Claims ..... 10

        Accounting and Audits ..... 10

        Interruption of Work ..... 11

        Penalties, Judgements and Settlements ..... 12

        Project Files ..... 12

        Environmental Compliance ..... 12

GENERAL CONDITIONS ..... 12

    Venue ..... 12

    Exemptions ..... 13

    Indemnification ..... 13

Non-parties ..... 13

Ambiguity and Performance ..... 14

Defaults ..... 14

Dispute Resolution ..... 14

Prevailing Wage ..... 15

SIGNATURES ..... 16

REIMBURSEMENT SUMMARY ..... 1

    Funding ..... 2

        Indirect Costs Rate Proposal ..... 2

    Invoicing and Payment ..... 2

        PS&E ..... 3

**COOPERATIVE AGREEMENT**

This AGREEMENT, effective on February 26, 2021, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of San Diego, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

**RECITALS**

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System (SHS) per the California Streets and Highways Code, Sections 114 and 130.
2. For the purpose of this AGREEMENT, construct interchange improvement on Interstate 805 (I-805) at Palm Avenue, in San Diego County, will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the Project Report (PR).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:

- PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)

Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other Cooperative Agreement or Memorandum of Understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

Document No. RE-313293-1  
 Filed NOV 10 2020  
 Office of the City Clerk  
 San Diego, California

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.

This AGREEMENT will terminate on December 31, 2023, or upon completion of WORK, whichever occurs first. 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 through Cooperative Agreement 11-8274:
  - Final Project Report signed on November 13, 2019
  - Mitigated Negative Declaration signed on June 29, 2019.
  - Finding of No Significant Impact signed on June 27, 2019.
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 (PDPM), will be approved by CALTRANS as the owner/operator of the SHS.

9. CITY 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.

- CITY is the PS&E IMPLEMENTING AGENCY.

PS&E includes the development of the plans, specifications, and estimate; obtaining any resource agency permits; and the advertisement/award of the construction contract.

11. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for the WORK in that component. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and approval.

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.

13. PARTIES will not be reimbursed for costs beyond the funds obligated in this AGREEMENT.

If an IMPLEMENTING AGENCY anticipates that funding for the WORK will be insufficient to complete the WORK, the IMPLEMENTING AGENCY will promptly notify the SPONSOR.

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

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

14. Unless otherwise documented in the Reimbursement Summary, overall liability for project costs within a PROJECT COMPONENT will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.

15. Unless otherwise documented in the Reimbursement 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.
16. WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the REIMBURSEMENT SUMMARY. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

#### **CALTRANS' Quality Management**

17. CALTRANS, as the owner/operator of the SHS, will perform quality management work including Quality Management Assessment (QMA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
18. CALTRANS' QMA efforts are to ensure that CITY's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's QMP. QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

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

19. CALTRANS, as the owner/operator of the SHS, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
20. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

#### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)/NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) Lead Agency**

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

#### **Environmental Permits, Approvals and Agreements**

23. PARTIES 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 each PARTY's responsibilities in this AGREEMENT.

24. 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.
25. The PROJECT requires the following environmental permits/approvals:

<b>ENVIRONMENTAL PERMITS/REQUIREMENTS</b>
State Waste Discharge Requirements (Porter Cologne), Regional Water Quality Control Board
CPUC Utilities Construction Permit

**Plans, Specifications, and Estimate (PS&E)**

26. As the PS&E IMPLEMENTING AGENCY, CITY is responsible for all PS&E WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
27. CALTRANS will be responsible for completing the following PS&E activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.15.10.xx PS&E Component Execution & Control	No
230.35 Draft Specifications	Yes
255 Circulate, Review, and Prepare Final District PS&E Package	Yes
260 Contract Bid Documents Ready to List	Yes
265 Awarded and Approved Construction Contract	Yes

The following tasks listed above 230.35, 255, 260, and 265 will be performed as reimbursed work.

28. This AGREEMENT does not include the RIGHT-OF-WAY PROJECT COMPONENT. Completion of PS&E may depend upon completion of some RIGHT-OF-WAY activities. PARTIES acknowledge that the WORK may not result in a product that can be used to advertise and award a contract for the CONSTRUCTION PROJECT COMPONENT without completing some activities under a separate agreement or by later amending this AGREEMENT.



29. CITY will prepare Utility Conflict Maps identifying the accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the PROJECT or that violate CALTRANS' encroachment policy.

CITY will provide CALTRANS a copy of Utility Conflict Maps for CALTRANS' concurrence prior to issuing the Notices to Owner and executing the utility agreement. All utility conflicts will be addressed in the PROJECT PS&E.

30. CITY will determine the cost to positively identify and locate, accommodate, protect, relocate, or remove any utility facilities whether inside or outside the SHS right-of-way in accordance with Federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements including but not limited to Freeway Master Contracts.
31. PARTIES acknowledge that the activities Draft Specifications (230.35), Circulate, Review, and Prepare Final District PS&E Package (255), and Contract Bid Documents "Ready to List" (260) will be performed by CALTRANS. Because CALTRANS is anticipated to perform the Advertisement, Award, and Administration (AAA) of the construction contract, the PS&E package must be reviewed and approved by CALTRANS District and Headquarters (HQ) Office Engineers prior to advertisement.

CITY will ensure that any consultant involved in the preparation of the PS&E package will remain available to address all comments generated during the performance of the Final District PS&E Package and Contract Bid Documents "Ready to List" activities.

### **Schedule**

32. 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.
33. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish the other PARTY with a final report of the WORK completed.

## Additional Provisions

### Standards

34. PARTIES will perform all WORK in accordance with Federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:
- Computer-Aided Design & Drawing Users Manual
  - CALTRANS policies and directives
  - Plans Preparation Manual
  - PDPM
  - Workplan Standards Guide
  - Standard Environmental Reference
  - Highway Design Manual
  - Right of Way Manual

### Noncompliant Work

35. CALTRANS retains the right to reject noncompliant WORK. CITY 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 SHS.

### Qualifications

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

### Consultant Selection

37. CITY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

### Encroachment Permits

38. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right-of-way. CITY, its contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to CITY, its contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
39. CITY will issue any encroachment permits that are necessary for WORK within its jurisdiction and outside the SHS right-of-way. CITY will provide encroachment permits to CALTRANS, its contractors, consultants and agents, at no cost.
40. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

### Protected Resources

41. 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 the other PARTY within twenty-four (24) hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

### Disclosures

42. PARTIES will hold all administrative drafts and 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.

43. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify the other PARTY within five (5) working days of receipt and make that PARTY aware of any disclosed public records.

Hazardous Materials (HM)

44. 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.

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

46. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing SHS 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 SHS right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

47. CITY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing SHS right-of-way. CITY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CITY 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 SHS right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

48. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.

CITY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and CITY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. CITY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

49. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

#### Claims

50. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.
51. 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.
52. 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.

#### Accounting and Audits

53. PARTIES will maintain and will ensure that any consultant hired by PARTIES to participate in WORK will maintain, a financial management system that conforms to Generally Accepted Accounting Principles, and that can properly accumulate and segregate incurred PROJECT costs and billings.

54. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

55. PARTIES have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the State Auditor, FHWA (if the PROJECT utilizes Federal funds), and CITY will have access to all WORK-related records of each PARTY, and any consultant hired by a PARTY to participate in WORK, for audit, examination, excerpt, or transcription.

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

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

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTIES is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

56. 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.

57. When a PARTY reimburses a consultant for WORK with State or Federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

#### Interruption of Work

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

59. If WORK stops for any reason, each PARTY will continue with environmental commitments included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

#### Penalties, Judgements and Settlements

60. The cost of awards, judgements, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
61. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
62. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

#### Project Files

63. CITY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on SHS within sixty (60) days following the completion of each PROJECT COMPONENT. CITY will prepare the Project History File in accordance with the PDPM, Chapter 7. All material will be submitted neatly in a three-ring binder and on a Compact Disk (CD)-Read Only Memory in Portable Document File (PDF) format.

#### Environmental Compliance

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

### **GENERAL CONDITIONS**

#### Venue

65. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the County in which the CALTRANS District Office that is signatory to this AGREEMENT resides, or in the Superior Court of the County in which the PROJECT is physically located.

### **Exemptions**

66. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

### **Indemnification**

67. Neither CALTRANS nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
68. Neither CITY nor any of its 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 CITY and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

### **Non-parties**

69. PARTIES do not intend this AGREEMENT to create a third-party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
70. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.



### **Ambiguity and Performance**

71. CITY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. CITY 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.

72. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

### **Defaults**

73. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

### **Dispute Resolution**

74. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the QMP. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of CITY 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.

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

**Prevailing Wage**

76. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with Federal funds and is of the type of work subject to Federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include Federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from Federal prevailing wage requirements.

**SIGNATURES**

PARTIES are empowered by California Streets and Highways Code to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

**This AGREEMENT may be executed and delivered in counterparts, and by each PARTY in a separate counterpart, each of which when so executed and delivered shall constitute an original and all of which taken together shall constitute one and the same instrument. The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email (E-MAIL), and that such copies shall be deemed to be effective as originals.**

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

*Gustavo Dallarda* 2-25-2021  
GUSTAVO DALLARDA  
District 11 Director

**VERIFICATION OF FUNDS AND  
AUTHORITY:**

*Erika O'Farrell* 2/9/2021  
Erika O'Farrell  
Budget Manager

**CITY OF SAN DIEGO**

*Cindy Crocker* 12/3/2020  
Mayor or Designee  
Cindy Crocker  
Principal Contract Specialist  
Engineering & Capital Projects

Approved as to form:

MARA ELLIOTT  
City Attorney

*Ryan Gerrity* 12/18/2020  
RYAN GERRITY  
Deputy City Attorney

RR-313293-1

# REIMBURSEMENT SUMMARY NO.1

<b>REIMBURSEMENT SUMMARY</b>		
Fund Type	PS&E	Totals
	CALTRANS	
Local	\$761,000	\$761,000
<b>Totals</b>	\$761,000	\$761,000

### **Funding**

1. If there are insufficient funds available in this AGREEMENT to place the PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTIES amend this AGREEMENT.

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

2. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTY accepts responsibility to fund its respective WORK until such time as PARTIES amend this AGREEMENT.

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

### **Indirect Costs Rate Proposal**

3. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and Federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.

In accordance with California Senate Bill 848, the Administration Rate is capped at 10 percent until July 1, 2021, for Self-Help Counties with a countywide sales tax measure dedicated to transportation improvements.

### **Invoicing and Payment**

4. PARTIES will invoice for funds where the REIMBURSEMENT SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, CITY will pay invoices within five (5) calendar days of receipt of invoice.

5. If CITY has received EFT certification from CALTRANS, then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.

*Plans, Specifications, and Estimate (PS&E)*

6. CALTRANS will invoice CITY for a fixed amount as a lump sum (single payment) after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of PS&E expenditures.

RESOLUTION NUMBER R- 313293

DATE OF FINAL PASSAGE NOV 17 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE DESIGN COOPERATIVE AGREEMENT WITH CALTRANS AND AUTHORIZING AN AGREEMENT FOR ENGINEERING SERVICES, CONTRACT H207138, WITH DOKKEN ENGINEERING FOR PALM AVENUE & INTERSTATE 805 INTERCHANGE PROJECT.

WHEREAS, the Palm Avenue Interstate 805 Interchange project (Project) will improve and enhance traffic operations at the Interstate 805 (I-805)/Palm Avenue Interchange (Interchange) and improve bicycle and pedestrian access on Palm Avenue; and

WHEREAS, this Project will improve levels of service on the Interchange, relieve traffic congestion, reduce traffic delays caused by population growth, and provide safe mobility for all users of the Interchange; and

WHEREAS, the Project scope of work includes improving the ramp intersections at the northbound and southbound off-ramps, widening the northbound on-ramp, widening Palm Avenue west of I-805, lengthening the eastbound right-turn pocket, widening the Palm Avenue overcrossing, lengthening the dual-left turn lanes in the eastbound and westbound directions, widening Palm Avenue east of I-805, realigning Palm Avenue to include a Class IV Separated Bikeway, and installing bus pads and ramp meters on the on-ramps; and

WHEREAS, the City, in cooperation with the California Department of Transportation (Caltrans), is undertaking the design of this Project, which will involve work within Caltrans Right-of-Way. A Cooperative Agreement between the two agencies will define the responsibilities of the City and Caltrans for the design of the Project and will compensate

Caltrans for their oversight for plans, specifications, and estimates (PS&E) for an amount not to exceed \$761,000; and

WHEREAS, in September 2019, the City prepared and advertised a Request for Proposal (RFP) for selection of a consultant to provide professional engineering services for this Project. Dokken Engineering was identified as the most highly qualified consultant. This action will execute the consultant agreement with Dokken Engineering to provide professional engineering services to prepare plans, specifications, and cost estimates for the completion of the Project for an amount not to exceed \$2,198,058.00 for the 5-year term of the agreement; NOW,

THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, a Design Cooperative Agreement with Caltrans for the purpose of completing PS&E for Capital Improvement Program (CIP) S-00869, Palm Avenue Interstate 805 Interchange, in an amount not to exceed \$761,000.

2. That the Chief Financial Officer is authorized to expend an amount not to exceed \$761,000, from CIP S-00869, Palm Avenue Interstate 805 Interchange, Fund 400092, Otay Mesa-East Facilities Benefit Assessment, for the purpose of executing this cooperative agreement, under the terms and conditions set forth in the document, on file in the Office of the City Clerk as Document No. RR-313293<sup>-1</sup>, contingent upon the Chief Financial Officer furnishing one or more certificates demonstrating that the funds for this expenditure are, or will be, on deposit with the City Treasurer.



3. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, an Agreement with Dokken Engineering for professional engineering services for CIP S-00869, Palm Avenue Interstate 805 Interchange, in an amount not to exceed \$2,198,058.00.

4. That the Chief Financial Officer is authorized to expend an amount not exceed \$2,198,058.00 from CIP S-00869, Palm Avenue Interstate 805 Interchange; of which, \$764,898.00 is in Fund 400092, Otay Mesa-East Facilities Benefit Assessment, \$916,694.19 is in Fund 400093, Otay Mesa-West Facilities Benefit Assessment, and \$516,465.81 is in Fund 400857, Otay Mesa Development Impact Fee, for the purpose of executing this agreement with Dokken Engineering, under the terms and conditions set forth in the document, on file in the Office of the City Clerk as Document No. RR313293<sup>-2</sup>, contingent upon the Chief Financial Officer furnishing one or more certificates demonstrating that the funds for this expenditure are, or will be, on deposit with the City Treasurer.

5. That the Chief Financial Officer is authorized, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Ryan P. Gerrity  
Ryan P. Gerrity  
Deputy City Attorney

RPG:cw

10/22/20

Or.Dept: Public Works - Engineering

CC No.: 3000013525 (Design Cooperative Agreement - Caltrans)


CC No.: 3000013526 (Agreement - Engineering Services - Dokken Engineering)

Doc. No.: 2501258

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego,  
at its meeting of 11/10/2020.

ELIZABETH S. MALAND  
City Clerk

By /s/ Stacy D. Ready  
Deputy City Clerk

  
\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Approved: 11/16/20  
(date)

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 10 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 17 2020.

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By *My Beach*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 313293

Passed by the Council of The City of San Diego on November 10, 2020, by the following vote:

**YEAS:** **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN, MORENO, AND GÓMEZ.**

**NAYS:** **NONE.**

**NOT PRESENT:** **NONE.**

**RECUSED:** **NONE.**

AUTHENTICATED BY:

**KEVIN L. FAULCONER**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

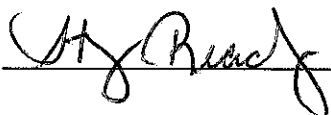
By: **Stacy D. Ready**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of  
RESOLUTION NO. **R-313293** approved on **November 10, 2020**. The date of final  
passage is **November 17, 2020**.

**ELIZABETH S. MALAND**

City Clerk of the City of San Diego, California

(Seal)

By: , Deputy

**The City of San Diego  
COMPTROLLER'S CERTIFICATE**

**CERTIFICATE OF UNALLOTTED BALANCE**

ORIGINATING CC 3000013525  
DEPT. NO.: 2112

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_

Purpose: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_  
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \_\_\_\_\_ \$761,000.00

Vendor: Caltrans

Purpose: To authorize the expenditure of funds not to exceed \$761,000.00 to Caltrans for the execution of a Design Cooperative Agreement for the Palm Avenue Interstate 805 Interchange project.

Date: \_\_\_\_\_ October 1, 2020 By: Raymond Iadanza  
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
1	S00869	400092	NOT_RELEVANT_GRANT	512176	OTHR-00000000-TR	2113	2113120013	S-00869.02.02	\$761,000.00
TOTAL AMOUNT									\$761,000.00

FUND OVERRIDE