RESOLUTION OF THE COUNCIL OF THE CITY OF PALO ALTO
AUTHORIZING EXECUTION OF A COOPERATIVE AGREEMENT
WITH THE STATE OF CALIFORNIA DEPARTMENT OF
TRANSPORTATION FOR THE STANFORD AVENUE/EL CAMINO
REAL (ROUTE 82) INTERSECTION IMPROVEMENTS PROJECT

WHEREAS, The State of California by and through its Department of Transportation in partnership with the City of Palo Alto is proposing to complete the Project Report, Environmental, Design and Construction for the Stanford Avenue/El Camino Real (Route 82) Intersection Project; and

WHEREAS, the State of California has requested the City of Palo Alto adopt a resolution authorizing the execution of the cooperative agreement providing for the services of said improvements.

NOW, THEREFORE, the Council of the City of Palo Alto does hereby RESOLVE as follows:

SECTION 1. The City Manager is hereby authorized to execute the Caltrans Cooperative Agreement No. 04-2194 attached to this resolution as Exhibit A by and between the State of California and the City of Palo Alto for the Stanford Avenue/El Camino Real (Route 82) Intersection Project.

SECTION 2. The City Council finds that this project is subject to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). State of California, which is the lead agency for the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) for the project, will determine the type of environmental documentation required and will cause that documentation to be prepared.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

__________________________
City Clerk

APPROVED AS TO FORM:

__________________________
Assistant City Attorney

APPROVED:

__________________________
Mayor

__________________________
City Manager

__________________________
Director of Planning and Community Environment
COOPERATIVE AGREEMENT

This agreement, effective on _________________, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

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

RECITALS

1. CALTRANS and CITY, collectively referred to as PARTNERS, are authorized to enter into a cooperative agreement for improvements to the SHS per Streets and Highways Code sections 114 and/or 130.

2. WORK completed under this agreement contributes toward improvements at the intersection of Stanford Avenue in the City of Palo Alto on Route 82 (El Camino Real), referred to as PROJECT.

3. PARTNERS will cooperate to complete PA&ED, PS&E, R/W and CONSTRUCTION of PROJECT.

4. There are no prior PROJECT-related cooperative agreements.

5. No PROJECT deliverables have been completed prior to this agreement.

6. The estimated date for COMPLETION OF WORK is December 31, 2010.

7. PARTNERS now define in this agreement the terms and conditions under which they will accomplish WORK.

DEFINITIONS

CALTRANS STANDARDS – Caltrans policies and procedures, including, but not limited to, the guidance provided in the Guide to Project Delivery Workplan Standards (previously known as WBS Guide) available at http://dot.ca.gov.

CEQA – The California Environmental Quality Act (California Public Resources Code, sections 21000 et seq.) that requires State and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.
COMPLETION OF WORK – All PARTNERS have met all scope, cost, and schedule commitments included in this agreement and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

CONSTRUCTION – The project component that includes the activities involved in the administration, acceptance, and final documentation of a construction contract for PROJECT.

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all scope, cost, and schedule commitments included in this agreement.

FHWA – Federal Highway Administration.

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at http://www.fhwa.dot.gov/programs.html.

FUNDING PARTNER – A partner who commits a defined dollar amount to WORK.

FUNDING SUMMARY - The table in which PARTNERS designate funding sources, types of funds, and the project components in which the funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

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

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that requires removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

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

IQA – Independent Quality Assurance – Ensuring that IMPLEMENTING AGENCY’S quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan. IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another partner.

NEPA – The National Environmental Policy Act of 1969 that establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a Federal nexus.
PA&ED – The project component that includes the activities required to deliver the project report and environmental documentation for PROJECT.

PARTNERS – The term that collectively references all of the signatory agencies to this agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one partner’s individual actions legally bind the other partners.

PROJECT MANAGEMENT PLAN – A group of documents used to guide a project’s execution and control throughout the project’s lifecycle.

PS&E – The project component that includes the activities required to deliver the plans, specifications, and estimates for PROJECT.

RESIDENT ENGINEER – A civil engineer licensed in the State of California who is responsible for construction contract administration activities. Said engineer shall be independent of the design engineering company and the construction contractor.

R/W – The project component that includes the activities required to deliver the right of way for PROJECT.


SCOPE SUMMARY – The table in which PARTNERS designate their commitment to specific scope activities within each project component as outlined by the Guide to Project Delivery Workplan Standards (previously known as WBS Guide) available at http://dot.ca.gov, or as indicated on the SCOPE SUMMARY.

SHS – State Highway System.

SPENDING SUMMARY – The table in which PARTNERS designate how they will spend funds within each project component.

SPONSOR(S) – The partner(s) responsible for securing the financial resources for WORK from FUNDING PARTNERS. This includes any additional or unforeseen expenses that are not otherwise stated as WORK or PROJECT costs in this agreement.

STATE-FURNISHED MATERIAL – Any materials or equipment supplied by CALTRANS.

WORK – All scope and cost commitments included in this agreement.
RESPONSIBILITIES

8. CITY is SPONSOR for all WORK.

9. CITY is FUNDING PARTNER for this agreement. Their funding commitments are defined in the FUNDING SUMMARY.

10. CALTRANS is the CEQA lead agency and the NEPA lead agency for PROJECT. CALTRANS will determine the type of environmental documentation required and will cause that documentation to be prepared.

11. CITY is IMPLEMENTING AGENCY for PA&ED.

12. CITY is IMPLEMENTING AGENCY for PS&E.

13. CITY is IMPLEMENTING AGENCY for R/W.

14. CITY is IMPLEMENTING AGENCY for CONSTRUCTION.

SCOPE

General Scope Articles

15. All WORK will be performed in accordance with Federal and California laws, regulations, and standards.

   All WORK will be performed in accordance with FHWA STANDARDS and CALTRANS STANDARDS.

16. IMPLEMENTING AGENCY for a project component will provide a Quality Management Plan for that component as part of the PROJECT MANAGEMENT PLAN.

17. CALTRANS will provide IQA for the portions of WORK within existing and proposed SHS right of way. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.

18. CITY may provide IQA for the portions of WORK within its right of way.

19. PARTNERS may, at their own expense, have a representative observe any scope, cost, or schedule commitments performed by another partner. Observation does not constitute authority over those commitments.
20. Each partner will ensure that all of their personnel participating in WORK are appropriately qualified to perform the tasks assigned to them.

21. PARTNERS will invite each other to participate in the selection and retention of any consultants who participate in WORK.

22. PARTNERS will conform to sections 1720 – 1815 of the California Labor Code and all applicable regulations and coverage determinations issued by the Director of Industrial Relations if PROJECT work is done under contract (not completed by a partner’s own employees) and is governed by the Labor Code’s definition of a “public work” (section 1720(a)(1)).

PARTNERS will include wage requirements in all contracts for “public work” and will require their contractors and consultants to include prevailing wage requirements in all agreement-funded subcontracts for “public work”.

23. IMPLEMENTING AGENCY for each project component included in this agreement will be available to help resolve WORK-related problems generated by that component for the entire duration of PROJECT.

24. CALTRANS will issue, upon proper application, at no cost, the encroachment permits required for WORK within SHS right of way.

Contractors and/or agents, and utility owners will not perform WORK without an encroachment permit issued in their name.

25. If unanticipated cultural, archaeological, paleontological, or other protected resources are discovered during WORK, all work in that area will stop until a qualified professional can evaluate the nature and significance of the discovery and a plan is approved for its removal or protection.

26. All administrative draft and final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e).

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete WORK without the written consent of the partner authorized to release them, unless required or authorized to do so by law.

27. If any partner receives a public records request, pertaining to WORK under this agreement, that partner will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any transferred public documents.
28. If HM-1 or HM-2 is found during WORK, IMPLEMENTING AGENCY for the project component in which it is found will immediately notify PARTNERS.

29. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. CALTRANS will undertake HM-1 MANAGEMENT ACTIVITIES with minimum impact to PROJECT schedule.

30. 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 impacts to PROJECT schedule.

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

32. PARTNERS will comply with all of the commitments and conditions set forth in the environmental permits, approvals, and agreements as those commitments and conditions apply to each partner’s responsibilities in this agreement.

33. IMPLEMENTING AGENCY for each project component will furnish PARTNERS with written quarterly progress reports during the implementation of WORK in that component.

34. Upon COMPLETION OF WORK, ownership and title to all materials and equipment constructed or installed as part of WORK within SHS right of way become the property of CALTRANS.

35. IMPLEMENTING AGENCY for a project component may accept, reject, compromise, settle, or litigate claims of any non-agreement parties hired to do WORK in that component.

36. PARTNERS will confer on any claim that may affect WORK or PARTNERS’ liability or responsibility under this agreement in order to retain resolution possibilities for potential future claims. No partner shall prejudice the rights of another partner until after PARTNERS confer on claim.

37. PARTNERS will maintain and make available to each other all WORK-related documents, including financial data, during the term of this agreement and retain those records for four (4) years from the date of termination or COMPLETION OF WORK, or three (3) years after the final federal voucher, whichever is later.

38. PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.
CALTRANS, the State auditor, FHWA, and CITY will have access to all WORK-related records of each partner for audit, examination, excerpt, or transaction.

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 audited partner will review the preliminary audit, findings, and recommendations, and provide written comments within 60 calendar days of receipt.

Any audit dispute not resolved by PARTNERS is subject to dispute resolution. Any costs arising out of the dispute resolution process will be paid within 30 calendar days of the final audit or dispute resolution findings.

39. PARTNERS consent to service of process by mailing copies by registered or certified mail, postage prepaid. Such service becomes effective 30 calendar days after mailing. However, nothing in this agreement affects PARTNERS' rights to serve process in any other matter permitted by law.

40. PARTNERS will not incur costs beyond the funding commitments in this agreement. If IMPLEMENTING AGENCY anticipates that funding for WORK will be insufficient to complete WORK, SPONSOR(S) will seek out additional funds and PARTNERS will amend this agreement.

41. If WORK stops for any reason, IMPLEMENTING AGENCY will place all facilities impacted by WORK in a safe and operable condition acceptable to CALTRANS.

42. If WORK stops for any reason, PARTNERS are still obligated to implement all applicable commitments included in the PROJECT environmental documentation, permits, agreements or approvals in order to keep PROJECT in environmental compliance until WORK resumes.

43. PARTNERS accept responsibility to complete the activities identified on the SCOPE SUMMARY. Activities marked with "N/A" on the SCOPE SUMMARY are not included in the scope of this agreement.

44. CITY will coordinate, obtain, implement, and if necessary, renew, and amend the permits, agreements or approval from applicable resource agencies for PROJECT.
Project Approval and Environmental Documentation (PA&ED) Scope Articles

45. CALTRANS is the CEQA lead agency. CALTRANS will determine the type of
environmental documentation required and will cause that documentation to be prepared.

46. All partners involved in the preparation of CEQA environmental documentation will
follow the CALTRANS STANDARDS that apply to the CEQA process.

47. Pursuant to SAFETEA-LU Section 6004 and/or 6005, CALTRANS is the NEPA lead
agency for PROJECT and will assume responsibility for NEPA compliance and any
associated Federal environmental requirements.

48. All partners involved in the preparation of NEPA environmental documentation will
follow the FHWA STANDARDS that apply to the NEPA process.

49. CITY will prepare the appropriate environmental documentation to meet CEQA and
NEPA requirements.

50. CITY will submit any CEQA environmental documentation, including any studies and
reports prepared by CITY, to CALTRANS for CALTRANS’ review, comment, and
approval at appropriate stages of development prior to public availability.

51. CITY will submit any NEPA environmental documentation, including any studies and
reports, prepared by CITY to CALTRANS for CALTRANS’ review, comment, and
approval prior to public availability.

52. CITY will prepare, publicize, and circulate all CEQA-related public notices. CITY will
submit all notices to CALTRANS for CALTRANS’ review, comment, and approval prior
to publication and circulation.

53. CITY will prepare, publicize, and circulate all NEPA-related public notices, except
Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS’
review, comment, and approval prior to publication and circulation.
CALTRANS will work with the appropriate Federal agency to publish notices in the Federal Register.

54. CITY will plan, schedule, prepare materials for, and host all CEQA-related public meetings. CITY will submit all materials to CALTRANS for CALTRANS’ review, comment, and approval at least 10 working days prior to the public meeting date.

55. As the CEQA lead agency, CALTRANS will attend all CEQA-related public meetings.

56. CITY will plan, schedule, prepare materials for and host all NEPA-related public meetings. CITY will submit all materials to CALTRANS for CALTRANS’ review, comment, and approval at least 10 working days prior to the public meeting date.

57. As the NEPA lead agency, CALTRANS will attend all NEPA-related public meetings.

58. If a partner who is not the CEQA or NEPA lead agency holds a public meeting about PROJECT, that partner must clearly state their role in PROJECT and the identity of the CEQA and NEPA lead agencies on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA or NEPA public review process.

That partner will submit all meeting advertisements, agendas, exhibits, handouts, and materials to CALTRANS for CALTRANS’ review, comment, and approval at least 10 working days prior to publication or use. If that partner makes any changes to the materials, that partner will allow CALTRANS to review, comment, and concur on those changes three (3) working days prior to the public meeting date.

As the CEQA and NEPA lead agency, CALTRANS maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA and NEPA-related roles and responsibilities.

59. The partner who prepares the environmental documentation including the studies and reports will ensure that the individuals who actually prepared the documentation remain available to discuss environmental issues, and will perform any necessary work to ensure that the PROJECT remains in environmental compliance.

Plans, Specifications, and Estimates (PS&E) Scope Articles

60. CITY will ensure that the engineering firm preparing the plans, specifications, and estimates will not be employed by or under contract to the PROJECT construction contractor.

CITY will not employ the engineering firm preparing the plans, specifications, and estimates for construction management of PROJECT.
However, CITY may retain the engineering firm during CONSTRUCTION to check shop drawings, do soil foundation tests, test construction materials, and perform construction surveys.

61. CITY will identify and locate all utility facilities within PROJECT area as part of PS&E responsibilities. All utility facilities not relocated or removed in advance of construction will be identified on the plans, specifications, and estimate for PROJECT.

62. CITY will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of PROJECT or that violate CALTRANS’ encroachment policy.

63. CITY will reevaluate the environmental documentation if any factors arise during PS&E that might impact PROJECT’s environmental compliance.

Right of Way (R/W) Scope Articles

64. CITY will provide a land surveyor licensed in the State of California to be responsible for surveying and right of way engineering. All survey and right of way engineering documents shall bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.

65. CITY will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of PROJECT or that violate CALTRANS’ encroachment policy.

66. CITY will provide CALTRANS-approved verification of its arrangements for the protection, relocation, or removal of all conflicting facilities and that such work will be completed prior to construction contract award or as otherwise stated in the PROJECT plans, specifications, and estimates. This verification must include references to all required SHS encroachment permits.

67. CITY will utilize a qualified CALTRANS-approved public agency or consultant in all right of way activities. Right of way consultant contracts will be administered by a qualified right of way person.

68. CITY will provide a Right of Way Certification to CALTRANS prior to PROJECT advertisement.
69. CITY is responsible to obtain the permission from CALTRANS Division of Right of Way to hear Resolutions of Necessity at the county level in accordance with the R/W Manual, Section 17.04.09.01, should that need arise as part of this PROJECT.

70. CITY will reevaluate the environmental documentation if any factors arise during R/W that might impact PROJECT's environmental compliance.

CONSTRUCTION Scope Articles

71. CITY will advertise, open bids, award, and approve the construction contract in accordance with the Public Contract Code and the California Labor Code.

    CITY will not advertise the construction contract until CALTRANS completes or accepts the final plans, specifications, and estimates package; CALTRANS approves the Right of Way Certification; and FUNDING PARTNERS fully fund WORK.

    By accepting responsibility to advertise and award the construction contract, CITY also accepts responsibility to administer the construction contract.

72. CITY will provide a RESIDENT ENGINEER and construction support staff who are independent of the design engineering company and construction contractor.

73. CITY will provide a landscape architect licensed in the State of California.

74. PARTNERS will implement changes to the construction contract through contract change orders (CCOs). PARTNERS will review and concur on all CCOs over $5,000. All CCOs affecting public safety or the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS Construction Manual will be approved by CALTRANS in advance of the CCO work to be performed.

75. PARTNERS will use a CALTRANS-approved construction contract claims process, will administer all claims through said process, and will be available to provide advice and technical input in any claims process.

76. If the lowest responsible construction contract bid is equal to or less than 10% over the engineer's estimate, CITY may award the contract. If the lowest responsible construction contract bid is more than 10% over the engineer's estimate, all PARTNERS must be involved in determining how to proceed. If PARTNERS do not agree in writing on a course of action within 15 working days, this agreement will terminate.

77. CITY will require the construction contractor to furnish payment and performance bonds naming CITY as obligee and to carry liability insurance in accordance with CALTRANS specifications.
78. CITY will submit a written request for any STATE-FURNISHED MATERIAL identified in the PROJECT plans, specifications, and estimates a minimum of 45 calendar days in advance of the need for such materials.

79. Upon receipt of payment, CALTRANS will make STATE-FURNISHED MATERIAL available at a CALTRANS-designated location.

80. CITY will reevaluate the environmental documentation if any factors arise during CONSTRUCTION that might impact PROJECT’s environmental compliance.

81. CITY will provide maintenance for those portions of the SHS included in this agreement until a separate maintenance agreement is in effect.

82. Upon COMPLETION OF WORK, those portions of the SHS within the WORK limits of this agreement will be covered by an existing maintenance agreement.

**COST**

**General Cost Articles**

83. SPONSOR(S) will secure funds for all WORK including any additional funds beyond the FUNDING PARTNERS’ existing commitments in this agreement. Any change to the funding commitments outlined in this agreement requires an amendment.

84. The cost of any awards, judgments, or settlements generated by WORK is a WORK cost.

85. CALTRANS, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to any HM-1 found within existing SHS right of way.

86. CITY, independent of PROJECT, will pay all costs for HM MANAGEMENT ACTIVITIES related to any HM-1 or HM-2 found outside of existing SHS right of way.

87. HM MANAGEMENT ACTIVITIES costs related to HM-2 are a PROJECT CONSTRUCTION cost.

88. The cost of coordinating, obtaining, implementing, renewing and amending all of the necessary permits, approvals, and agreements is a PROJECT cost.

89. The cost of complying with all of the commitments set forth in the environmental documentation, permits, approvals, and agreements is a PROJECT cost.

90. The cost to ensure that PROJECT remains in environmental compliance is a WORK cost.
91. The cost of any legal challenges to the CEQA or NEPA environmental process or documentation is a WORK cost.

92. Independent of WORK costs, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right of way.

93. Independent of WORK costs, CITY will fund the cost of its own IQA for WORK done outside ultimate SHS right of way.

94. Fines, interest, or penalties levied against any partner will be paid, independent of WORK costs, by the partner whose actions or lack of action caused the levy. That partner will indemnify and defend all other partners.

95. CALTRANS will administer all Federal subvention funds identified on the FUNDING SUMMARY.

96. The cost to place PROJECT right of way in a safe and operable condition and meet all environmental commitments is a WORK cost.

97. Because IMPLEMENTING AGENCY is responsible for managing the scope, cost, and schedule of a project component, if there are insufficient funds available in this agreement to place the right of way in a safe and operable condition or to continue the environmental commitments, the appropriate IMPLEMENTING AGENCY accepts responsibility to fund these activities until such time as PARTNERS amend this agreement.

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

98. PARTNERS will pay invoices within 45 calendar days of receipt of invoice.

99. FUNDING PARTNERS accept responsibility to provide the funds identified on the FUNDING SUMMARY.

100. SPONSOR(S) accepts responsibility to ensure full funding for the identified scope of work.

101. Based on the information compiled in the SPENDING SUMMARY, the CITY will invoice CALTRANS for the following components: PA&ED, PS&E, R/W Support, CONSTRUCTION Support and CONSTRUCTION Capital. The invoices will be submitted monthly and based on actual costs. Electronic funds transfers will not be allowed.
Project Approval and Environmental Documentation (PA&ED) Cost Articles

102. The cost to prepare, publicize, and circulate all CEQA and NEPA-related public notices is a WORK cost.

103. The cost to plan, schedule, prepare materials for, and host all CEQA and NEPA-related public meetings is a WORK cost.

104. As SPONSOR(S) for PA&ED, CITY will secure funds for any legal challenges to the CEQA or NEPA environmental process, determination, or documents as a WORK cost.

105. FUNDING PARTNERS will share the cost of PA&ED by percent in the proportions shown on the FUNDING SUMMARY.

Plans, Specifications, and Estimates (PS&E) Cost Articles

106. The cost to positively identify and locate, protect, relocate, or remove any utility facilities whether inside or outside SHS right of way will be determined 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.

107. FUNDING PARTNERS will share the cost of PS&E by percent in the proportions shown on the FUNDING SUMMARY.

Right of Way (R/W) Cost Articles

108. FUNDING PARTNERS will share the cost of R/W by percent in the proportions shown on the FUNDING SUMMARY.

CONSTRUCTION Cost Articles

109. CALTRANS will invoice CITY for the actual cost of any STATE-FURNISHED MATERIAL as a CONSTRUCTION capital cost.

CONSTRUCTION FUNDING PARTNER(s) will pay CALTRANS within 45 calendar days of receipt of invoice.

110. The cost to maintain the SHS within WORK limits is a WORK cost until a separate maintenance agreement is in effect.

111. FUNDING PARTNERS will share the cost of CONSTRUCTION by percent in the proportions shown on the FUNDING SUMMARY.
112. PARTNERS will manage the schedule for WORK through the work plan included in the PROJECT MANAGEMENT PLAN.

113. This agreement will be understood 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 legal action arising from this agreement will be filed and maintained in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides.

114. All obligations of CALTRANS under the terms of this agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.

115. Any partner who performs IQA does so for their own benefit. Other partners or parties not signatory to this agreement cannot assign liability to that partner by reason of their IQA activities.

116. 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 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 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 or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this agreement.

117. 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 CALTRANS under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS or arising under this agreement. It is understood and agreed that, CALTRANS 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, 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 CALTRANS under this agreement.

118. This agreement is not intended to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this agreement. This agreement is not
intended to affect the legal liability of PARTNERS by imposing any standard of care for completing WORK different from the standards imposed by law.

119. PARTNERS will not assign or attempt to assign agreement obligations to parties not signatory to this agreement.

120. Any ambiguity contained in this agreement will not be interpreted against PARTNERS. PARTNERS waive the provisions of California Civil Code section 1654.

121. A waiver of a partner’s performance under this agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this agreement does not constitute an amendment to or negate all other articles or sections of this agreement.

122. 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.

123. If any partner defaults in their agreement obligations, the non-defaulting partner(s) will request in writing that the default be remedied within 30 calendar days. If the defaulting partner fails to do so, the non-defaulting partner(s) may initiate dispute resolution.

124. PARTNERS will first attempt to resolve agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of CITY will attempt to negotiate a resolution. If no resolution is reached, PARTNERS’ legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of WORK in accordance with the terms of this agreement. However, if any partner stops WORK, the other partner(s) may seek equitable relief to ensure that WORK continues.

Except for equitable relief, no partner may file a civil complaint until after mediation, or 45 calendar days after filing the written mediation request, whichever occurs first.

Any civil complaints will be filed in the Superior Court of the county in which the CALTRANS district office signatory to this agreement resides. The prevailing partner will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this agreement or to enforce the provisions of this article including equitable relief.

125. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
126. If any provisions in this agreement are deemed 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.

127. This agreement is intended to be PARTNERS' final expression and supersedes all prior oral understanding or writings pertaining to WORK.

128. PARTNERS will amend this agreement if additional activities or environmental documentation are required for CEQA or NEPA compliance.

129. PARTNERS will execute a formal written amendment if there are any changes to the commitments made in this agreement.

130. This agreement will terminate upon COMPLETION OF WORK or upon 30 calendar days’ written notification to terminate and acceptance between PARTNERS, whichever occurs first.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

131. The following documents are attached to, and made an express part of this agreement: SCOPE SUMMARY, FUNDING SUMMARY, SPENDING SUMMARY.

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

**CONTACT INFORMATION**

The information provided below indicates the primary contact data for each partner to this agreement. PARTNERS will notify each other in writing of any personnel or location changes. These changes do not require an amendment to this agreement.

The primary agreement contact person for CALTRANS is:
Nick Saleh, Project Manager
111 Grand Avenue
Oakland, California 94612
Office Phone: (510) 286-6355
Mobile Phone: (510) 715-9046
E-Mail: Nick_Saleh@dot.ca.gov
The billing contact person for CALTRANS is:
Division of Accounting
ATTN: Candy Yu, Local Program Accounting
P.O. Box 942874
Sacramento, California 94274-0001
Office Phone: (916) 227-4287
E-Mail: Candy_Yu@dot.ca.gov

The primary agreement contact person for CITY is:
Shahla Yazdy, Transportation Engineer
250 Hamilton Avenue
Palo Alto, California 94303
Office Phone: (650) 617-3151
E-Mail: shahla.yazdy@cityofpaloalto.org

SIGNATURES

PARTNERS declare that:
1. Each partner is an authorized legal entity under California state law.
2. Each partner has the authority to enter into this agreement.
3. The people signing this agreement have the authority to do so on behalf of their public agencies.
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: __________________________
    Stewart D. Ng
    Deputy District Director - Design (Interim)

APPROVED AS TO FORM AND
PROCEDURE:

By: __________________________
    Meera Danday
    Attorney

CERTIFIED AS TO FUNDS:

By: __________________________
    Mike Neff
    District Budget Manager

CERTIFIED AS TO FINANCIAL
TERMS AND POLICIES:

By: __________________________
    __________________________
    Accounting Administrator
    Reimbursement Section

CITY OF PALO ALTO

By: __________________________
    Larry Klein
    Mayor

Attest: __________________________
    Donna Grider
    City Clerk

APPROVED AS TO FORM AND
PROCEDURE:

By: __________________________
    Donald Larkin
    Assistant City Attorney

PACT Version 12.26.07
# SCOPE SUMMARY

Who is doing what

<table>
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## FUNDING SUMMARY
Where the money is coming from

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<th>Funding Source</th>
<th>Type of Funds</th>
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<th>PS&amp;E</th>
<th>RW Support</th>
<th>CON Capital</th>
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SPENDING SUMMARY
What is the money paying for

Project Initiation (PID): No funds have been specified

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Design (PS&E)

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## Right of Way (Support)

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## Construction (Support and Capital)

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