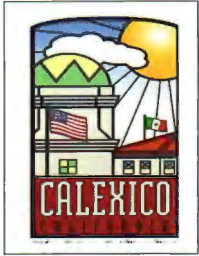


**AGENDA  
ITEM**

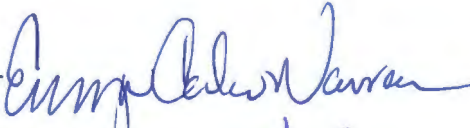
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# AGENDA STAFF REPORT

**DATE:** October 19, 2022

**TO:** Mayor and City Council

**APPROVED BY:** Esperanza Colio Warren, City Manager 

**PREPARED BY:** Lilliana Falomir, Public Works Manager – Administrative 

**SUBJECT:** Authorize the City Manager to Sign Memorandum of Understanding Between the Southern California Association of Governments and the City of Calexico Regarding Rockwood Roll-Out Project.

=====

**Recommendation:**

Authorize the City Manager to Sign Memorandum of Understanding between the Southern California Association of Governments and the City of Calexico regarding Rockwood Roll-Out Project.

**Background:**

Back in 2018, the Southern California Association of Governments (SCAG) issued a call for grant application under their Sustainable Communities Program – Quick Build Demonstration Project. One (1) of the grant requirements is that SCAG would be the lead applicant and the City of Calexico would be the co-applicant. In addition, the City would need to procure a construction contractor to perform the work. The City went ahead and submitted a grant application for Rockwood Avenue (Downtown) Promenade between 1<sup>st</sup> Street and 2<sup>nd</sup> Street. The project will consist of implementation of a Quick Build to test out temporary improvements along Rockwood Avenue between 1<sup>st</sup> Street and 2<sup>nd</sup> Street to make it safer and more enjoyable to walk. Improvements will include improved crosswalks and a promenade to increase space for pedestrians on the corridor.

**Discussion & Analysis:**

In 2021, SCAG awarded an architectural and engineering consultant agreement to KOA Corporation for our Rockwood Roll-Out Project. Since Dec. 2021 to present the following items have been completed:

- Formation of Community and Technical Advisory Committee
- Data collection and existing condition analysis
- Three (3) out of seven (7) community touch points



- Monthly meeting with KOA, City, Bloomberg and Calexico Arts Council, Inc.
- 60% of the plans for Rockwood Roll-Out Project

KOA Corporation is currently finalizing the 90% plans of said project. The next step is for SCAG and the City to enter into a Memorandum of Understanding (MOU) that will allocate \$40,555.00 from the California Transportation Commission (CTC) Active Transportation Program (ATP) to the City, in order to hire a contractor that will construct and implement the Rockwood Roll-Out Project. The City’s local match of \$25,000.00 is budgeted for FY 2022-2023 under Measure “D” funds. The reimbursable activities for said project will begin on the effective date that the MOU is approved and shall be completed by February 20, 2023. City staff is recommending that the City Council of the City of Calexico authorize the City Manager to sign the attached MOU between SCAG and the City. Please note that our City Attorney’s Office has reviewed and approved the attached MOU.

**Fiscal Impact:**

REVENUE	
Federal Grant – Fund No. 412-90-963	\$40,555.00
Local Match – Fund No. 231-90-963 (Measure “D”)	\$25,000.00
Total	\$65,555.00
EXPENDITURE	
Fund No. 412-90-963-56000-000	\$65,555.00
Total	\$65,555.00

**Coordinated With:**

City Manager’s Office.  
 City Attorney’s Office.  
 Public Works Department.

**Attachment(s):**

1. Memorandum of Understanding between the Southern California Association of Governments and the City of Calexico Regarding Rockwood Roll-Out.

**COVER PAGE  
MEMORANDUM OF UNDERSTANDING  
NO. M-026-21**

**SCAG Overall Work Program (OWP) No:** 225-3564X4.14

**Federal/State Awarding Agency:** N/A (Caltrans Local Assistance ATP State Funded Project)

**CFDA Number and Name:** N/A

**Federal Award Identification Number (FAIN) No:** N/A

**Federal Award Date:** N/A

**Total Amount of the Federal Award:** N/A

**Federal Award Project Description:** N/A

**Pass-Through Awarding Agency:** California Department of Transportation (Caltrans)

**Pass-Through Award No:** ATPLNI-6049(022)

**Pass-Through Award Date:** October 9, 2019

**Pass-Through Award End Date:** February 20, 2023

**Pass-Through Agency Contact:** Steve Novotny, Office Chief, Office of Local Assistance & Alameda Corridors

**Sub-Recipient Name:** City of Calexico

**Sub-Recipient's Unique Entity Identifier No:** QGR7KQG4JKR6

**Total Amount of Federal Funds Obligated to the Sub-Recipient:** \$0.00

**Total Amount of Match Funds Committed by the Sub-Recipient:** \$25,000.00

**Total Amount of Non-Federal Funds Obligated to the Sub-Recipient:** \$40,555.00 (ATP)

**Subaward Period of Performance Start Date:** Effective date of the MOU

**Subaward Period of Performance End Date:** 2/20/2023

**Type of Contract:** Project Specific

**Method of Payment:** See Section 6

**Project R&D:** N/A

**Indirect Cost Rate for the Federal Award:** N/A

**Subaward Project Title:** Calexico's Rockwood Roll-Out

**Subaward Project Description:**

Calexico's Rockwood Roll-Out will implement a Quick Build to test out temporary improvements along Rockwood Avenue, between 1st Street and 2nd Street, to make it safer and more enjoyable to walk. Improvements will include improved crosswalks and a promenade to increase space for pedestrians on the corridor.

**MEMORANDUM OF UNDERSTANDING  
NO. M-026-21**

**BETWEEN THE  
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS  
AND THE CITY OF CALEXICO  
REGARDING ROCKWOOD ROLL-OUT**

(SCAG Project/OWP No. 225-3564X4.14)

This Memorandum of Understanding (“MOU” or “Agreement”) is made by and between the **Southern California Association of Governments** (“SCAG”) and the **City of Calexico** (“CITY”), for the purpose of partnering on the Rockwood Roll-Out, subsequently herein referred to as “Project”, to be implemented in the CITY, and as more fully described herein. SCAG and the CITY are individually referred to herein as “Party” and may be collectively referred to herein as “Parties.”

**RECITALS**

WHEREAS, SCAG is a Joint Powers Agency and a federally designated Metropolitan Planning Organization (MPO) for Southern California. As an MPO, SCAG is primarily responsible for the development of a Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) for the counties of Imperial, Los Angeles, Orange, San Bernardino, Riverside, and Ventura;

WHEREAS, SCAG has initiated its Sustainable Communities Program (“SCP”) to assist Southern California jurisdictions in evaluating planning options and stimulating development consistent with SCAG’s RTP/SCS and the region’s overall planning goals. SCAG’s SCP supports visioning efforts, planning for multimodal transportation choices, economic and policy analyses, and marketing and communication programs;

WHEREAS, pursuant to its annual Overall Work Program (OWP), SCAG will be engaged in activities and projects that will require certain technical, professional, or support services from time to time related to its work regarding the RTP/SCS and the SCP;

WHEREAS, all obligations of SCAG under this MOU are subject to the availability of State funds and enactment of the State of California (“State”) Budget Act. Thus, no payments may be made under this MOU prior to the passage of the State Budget Act for any Fiscal Year;

WHEREAS, all funds provided under this MOU are allocated from the California Transportation Commission (CTC) Active Transportation Program (ATP) and awarded by the California Department of Transportation (Caltrans), under Grant Agreement Number ATPLNI-6049(022) and its Master Agreement Number 00405S, which are on file with the Parties and incorporated herein by this reference, to conduct the Project and added into SCAG’s OWP;

WHEREAS, the CITY will implement Rockwood Roll Out (“Project”);

WHEREAS, through its SCP, SCAG has awarded the CITY ATP State grant funds to pursue the Project which supports the goals and policies of SCAG’s 2020 RTP/SCS;

WHEREAS, SCAG has retained an architectural and engineering (A&E) Consultant (SCAG Contract Number 21-015-C01 (“Consultant”) for the purpose of producing the design plan for the Project in conjunction with the CITY. CITY will work with SCAG and SCAG’s Consultant to develop the Scope of Work (“Scope of Work”) and Cost Estimate (“Cost Estimate”) for implementation of the Project;

WHEREAS, in accordance with applicable procurement requirements, the CITY will procure a construction contractor (“Contractor”) to perform the work required for the Project as identified in the Scope of Work approved by SCAG and the CITY (“Work”);

WHEREAS, SCAG shall contribute a maximum, not to exceed amount of Forty Thousand Five Hundred and Fifty-Five Dollars (\$40,555.00), towards the Work to be used solely for the Project, using ATP State grant funds;

WHEREAS, as the CITY’s contribution towards the Project, the CITY shall contribute a minimum amount of Twenty-Five Thousand Dollars (\$25,000.00), using local cash funds, towards the Work. In addition, the CITY will provide In-Kind services as described in Section 2(h) to produce the Project in accordance with the Scope of Work. SCAG shall not be responsible to pay the CITY any funds for the In-Kind services provided;

WHEREAS, the CITY’s designated project manager, in coordination with SCAG’s designated project manager, will ensure the Work is performed by the Contractor, and the In-Kind Services described in Section 2(h) are performed by the assigned CITY staff;

WHEREAS, reimbursable activities for the Project by the CITY shall begin on the effective date of this MOU and shall be completed by February 20, 2023;

WHEREAS, the purpose of this MOU is to describe the roles and responsibilities of the Parties, and shall supersede and replace any previous agreements between SCAG and the CITY related to the Project described herein; and

WHEREAS, SCAG’s Fiscal Year is from July 1 through June 30.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. MOU Contents; Source of Funding**

- a. This MOU is comprised of these terms and conditions contained herein and any attached Exhibits, and may be amended only by written agreement between SCAG and the CITY. Such terms and conditions are subject to change. The Recitals to this Agreement are also incorporated herein by this reference.
- b. The source of funding is from Caltrans, Grant Agreement Number ATPLNI-6049(022). The CITY shall comply with all applicable terms and conditions of the Caltrans Grant Agreement and its Master Agreement Number 00405S, including but not limited to “Article IV – Fiscal Provisions and Article V – Audits, Third Party Contracting, Records Retention and Reports,” Exhibit A, attached, hereto and incorporated herein by this reference, and shall not take any action or fail to take an action that would cause SCAG to be out of compliance with the Caltrans Grant Agreements.

**2. Project Commitments**

- a. SCAG is the sponsor agency for the Project, and shall only be obligated to make payment to the CITY for the Work completed by the Contractor, up to the maximum amount of Forty Thousand Five Hundred and Fifty-Five Dollars (\$40,555.00). SCAG intends to use the ATP State grant funds to meet its funding obligations described herein.
- b. SCAG has, based on written commitments from the CITY, procured the Consultant. The CITY shall consult with SCAG and its Consultant in developing the Scope of Work and Cost Estimate for the Project, and obtain SCAG’s written approval on the final Scope of Work and Cost Estimate. SCAG shall provide the Scope of Work and Cost Estimate to the CITY at no cost and without warranty from SCAG for the purposes of the Project. SCAG shall include the CITY as an additional insured and indemnified party under the Consultant contract.
- c. The CITY shall procure the Contractor to perform the Work in accordance with the CITY’s procurement policies and procedures, and all other applicable requirements including, but not limited to, the Caltrans Local Assistance Procedure Manual Ch.15, the Public Contract Code and the Labor Code. The CITY shall obtain SCAG’s approval prior to issuing an Invitations for Bid (IFB) and provide SCAG with a copy of the IFB, Notice to Proceed issued to the Contractor, a copy of Contractor contract, within 30 days of issuance of each document, and other related documentation of compliance with applicable procurement requirements and terms and conditions of this MOU. The CITY will award a contract to Contractor to perform the Work, no later than October 21, 2022.
- d. The Contractor shall perform the Work, in accordance with requirements described in the Caltrans Grant Agreements ATPLNI-6049(022) and Master Agreement Number 00405S, and applicable Federal, State, and Local requirements, including but not limited to the requirements set forth in Sections 7, 13, 14, 15 and 16 of this MOU, as applicable.

- e. Subject to the execution of a valid, enforceable contract between the CITY and Contractor, the CITY shall be responsible for managing the Contractor in performing the Work, with written Quarterly Reports provided to SCAG's Project Manager. Each Party's Project Manager shall review and approve Contractor's invoices.
- f. The CITY's Project Manager shall be responsible for final approval of Contractor's deliverables consistent with the Scope of Work; provided, however, that prior to approving a deliverable from the Contractor, the CITY's Project Manager shall consult with SCAG's Project Manager. In the event that the CITY or its Contractor proposes an amendment to the Contractor's contract which changes the terms of Contractor's contract with the CITY, including but not limited to, increases the value of the contract amount and/or modifies the Scope of Work, the CITY shall notify SCAG's Project Manager in writing prior to execution of such amendment, provide SCAG with copy of the amendment and obtain SCAG's written concurrence. SCAG may propose an amendment to this Agreement, if necessary, consistent with any executed amendments to the Contractor contract.
- g. SCAG's Project Manager shall be notified and invited to: the kick-off meeting with the Contractor, all steering and technical advisory committee meetings, all public engagement outreach events, all site visits, and all City Council or Commission meetings where the Project in whole or in part is being presented or discussed.
- h. In addition to the above, the CITY is responsible for fully cooperating with SCAG and its Consultant as may be reasonably necessary to produce the Project in accordance with the Scope of Work, and providing the In-Kind Services, including but not limited to the following:
  - i. Providing any required decisions as promptly as practicable so as to avoid unreasonable delay;
  - ii. Making the CITY engineering staff from the CITY's Public Works Department available to work closely with SCAG and the Consultant on the overall planning, design, and final approvals of the Project;
  - iii. Securing necessary permits and approvals from relevant CITY departments and/or agencies as applicable;
  - iv. Making CITY Special Events and/or Public Relations staff available to support advertising, communications, and programming to the public to promote the Project;
  - v. Determining and addressing any public safety requirements and traffic control requirements, and developing a street closure and traffic management plan for the Project in collaboration with the Consultant;
  - vi. Providing adequate staffing as reasonably requested by the SCAG Project Manager to implement the Project;
  - vii. Determining the appropriate configuration for the Project elements in consultation with the Consultant;;
  - viii. Providing engineering oversight as required by Caltrans Local Assistance Procedure Manual Ch. 16 and Ch. 17;
  - ix. Securing necessary insurance as applicable and requested by SCAG;
  - x. Posting "No Parking" signage along the route 3-5 days prior to realignment, as necessary, securing donation of materials as requested by the SCAG Project Manager;
  - xi. Coordinating and confirming appropriate locations for storing and staging of all materials;
  - xii. Securing temporary infrastructure improvements as requested by the SCAG Project Manager, and confirming that the temporary facilities comply with the CITY regulations

- xiii. Providing project management and oversight of the Contractor's Work including, but not limited to, Contractor's compliance with its contractual requirements.
  - xiv. Conducting Quality Assurance/Quality Control of the Work in collaboration with the Consultant;
  - xv. Providing ongoing maintenance of the Project site, including regular street sweeping, and removal of project materials at the end of the implementation period;
  - xvi. To the extent the Project will impact any roadway, street, intersection, sidewalk and/or other property of or in the CITY, the CITY shall coordinate with the Consultant in development of the Scope of Work to ensure inclusion of applicable City requirements, including but not limited to, any and all necessary permits, plans (such as design plans and traffic control plans), and/or insurance requirements set-forth by the City for such permits. The CITY shall ensure compliance by the Contractor with all such requirements; and
  - xvii. The CITY shall ensure compliance by the Contractor with California Labor Code Section 1770 *et seq.*, which requires, among other things, the payment of prevailing wages on public works.
- i. The CITY shall not be authorized to direct any additional work by the Consultant, or cause any increase in the Consultant costs without SCAG's prior written approval.

### 3. Term

The Term of this Agreement shall begin on the Effective Date of the Agreement and continue until February 20, 2023, hereinafter referred to as the "Completion Date," unless terminated earlier as provided herein. Time is of the essence in the performance of services under this MOU.

### 4. Project Management

- a. All work under this MOU shall be coordinated with SCAG, SCAG's Consultant, and the CITY through the Project Managers.
- b. For purposes of this MOU, SCAG designates the following Project Managers:

#### **Consultant Project Manager**

##### **Carlos Velazquez**

KOA Corporation

VP | Managing Director

1100 Corporate Center Drive, Suite 201, Monterey Park, CA 91754

T (323) 260-4703 | C (323) 945-8149

cvelasquez@koacorp.com

#### **SCAG Project Manager**

##### **Hannah Brunelle**

Southern California Association of Governments

Senior Regional Planner

(213) 236-1907

brunelle@scag.ca.gov

SCAG reserves the right to change this designation upon written notice to the CITY.

- c. For purposes of this MOU, the CITY designates the following individual as its Project Manager:

**Lily Falomir**  
City of Calexico  
Public Works Department  
608 Heber Avenue  
Calexico, CA 92231  
(760) 768-2160  
[falomirl@calexico.ca.gov](mailto:falomirl@calexico.ca.gov)

The CITY reserves the right to change this designation upon written notice to SCAG.

## **5. Funding**

- a. SCAG's contribution to the Work is funded wholly with ATP State grant funds (non-federal), up to Forty Thousand Five Hundred and Fifty-Five Dollars (\$40,555.00). SCAG shall not be obligated to make payments for any Work costs that exceed Forty Thousand Five Hundred and Fifty-Five Dollars (\$40,555.00). SCAG shall not be obligated to pay for any increase in Work costs which exceeds SCAG's obligated funding amount.
- b. If the bid from the lowest responsible, responsive contractor pursuant to the CITY'S IFB exceeds the foregoing sum, plus the required local match, the CITY shall be responsible for such excess costs, or the Parties shall confer on potential reductions to the Scope of Work.

## **6. Invoices, Progress Reports and Match Reports**

- a. SCAG's contribution to the Project shall be made on a reimbursement basis to the CITY, after the Contractor has performed and been reimbursed by the CITY for the Work, or portions thereof, if payment is made on a progress payment basis. All invoices submitted to SCAG for payment shall be e-mailed to [accountspayable@scag.ca.gov](mailto:accountspayable@scag.ca.gov) (file cannot exceed 10MB).
- b. Not less frequently than once a month, the CITY shall submit an invoice to SCAG using the MOU Invoice Report Checklist and Template, to be provided by SCAG. SCAG shall reimburse the CITY for paid Contractor invoices. The Invoice shall be accompanied by the applicable attachments noted on the MOU Invoicing Report Checklist and Template and include a narrative description of the progress toward completion of tasks related to the Project, copies of paid Contractor invoices, associated deliverables, and a proof of the payment. If the CITY uses its own invoice template in lieu of the Invoice Report Checklist and Template, the CITY's invoice template shall include the required certification in accordance with 2 CFR Part 200.415 (a), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and such certification shall be signed by an official who is authorized to legally bind the CITY.
- c. The Invoice Report shall include the following information:

- 1) Names of Contractor performing work
  - 2) Dates and times of Project work
  - 3) Location of Project work
  - 4) Items indicated in the Section 6.b and progress report (narrative report) indicating percentage of completion with each set of invoices to allow SCAG's Project Manager to determine if the CITY is performing to expectations, on schedule, within funding limitations, as well as to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.
  - 5) No CITY staff costs are authorized under this MOU.
- d. Incomplete or inaccurate invoices shall be returned to the CITY unapproved for correction.
- e. All direct Contractor costs billed must be specifically identified and costs shall not exceed the Contractor's budget as identified in its contract document. Costs shall be expended in accordance with the Contractor's contract terms and conditions.
- f. Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Human Resources for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates were not then commercially available to the CITY, its sub-recipient, contractors, and/or subcontractors, at the time and location required as specified in the following link: <https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>. Also see website for summary of travel reimbursement rules.
- g. By the tenth day following the start of a new quarter (i.e., January 10, April 10, July 10, October 10), the CITY shall submit a Quarterly Report in a format reasonably acceptable to SCAG' Project Manager. The Quarterly Report shall include, in narrative form, a description of services performed by Contractor as well as progress toward completion of tasks related to the Project for the prior quarter and a reporting of all costs incurred regarding the Project.
- i. On all documents submitted to SCAG for the Project, including Invoices and Quarterly Reports, the Project Number (OWP No. 225-3564X4.14) shall be referenced from the Effective Date through Completion Date.
- j. The Parties acknowledge that SCAG's fiscal year is from July 1 to June 30. The CITY agrees to review, approve, and pay any Contractor invoices in a timely manner and submit all invoices to SCAG for Work rendered through June 30th, no later than July 21<sup>st</sup> during the contract's term (e.g., 7/21/22), and for Work rendered between July 1, 2022, and February 20, 2023, no later than March 21, 2023. SCAG shall not be obligated to pay the CITY for any invoice received after such date.
- k. The CITY will require that its Contractor pay any subcontractors for satisfactorily completed work no later than ten (10) days of receipt of each payment from the CITY. The ten (10) calendar days period is applicable unless a longer period is agreed to in writing.

## 7. Cost Principles

- a. The CITY agrees to comply with the following:

- 1) The Contract Cost Principles and Procedures, 48 Code of Federal Regulations (CFR), Federal Acquisition Regulations System, Chapter 1, Subchapter E, Part 31, et seq. (Office of Management and Budget Circular A-87 Revised, "Cost Principles for State, Local, and Indian Tribal Governments), 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and applicable ATP program cost guidance shall be used to determine the acceptability of individual project cost items.
  - 2) The CITY agrees, and will require that its Contractor be obligated to agree, that (a) the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 , et seq. and applicable ATP program cost guidance shall be used to determine the allowability of individual project cost items; and (b) all parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The CITY and every Contractor receiving Project funds under this Agreement shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
- b. Any costs for which the CITY receives reimbursement or credit that is determined by a subsequent audit or other review by either SCAG, Caltrans or other State or Federal authorities to be unallowable under, but not limited to, Title 2, CFR, part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, are to be repaid by the CITY within thirty (30) calendar days of the CITY receiving notice of audit findings and a written demand for reimbursement from SCAG. Should the CITY fail to reimburse unallowable costs due SCAG within thirty (30) calendar days of demand, or within such other period as may be agreed between both parties hereto, SCAG is authorized to withhold future payments due to the CITY.

#### **8. Electronic Version of Work Products; Tangible Assets**

- a. For purposes of this Agreement, "Work Products" shall mean any deliverables, including reports, data files, newsletters or any other written or electronic materials provided pursuant to the Scope of Work.
- b. The CITY shall submit one (1) electronic copy of all completed deliverables associated with the Project to the assigned SCAG Project Manager.
- c. SCAG shall own all Work Products and shall grant to the CITY a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use Work Products related to the Project and developed as part of this MOU; provided, however, that any reproduction, publishing, or reuse of the Work Products without written verification by SCAG will be at the CITY's sole risk and without liability or legal exposure to SCAG. Such written verification by SCAG shall not be unreasonably denied and shall be provided by SCAG within ten calendar days of the CITY's request therefor.
- d. Subject to the California Public Records Act, all deliverables and related materials related to the Project shall be held confidential by Contractor. Nothing furnished to the CITY or SCAG which

is otherwise known or is generally known, or has become known, to the related industry shall be deemed confidential. The CITY shall also safeguard such confidential materials from unauthorized disclosure, using the same standard of care to avoid disclosure, as the CITY treats its confidential information, but in no case less than reasonable care.

- e. The CITY shall require its Contractor to develop a Waste Management Plan for tangible assets acquired for the Project, and the Contractor shall return to SCAG items deemed reusable and dispose of items that are unable to be reused or recycled.

## 9. MOU Changes

- a. No alteration or deviation of the terms of this MOU shall be valid unless made in writing in the form of MOU Amendment and properly executed by both parties. If an amendment is to become effective before the date of full execution by the Parties, the effective date of such amendment shall be no earlier than the date that SCAG received the Request.
- b. Either Party may request, at any time, amendments to this MOU and will provide written notice to the other party regarding such changes. Within ten (10) calendar days from the date of the written notice, the requesting Party shall notify the other Party of the impact of such changes on the Scope of Work, schedule, and budget. Upon agreement between the Parties as to the required changes, an amendment to this MOU shall be prepared regarding the same. If the Parties are unable to reach an agreement regarding the changes requested by SCAG, the Parties may terminate this MOU in accordance with the provisions set forth in Section 20(a) of this MOU.

## 10. Notices

Any notice or notices required or permitted to be given pursuant to this MOU may be personally served on the other Party by the Party giving such notice, or may be served by certified mail, return receipt requested, to the addresses below.

To SCAG:                      Cindy Giraldo  
   Chief Financial Officer  
   Southern California Association of Governments  
   900 Wilshire Blvd., Suite 1700  
   Los Angeles, CA 90017  
   Phone: (213) 630-1413  
   [giraldo@scag.ca.gov](mailto:giraldo@scag.ca.gov)

To the CITY:                      Esperanza Colio  
   City Manager  
   Office of the City Manager  
   608 Heber Avenue  
   Calexico, CA 92231  
   Phone: (760) 768-2110  
   [ecolio@calexico.ca.gov](mailto:ecolio@calexico.ca.gov)

## **11. Insurance**

The CITY shall procure, at its own expense, and shall require that the Contractor procure, at its own expense, and maintain policies of insurance of the types and amounts below, for the duration of the MOU. The policies shall state they afford primary coverage. The minimum required insurance coverage required by SCAG is set for below.

a. Minimum Scope of Insurance – Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (Occurrence form CG0001), or its equivalent.
- 2) Insurance Services Office form number CA0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto) or its equivalent.
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- 4) Professional Liability (Errors and Omissions) insurance appropriate to the Consultant's profession.

b. Minimum Limits of Insurance – The CITY, Contractor and SCAG shall maintain limits no less than:

- 1) General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: Including contractual liability insuring owned, non-owned, hired and all vehicles by the CITY and Contractor with a combined single limit of not less than \$1,000,000 applicable to bodily injury, or death, and loss of or damage to property in any one occurrence.
- 3) Workers' Compensation Liability: Including Occupational Diseases in accordance with California Law and Employers' Liability Insurance with a limit of not less than \$1,000,000 each accident.
- 4) For the Consultant Only - Professional Liability Insurance: With limits of not less than \$1,000,000 per occurrence. In addition, it shall be required that the professional liability insurance policy remain in effect for six (6) months after the Completion Date or earlier termination of this Agreement.
- 5) For the Contractor only – Pollution Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to SCAG providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the Contractor's policy as

“covered operations.” The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

- c. Other Insurance Provisions – The CITY and SCAG shall comply with the other insurance provisions, and the CITY shall require that the Contractor comply with such provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- 1) SCAG, its officials and employees are to be covered as additional insureds, as respects to liability arising out of the activities performed by or on behalf of the CITY or Contractor, products and completed operations of the CITY or Contractor; premises owned, occupied or used by the CITY or Contractor; or automobiles owned leased, hired or borrowed by the CITY of Contractor. The coverage shall contain no special limitations on the scope of protection afforded to SCAG, its officials and employees.
  - 2) Products/completed operations coverage shall extend a minimum of three (3) years after Project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include work performed “by or on behalf” of the insured. Policy shall contain no language that would invalidate or remove the insurer’s duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. SCAG, and its officials, officers, agents, and employees, shall be included as additional insured under the Products and Completed Operations coverage.
  - 3) For any claims related to this Project, the CITY and Contractor’s insurance coverage shall be primary insurance as respects SCAG, its officials and employees Any insurance or self-insurance maintained by SCAG shall be excess of the CITY and Contractor’s insurance and shall not contribute with it.
  - 4) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SCAG, its officials and employees.
  - 5) The CITY and Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
  - 6) Workers’ Compensation and Employer’s Liability policies shall contain the inclusion of SCAG, its members, subsidiaries, officials and employees and shall provide a waiver of subrogation.
- d. Deductibles and Self-Insured Retentions – Any deductibles or self-insured retentions in amounts over \$10,000 for any of the Contractor’s insurance policies must be declared to and approved by SCAG.
- e. Acceptability of Insurers – Insurance is to be placed with California admitted insurers with a current A.M. Best’s rating of no less than A and be admitted, unless otherwise approved by SCAG.
- f. Verification of Coverage – The CITY and Contractor shall furnish SCAG with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be

received and approved by SCAG before work commences. Upon request of SCAG at any time, the CITY and Contractor shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

## **12. Indemnity**

- a. Except for the negligence or willful misconduct of the CITY and any of its officers, agents, employees, assigns, volunteers, and successors in interest, SCAG, undertake and agree to defend, indemnify, and hold harmless the CITY and any of its directors, officers, agents, employees, assigns, and successors in interest from and against any and all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including SCAG's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner out of, pertaining to, or incident to any alleged acts, errors or omissions of SCAG, its officials, officers, employees, or agents in connection with the performance of the Project or this MOU, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.
- b. Except for the negligence or willful misconduct of SCAG and any of its directors, officers, agents, employees, assigns, and successors in interest, the CITY undertakes and agrees to defend, indemnify, and hold harmless SCAG and any of its directors, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including CITY's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising rising in any manner out of, pertaining to, or incident to any alleged acts, errors or omissions of the CITY, its officials, officers, employees, agents or the Contractor in connection with the performance of the Project or this MOU, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.
- c. The CITY shall require that the Contractor indemnify SCAG to the same extent indemnity is provided to the CITY under its agreement with the Contractor.

## **13. Records Retention and Audits**

- a. The CITY shall maintain all source documents, books and records connected with the Project and procurement of the Contractor and all work performed under this MOU for a minimum of four (4) years from the Completion Date or the date an audit resolution is achieved for each annual SCAG Overall Work Program (OWP), whichever is later, and shall make all supporting information available upon request for inspection and audit by representatives of SCAG, the California State Auditor, or other authorized government agency. Copies shall be made and furnished by SCAG upon request at no cost to SCAG.
- b. SCAG shall maintain all source documents, books and records connected with the Project under this MOU for a minimum of four (4) years from the Completion Date or the date an audit resolution

is achieved for each annual SCAG OWP, and shall make all supporting information available upon request for inspection and audit by representatives of the CITY, the California State Auditor, or other authorized government agency. Copies shall be made and furnished by the CITY upon request at no cost to the CITY.

- c. The CITY shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Invoices which segregate and accumulate the costs of work elements by line item and produce Progress Reports which clearly identify reimbursable costs and other expenditures by OWP work elements.
- d. If applicable, the CITY agrees to include all costs associated with this MOU and any amendments thereto to be examined in the annual audit and in the schedule of activities to be examined under a single audit prepared by the CITY in compliance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F – Audit Requirements. The CITY is responsible for assuring that the Single Auditor has reviewed the requirements of this MOU. Copies of said audits shall be submitted to SCAG.
- e. Neither the pendency of a dispute nor its consideration by a Party or the State shall excuse the other Party from full and timely performance in accordance with the terms of this MOU.
- f. The CITY shall include the requirements of this section in its contract with the Contractor.

#### **14. Compliance with Laws**

The CITY agrees to comply with all applicable federal, state, and local laws, ordinances, codes and regulations and orders of public authorities as well as Caltrans requirements in the performance of this MOU.

#### **15. Equal Employment Opportunity/Nondiscrimination**

- a. In the performance of work undertaken pursuant to this MOU, the Parties and their assignees and successors in interest, shall affirmatively require that their employees and contractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.
- b. The Parties shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Parties shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing the Government Code sections referenced above, are incorporated into this MOU by reference and made a part hereof as if set forth in full.

- c. Noncompliance: In the event of noncompliance by either Party with the nondiscrimination provisions of this MOU, the other Party may cancel, terminate or suspend the MOU, in whole or in part.
- d. If required by DOT, additional or alternate sanctions for noncompliance may be imposed.
- e. The Governor and the Legislature of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. The CITY agrees to comply with the requirements of the Fair Employment Practices Addendum, attached hereto as Exhibit "B" and further agrees that any agreement entered into by the CITY with a third party for performance of work connected with Project shall incorporate Exhibit B (with third party's name replacing the CITY) as part of such agreement.
- f. To the extent applicable, CITY shall comply with the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the United States Department of Transportation (US DOT) implementing regulations (49 CFR 27, 37, and 38).
- g. The CITY shall include the requirements of this Section in its contract with the Contractor.

#### **16. Conflict of Interest**

The Parties shall comply with State conflict of interest laws, regulations and policies. If any Federal funds are provided under this MOU, the Parties shall also comply with applicable Federal conflict of interest laws, regulations and policies.

#### **17. Independent Contractor**

- a. It is understood that in the production of the Project, SCAG shall be an independent contractor, and is not an agent or employee of the CITY. It is also understood that the CITY and Contractor shall be independent contractors and neither are an agent or employee of SCAG. The Parties and Contractor shall retain the right to exercise full control over the employment, direction, and compensation of their employees. The CITY shall be solely responsible for, and shall indemnify, defend and hold harmless SCAG from all matters relating to the payment of Contractor for the Work.
- b. Except as may otherwise be authorized in writing, the Parties and Contractor shall have no authority, express or implied, to act on behalf of or bind the other Party in any capacity whatsoever as agents or otherwise.

#### **18. Disputes**

Except as otherwise provided in this MOU, if a dispute arises between the Parties to this MOU, the Parties hereto agree to use the following procedure to resolve such dispute, prior to pursuing other legal remedies:

- a. A meeting shall be held promptly between the Parties that will be attended by individuals with decision-making authority (to the extent reasonably possible), who will attempt in good faith to negotiate a resolution of the dispute.
- b. If the Parties are unsuccessful in resolving the dispute under (a) above, they may:
  - 1) agree to submit the matter to mediation, binding judicial reference, or a private adjudicator (if all Parties so agree); or
  - 2) initiate litigation following advance written notice to the other Party of not less than thirty (30) days.
- c. If any Party should bring a legal action against the other to enforce the terms of this MOU, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, as determined by a court of competent jurisdiction in said proceeding.

## **19. Noncompliance**

In addition to such other remedies as provided by law, in the event of noncompliance with any grant condition or specific requirement of this MOU, this MOU may be terminated.

## **20. Termination of MOU**

- a. Termination for Convenience. Either Party may terminate this MOU at any time by giving written notice to the other party of such termination at least thirty (30) calendar days before the effective date of such termination. In such event, all finished or unfinished documents and other materials as described in the MOU shall be provided to SCAG and the CITY shall be paid for all services performed by Contractor and accepted by the CITY provided the required consultation between the CITY and SCAG has been undertaken in accordance with Section 2(f) of this MOU. Further, the Party terminating this MOU before the effective date of termination shall be responsible for any actual, incurred termination costs incurred by the Contractor as a result of such termination notice.
- b. Termination for Cause. If through any cause, the CITY shall fail to timely and adequately fulfill its obligations under this MOU, or if the CITY violates any of the covenants, agreements, or stipulations of this MOU, SCAG shall thereupon have the right to terminate the MOU by giving not less than ten (10) calendar days written notice to the CITY of the intent to terminate and specifying the effective date thereof. SCAG shall provide a reasonable opportunity for the CITY to cure prior to termination. In no event shall such opportunity to cure extend beyond the term of the MOU. In the event that SCAG invokes this termination clause, all finished or unfinished documents and other materials as described in the MOU shall be returned to SCAG at its option.
- c. If through any cause, SCAG shall fail to timely and adequately fulfill its obligations under this MOU, or if SCAG violates any of the covenants, agreements, or stipulations of this MOU, the CITY shall thereupon have the right to terminate the MOU by giving not less than ten (10) calendar days written notice to SCAG of the intent to terminate and specifying the effective date thereof. The CITY shall provide a reasonable opportunity for SCAG to cure prior to termination. In no

event shall such opportunity to cure extend beyond the term of the MOU. In the event that the CITY invokes this termination clause, all finished or unfinished documents and other materials as described in the MOU shall be returned to the CITY at its option.

**21. Non-Assignment**

- a. Neither Party shall assign this MOU, or any part thereof, without the written consent of each Party to this MOU. Any assignment without such written consent shall be void and unenforceable.
- b. The covenants and agreement of this MOU shall inure to the benefit of, and shall be binding upon each of the Parties and their respective successors and assignees.

**22. Release of Information**

The CITY shall not release any information to a third party or otherwise publish or utilize any information obtained or produced by it as a result of or in connection with the performance of services under this Agreement without the prior written authorization of SCAG, except as provided under this agreement, required by law and with prior written notice to SCAG.

**23. Severability**

If any provision of this MOU is held to be illegal, invalid, or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid, and enforceable, and the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.

**24. Survival**

The following sections survive expiration or termination of this MOU:

- Section 8 (Electronic Version of Work Products)
- Section 12 (Indemnity)
- Section 18 (Disputes)
- Section 22 (Release of Information)

**25. Jurisdiction and Venue**

To the furthest extent permitted by law, this MOU shall be deemed an agreement under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. To the furthest extent permitted by law, both Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Los Angeles County, California.

**26. Waiver**

No delay or failure by either Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A Waiver to be valid shall be in writing but

need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

**27. Standard of Care**

The Parties shall perform the work required for the production of the Project under this MOU in accordance with generally accepted industry standards, practices, and principles applicable to such work.

**28. Force Majeure**

Neither SCAG, the CITY nor Contractor shall be liable or deemed to be in default for any delay or failure in performance under this MOU or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, a lawfully declared emergency, or any other similar cause beyond the reasonable control of SCAG, the CITY or Contractor; provided, however, that the Party seeking to avail itself of the provisions of this Section 28 shall notify the other Party in writing not later than ten (10) days from the first instance of the event that the Party claims excuses or delays its performance and, if timely notice is not provided, then such Party's performance or failure shall not be deemed excused or delayed. Any delay or excuse of performance shall only continue on a day-for-day basis for the length of the noticed event.

**29. Execution of MOU or Amendment**

This MOU, or any amendment related thereto ("Amendment"), may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. The signature page of this MOU or any Amendment may be executed by way of a manual or authorized digital signature. Delivery of an executed counterpart of a signature page to this Agreement or an Amendment by electronic transmission scanned pages shall be deemed effective as a delivery of a manually or digitally executed counterpart to this Agreement or any Amendment.

**30. Effective Date**

This MOU shall be effective as of the last date in which the document is executed by both Parties.

**31. Recitals**

The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this MOU.

**32. No Third Party Beneficiaries**

There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**33. Entire MOU**

This MOU, including the attached Exhibits A and B, represents and contains the entire agreement of the Parties with respect to the matters set forth herein. This MOU supersedes any and all prior negotiations, discussions and, if any, previous agreements between the Parties.

**SIGNATURE PAGE TO  
MEMORANDUM OF UNDERSTANDING M-026-21**

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives as of the dates indicated below:

**SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (“SCAG”)**

By: \_\_\_\_\_  
Cindy Giraldo  
Chief Financial Officer  
Date \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jeffery Elder  
Deputy Legal Counsel II  
Date \_\_\_\_\_

**CITY OF CALEXICO (“CITY”)**

By: \_\_\_\_\_  
Esperanza Colio  
City Manager  
Date \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Carlos Campos  
City Attorney  
Date \_\_\_\_\_

**Exhibit A**

**Article IV – Fiscal Provisions and Article V – Audits, Third Party  
Contracting, Records Retention and Reports**

## ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the CTC.
2. STATE'S financial commitment of STATE FUNDS will occur only upon the execution of this AGREEMENT, the execution of each project-specific PROGRAM SUPPLEMENT and/or STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed duplicate invoices in arrears for reimbursement of allowable PROJECT costs on a monthly or quarterly progress basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the STATE FUNDS are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future allocations and invoice payments for any on-going or future STATE FUNDED project performed by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with Chapter 5 of the LAPM.
6. Invoices must have at least one copy of supporting backup documentation for allowable costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursements of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. An indirect cost allocation plan and related documentation are to be provided to STATE (Caltrans Audits & Investigations) annually for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect cost incurred within each fiscal year being claimed for reimbursement. The indirect cost allocation plan must be prepared in accordance with the requirements set forth in Office of Management and Budget Circular A-87 and Chapter 4 of the Local Assistance Procedures Manual.
9. STATE will withhold the greater of either two (2) percent of the total of all STATE FUNDS encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.
10. The estimated total cost of PROJECT, the amount of STATE FUNDS obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES with an allocation letter and finance letter. STATE FUNDING may be increased to cover PROJECT cost increases only if such additional funds are available and the CTC and/or STATE concurs with that increase in the form of an allocation and finance letter.

11. When such additional STATE FUNDS are not available, ADMINISTERING AGENCY agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

12. ADMINISTERING AGENCY shall use its own non STATE FUNDS to finance the local share of eligible costs and all PROJECT expenditures or contract items ruled ineligible for financing with STATE FUNDS. STATE shall make the final determination of ADMINISTERING AGENCY's cost eligibility for STATE FUNDED financing with respect to claimed PROJECT costs.

13. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

14. STATE FUNDS allocated from the STIP are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

15. STATE FUNDS encumbered for PROJECT are available for liquidation only for five (5) years from the beginning of the State fiscal year when those funds were appropriated in the State Budget. STATE FUNDS not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance in accordance with Government Code section 16304. The exact date of fund reversion will be reflected in the STATE signed PROJECT finance letter.

16. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid to rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand.

17. ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

18. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. ADMINISTERING AGENCY agrees to comply with the provisions set

forth in 23 CFR Parts 140, 645 and 646 when contracting with railroad and utility companies.

19. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under OMB Circular A-87, 48 CFR, Chapter 1, Part 31, 23 CFR Parts 140, 645 and 646 or 49 CFR, Part 18, are subject to repayment by ADMINISTERING AGENCY to STATE.

20. Upon written demand by STATE, any overpayment to ADMINISTERING AGENCY of amounts invoiced to STATE shall be returned to STATE.

21. Should ADMINISTERING AGENCY fail to refund any moneys due STATE as provided herein or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty (30) days of demand, or within such other period as may be agreed to in writing between the PARTIES hereto, STATE, acting through the State Controller, the State Treasurer, the CTC or any other public entity or agency, may intercept, withhold and demand the transfer of an amount equal to the amount paid by or owed to STATE for each PROJECT, from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may also withhold approval of future STATE FUNDED projects proposed by ADMINISTERING AGENCY.

22. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 21, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

23. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover STATE FUNDS improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

## ARTICLE V

### AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records when determined to be necessary or appropriate and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of Article V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance and costs of ADMINISTERING AGENCY's contracts with third parties pursuant to Government Code section 8546.7, ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above-referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to ADMINISTERING AGENCY under any PROGRAM SUPPLEMENT. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions and ADMINISTERING AGENCY shall furnish copies thereof if requested.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of OMB Circular A-133 if it receives a total of \$500,000 or more in STATE FUNDS in a single fiscal year. The STATE FUNDS received under PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205, Highway Planning and Research.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY'S annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with OMB Circular A-133.
6. ADMINISTERING AGENCY shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. All contracts awarded by ADMINISTERING AGENCY intended or used as local match credit must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of Article IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING, RECORDS RETENTION AND REPORTS and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner that is required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with LOCAL ASSISTANCE PROCEDURES.

**Exhibit B**  
**FAIR EMPLOYMENT PRACTICES ADDENDUM**

**EXHIBIT FAIR EMPLOYMENT PRACTICES ADDENDUM**

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, age, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, 1290-0 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, 7285.0, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

**5. Remedies for Willful Violation:**

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code section 1426 which has become final or has obtained an injunction under Labor Code section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing

the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.