

05-MON-68-13.1/13.6  
05-OT7101  
SR-68/San Benancio Road

**COOPERATIVE AGREEMENT**

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_ is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and

COUNTY OF MONTEREY,  
a political subdivision of the State of  
California, referred to herein as  
"COUNTY".

**RECITALS**

1. STATE and COUNTY, pursuant to Streets and Highways Code Sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State highways within the County of Monterey.
2. STATE and COUNTY plan operational improvements that include, but are not limited to, widening State route 68 (SR-68) on both sides to provide for a second west to southbound left turn lane and extend the east to southbound right turn lane, referred to herein as "PROJECT".
3. COUNTY is willing to fund one hundred percent (100%) of all capital outlay and staffing costs for PROJECT with State and Local funds, except:
  - a. STATE's contribution of \$750,000 of District 5 Minor A funds into PROJECT.
  - b. STATE cost of Independent Quality Assurance (IQA) of PROJECT Project Approval and Environmental Document (PA&ED), Plans Specifications and Estimates (PS&E) and construction,
  - c. STATE's costs incurred as the California Environmental Quality Act (CEQA) Lead Agency and National Environmental Policy Act (NEPA) Lead Agency, if applicable, in the review, comment and approval, if appropriate, of the PROJECT environmental documentation prepared entirely by COUNTY,
4. This Agreement will define roles and responsibilities of the CEQA Lead Agency and CEQA Responsible Agency regarding environmental documentation, studies, and reports necessary for compliance with CEQA. This Agreement will also define roles and responsibilities for compliance with NEPA, if applicable.
5. The parties hereto intend to define herein the terms and conditions under which PROJECT is to be developed, constructed, financed, owned, operated and maintained.

**SECTION I**

**COUNTY AGREES:**

1. To produce Project Report (PR), a detailed PS&E and to advertise, award, and administer the construction contract for PROJECT and to submit each to STATE for STATE's review, concurrence, and/or approval at appropriate stages of development. The PR and the final PS&E for PROJECT shall be signed on behalf of COUNTY by a Civil Engineer registered in the State of California.
2. To fund one hundred percent (100%) of all PROJECT capital and support costs with State and Local funds, except STATE's contribution of \$750,000 and the costs of STATE's IQA and STATE's review, comment and approval if appropriate, of the PROJECT environmental documentation for CEQA, and NEPA if applicable.
3. COUNTY will submit to STATE 3 monthly invoices beginning 15 working days prior to the construction contract bid advertising date for \$250,000 each total STATE's \$750,000 contribution to PROJECT.
4. All PROJECT work performed by COUNTY, or performed on COUNTY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, concurrence, and/or approval at appropriate stages of development.
5. All PROJECT work, except as set forth in this Agreement, is to be performed by COUNTY. Should COUNTY request that STATE perform any portion of PROJECT work, except as otherwise set forth in this Agreement, COUNTY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
6. To permit STATE to monitor, participate, and oversee selection of personnel who will prepare the PR, prepare environmental documentation, including the investigative studies and technical environmental reports, prepare the PS&E, provide right of way engineering services, and provide right of way acquisition services for PROJECT. COUNTY agrees to consider any request by STATE to avoid a contract award or to discontinue services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
7. COUNTY shall include a "conflict of interest" requirement in the PROJECT design consultant contract(s) that prohibits the design consultant from being employed or under contract to the future PROJECT construction contractor.
8. To identify and locate all utility facilities within the area of PROJECT as part of the design responsibility for PROJECT. All utility facilities not relocated or removed in advance of construction shall be identified on the PS&E for PROJECT
9. If any existing utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, COUNTY shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.

The costs for the PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside SHS right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies and procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.

10. To furnish evidence to STATE, in a form acceptable to STATE, that arrangements have been made for the protection, relocation, or removal of all conflicting facilities within SHS right of way and that such work will be completed prior to award of the contract to construct PROJECT or as covered in the PS&E for said contract. This evidence shall include a reference to all required SHS encroachment permits.
11. To apply for necessary encroachment permits for required work within State highway rights of way, in accordance with STATE's standard permit procedures, as more specifically defined in Articles (4), and (5) of Section III of this Agreement.
12. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside existing State Highway System (SHS) right of way that could impact PROJECT as part of performing any preliminary engineering work. If COUNTY discovers hazardous material or contamination within the PROJECT study area during said investigation, COUNTY shall immediately notify STATE.
13. Personnel who prepare the preliminary engineering studies and environmental documentation, including investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems which may arise during PS&E, Right of Way, and Construction phases of the PROJECT, and/or to make design revisions for contract change orders.
14. To construct PROJECT in accordance with PS&E prepared by or on behalf of COUNTY and accepted by STATE, and to construct PROJECT to the satisfaction of and subject to the approval of STATE.
15. Upon completion and acceptance of PROJECT construction contract by COUNTY, to furnish STATE a complete set of full-sized film positive reproducible As-Built plans.
16. To retain or cause to be retained for audit by STATE or other government auditors for a period of three (3) years from date of final payment, all records and accounts relating to construction of PROJECT.
17. If COUNTY terminates PROJECT prior to completion of the construction contract for PROJECT, STATE may require COUNTY to return to STATE all State-furnished materials and to return STATE's right of way to its original condition or to a condition of acceptable permanent operation. STATE also reserves the right to finish PROJECT or place PROJECT in a condition of satisfactory permanent operation. STATE may bill COUNTY for all or part of the actual expenses incurred and COUNTY agrees to pay said expenses within thirty (30) days or STATE, acting through the State Controller, may withhold an equal amount from future apportionments due COUNTY from the Highway User Tax Fund or any other available funds.

**SECTION II**

**STATE AGREES:**

1. To contribute \$750,000 into PROJECT.
2. At no cost to COUNTY, to complete STATE's review, comment and approval, if appropriate, as the CEQA Lead Agency and NEPA Lead Agency, if applicable, of the environmental documentation prepared entirely by COUNTY and to provide IQA of all COUNTY's work necessary for completion of the PR, PS&E and construction for PROJECT done by COUNTY, including, but not limited to, investigation of potential hazardous material sites undertaken by COUNTY or its designee, and provide prompt reviews, comments, concurrence, and/or approvals as appropriate, of submittals by COUNTY, while cooperating in timely processing of documents necessary for completion of the environmental documentation, PR, PS&E, and construction for PROJECT.
3. To pay COUNTY within thirty (30) days of receipt of invoice.
4. Upon proper application by COUNTY and by COUNTY's contractor, to issue, at no cost to COUNTY and to COUNTY's contractor, the necessary encroachment permits for required work within the State highway right of way.
5. At no cost to COUNTY, to provide independent quality assurance (IQA) activities of all work on PROJECT done by COUNTY, to provide prompt review and approvals, as appropriate, of submittals by COUNTY, and to coordinate in timely processing of PROJECT.
6. To certify to COUNTY that the right of way is owned by STATE or that STATE has Right of Entry to do work prior to award of contract.

**SECTION III**

**IT IS MUTUALLY AGREED:**

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of the resources by the Legislature and the allocation of resources by the California Transportation Commission.
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of PROJECT by COUNTY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the SHS by COUNTY conform with then existing STATE standards. IQA does not include any project related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by COUNTY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by COUNTY under the terms of this Agreement or by third parties by reason of STATE's IQA activities.
3. COUNTY to make sure that PROJECT is being constructed according to the plans and specifications of COUNTY and STATE's then applicable policies, procedures, standards, and

practices. Satisfaction of these requirements shall be verified by STATE's IQA representatives. COUNTY shall obtain aforesaid encroachment permit through the office of State District Permit Engineer. Receipt by COUNTY of the approved encroachment permit shall constitute COUNTY's authorization from STATE to proceed with work to be performed by COUNTY or COUNTY's representatives within STATE rights of way or STATE facilities, pursuant to this Agreement. COUNTY's authorization to proceed with said work shall be contingent upon COUNTY's compliance with all provisions set forth in said encroachment permit.

4. COUNTY's construction contractor shall also be required to obtain an encroachment permit from STATE prior to commencing any work within STATE rights of way or which affects STATE facilities. The application by COUNTY's contractor for said encroachment permit shall be made through the office of State District Permit Engineer and shall include proof said contractor has payment and performance surety bonds covering construction of PROJECT.
5. If any existing utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, COUNTY shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal. The costs for the PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside STATE's right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies, procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.
6. STATE will be the CEQA Lead Agency and COUNTY will be a CEQA Responsible Agency. STATE will be the NEPA Lead Agency, if applicable. COUNTY will assess PROJECT impacts on the environment and COUNTY will prepare the appropriate level of environmental documentation and necessary associated supporting investigative studies and technical environmental reports in order to meet the requirements of CEQA and if applicable, NEPA. COUNTY will submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. The environmental document and/or categorical exemption/exclusion determination, including the administrative draft, draft, administrative final, and final environmental documentation, as applicable, will require STATE's review, comment, and approval prior to public availability.

If, during preparation of preliminary engineering studies, preparation of the PS&E, performance of right of way activities, or performance of PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks by COUNTY.

7. COUNTY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
8. COUNTY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements, and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be a PROJECT cost.

9. COUNTY, subject to STATE's prior review and approval, as a PROJECT cost, shall be responsible for preparing, submitting, publicizing and circulating all public notices related to the CEQA environmental process and if applicable, the NEPA environmental process, including, but not limited to, notice(s) of availability of the environmental document and/or determinations and notices of public hearings. Public notices shall comply with all State and Federal laws, regulations, policies and procedures. STATE will work with the appropriate Federal agency to publish notices in the Federal Register, if applicable.

STATE, as a PROJECT cost, shall be responsible for overseeing the planning, scheduling and holding of all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. COUNTY, to the satisfaction of STATE and subject to all of STATE's and FHWA's policies and procedures, shall be responsible for performing the planning, scheduling and details of holding all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process including but not limited to, public meetings/hearings in the environmental document. STATE will participate as CEQA Lead Agency and if applicable, the NEPA Lead Agency, in all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process, for PROJECT. COUNTY shall provide STATE the opportunity to provide comments on any public meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such public meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings.

10. In the event COUNTY would like to hold separate and/or additional public meetings/hearings regarding the PROJECT, COUNTY must clarify in any meeting/hearing notices, exhibits, handouts or other materials that STATE is the CEQA Lead Agency and if applicable, the NEPA Lead Agency, and COUNTY is the CEQA Responsible Agency. Such notices, handouts and other materials shall also specify that public comments gathered at such meetings/hearings are not part of the CEQA and if applicable, NEPA, public review process. COUNTY shall provide STATE the opportunity to provide comments on any meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings solely with respect to text or graphics that could lead to public confusion over CEQA and if applicable, NEPA, related roles and responsibilities
11. If there is a legal challenge to the environmental documentation, including investigative studies and/or technical environmental report(s), permit(s), agreement(s), and/or approvals for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
12. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
13. If unanticipated cultural, archaeological, paleontological or other protected materials are encountered during construction of PROJECT COUNTY shall stop work in that area until a

qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material. The costs for any removal or protection of that material shall be covered as a PROJECT cost contemplated by this Agreement. If any such discovery occurs, COUNTY will notify STATE within 24 hours.

14. The party that discovers HM will immediately notify the other party(ies) to this Agreement.
  - a. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.
  - b. HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT
15. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

STATE has no responsibility for management activities or costs associated with HM-1 found outside the existing SHS right of way. COUNTY, independent of PROJECT, is responsible for any HM-1 found within PROJECT limits outside existing SHS right of way. COUNTY will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to PROJECT schedule, and COUNTY will pay, or cause to be paid, all costs associated with HM1 management activities.
16. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities. Any management activity cost related to HM-2 is a PROJECT construction cost
17. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
18. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
19. Upon completion of construction of PROJECT to the satisfaction of the STATE representative, STATE will accept control of and maintain PROJECT.
20. Upon completion of all work under this Agreement, ownership and title to all materials, equipment and appurtenances installed within STATE's right of way will automatically be vested in STATE. No further agreement will be necessary to transfer ownership to STATE.
21. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation or maintenance of the SHS and public facilities different from the standard of care imposed by law.

22. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority, or jurisdiction conferred upon COUNTY under this agreement. It is understood and agreed that, COUNTY will fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by COUNTY under this agreement.
23. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction conferred upon STATE under this agreement. It is understood and agreed that, STATE will fully defend, indemnify, and save harmless COUNTY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this agreement.
24. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
25. Those portions of this Agreement pertaining to the completion of PROJECT shall terminate upon the satisfactory completion of all post-construction obligations of COUNTY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2013, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction-related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related claims are settled, dismissed or paid.



**STATE OF CALIFORNIA  
Department of Transportation**

RANDELL H. IWASAKI  
Director

By \_\_\_\_\_  
RICHARD KRUMHOLZ  
District 5 Director

Approved as to form & procedure:

By \_\_\_\_\_  
Attorney, Department of  
Transportation

Certified as to financial terms & conditions:

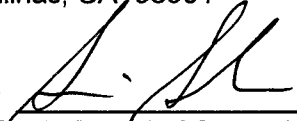
By \_\_\_\_\_  
Accounting Administrator

Certified as to funds:

By \_\_\_\_\_  
District 5 Budget Manager

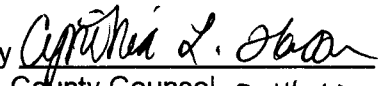
**COUNTY OF MONTEREY**

168 W. Alisal St.  
Salinas, CA, 93901

By   
Chair, Board of Supervisors

Attest:  
By   
County Clerk of the Board

Approved as to form & procedure:

By   
County Counsel 7-14-10