



**Agenda Item B.7**  
**CONSENT CALENDAR**  
**Meeting Date: August 20, 2019**

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**TO:** Mayor and Councilmembers

**FROM:** Charles W. Ebeling, Public Works Director

**CONTACT:** Teresa Lopes, Senior Project Engineer

**SUBJECT:** San Jose Creek Multipurpose Path Cooperative Agreement with the State of California Department of Transportation

**RECOMMENDATION:**

Approve and authorize the City Manager to enter into a Project Cooperative Agreement with the State of California, acting through its Department of Transportation (Caltrans) for the San Jose Creek Multipurpose Path Project, both the Middle Extent – Segment 2 and the Southern Extent, for the Project Approval and Environmental Document phase.

**BACKGROUND:**

The San Jose Creek Multipurpose Path Project extends approximately three miles alongside San Jose Creek from the California Coast Route path in the south to Cathedral Oaks Road and the Goleta Crosstown Bicycle Route in the north. The project will provide a direct and continuous bicycle/pedestrian path for commuting and recreational active transportation users from commercial and residential areas within the Goleta Old Town area to the Obern Trail, which provides direct access to Goleta Beach, UCSB, and other areas of Goleta Valley and the City of Santa Barbara. This important regional project also provides connection to the City of Santa Barbara's new Los Positas and Modoc Roads Multipurpose Path project and the County's new Modoc Road Multimodal Path Gap Closure Project.

The major component of the project is a separated pedestrian/bicycle path facility (Class I/Multipurpose Path). The project lies within both the City and Santa Barbara County. Project improvements include: a paved path (either 8-foot-wide with 2-foot graded shoulders or 10-foot-wide), bicycle and pedestrian bridges, tunnel undercrossing, retaining walls, concrete barriers, drainage features, crossing improvements, lighting, striping, and ADA accessibility.

The overall project was originally divided into three proposed segments historically referred to as "extents".

- San Jose Creek Multipurpose Path – Northern Extent - The Northern Extent project consists of a combination of separated Class I/Multipurpose path, Class II bike lane and Class III bike lane, and extends from Cathedral Oaks Road to Calle Real.
- The San Jose Creek Multipurpose Path - Middle Extent - The Middle Extent Project lies within the City limits and will construct a Class I/Multipurpose Path along the west side of San Jose Creek extending from Calle Real to Hollister Avenue. The Middle Extent project has been further broken into two segments (Segment 1 and Segment 2) for the purpose of phasing the design and to allow for immediate construction of portions of the project.
  - Segment 1 is the portion of the path from Hollister Avenue to Armitos Avenue. The environmental document has been completed for this segment, along with design. A portion of Segment 1 was constructed with the Jonny D. Wallis Park.
  - Segment 2 is the portion from Armitos Avenue to Calle Real. This segment is in conceptual design and environmental review phases.
- The San Jose Creek Multipurpose Path – Southern Extent Project - The limits of the San Jose Creek Bike Path Southern Extent are from Hollister Avenue (northern limit) to the existing Atascadero Creek Class I/Multipurpose path (Obern Trail), connecting just north of the State Route 217 Bridge over San Jose Creek (southern limit). The Southern Extent portion of the Path will consist of Class II bike lanes along Kellogg Avenue from Hollister Avenue to the Ekwill Street Extension intersection. The separated Class I/Multipurpose path begins at the Ekwill Street Extension intersection, crosses over the San Jose Creek Channel and continues parallel to SR 217 along the west side shoulder. The Path will be separated from SR 217 traffic lanes by a concrete barrier. North of the SR 217 Bridge over San Jose Creek, the Path will cross underneath SR 217 in a tunnel/culvert connecting to the existing Class I/Multipurpose Atascadero Creek (Obern Trail) on the east side of SR 217.

Public Works submitted a grant application to Cycle 4 of the Active Transportation Program (ATP) for design, right-of-way, and construction of both the Middle Extent (Segment 2) and Southern Extent projects. The grant application requested approximately \$18 million in ATP grant funds and committed \$2.3 million as local leveraging (matching) funding. The San Jose Creek Multipurpose Path Project application was successful, and the project was awarded \$14 million in ATP grant funding at the California Transportation Committee meeting on January 30, 2019.

The San Jose Creek Middle– Segment 2 and Southern Extent projects were combined into one project (The San Jose Creek Multipurpose Path Project) for the purpose of the ATP grant application; however, the ATP-funded portion of the project development process does not begin until the Design, Right-of-Way, and Construction phases. The Middle and Southern Extent projects will remain separate for the Conceptual Design and

Environmental Review phases to streamline the project development and to accelerate each Extent Project through the preliminary phases of the work.

Portions of the Project work will be performed within the Caltrans right-of-way. For the Southern Extent project, work is primarily in the Caltrans right-of-way along SR 217 and crossing beneath SR 217 at the Project's southern limit. For the Middle Extent- Segment 2 the project will encroach onto Caltrans right-of-way at the crossing beneath US 101. Work within the Caltrans right-of-way requires that the City obtain project approvals from Caltrans making Caltrans one of the reviewing and approval agencies for the Project.

According to California law, Caltrans is the agency assigned to plan, design, construct, operate, and maintain the State Highway System. Whenever there is an exchange of effort, funding, or materials between Caltrans and a public entity regarding the planning, design, or construction of an improvement or facility on the State Highway System, a cooperative agreement is required. For the San Jose Creek Multipurpose Path project, a cooperative agreement is required between the City and Caltrans.

## **DISCUSSION:**

On July 18, 2019 the City received the Cooperative Agreement for the San Jose Creek Multipurpose Path (which includes both the Middle - Segment 2 and the Southern Extents) from Caltrans for signature by the Mayor, City Clerk, and City Attorney. Execution of the Cooperative Agreement is a necessary step to complete preliminary engineering and environmental review phases (PA&ED phase) for the project.

The Cooperative Agreement assigns all obligations and responsibilities to complete the Project Approval and Environmental Documentation component of the Project, which consists of preparation and approval of the final Environmental Documents (for both Middle- Segment 2 and Southern Extents) and preparation and approval of the Project Report (for Southern Extent) which documents project alternative selection. Because the ATP grant will include federal funding for the construction phase both California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) Environmental Documents must be prepared for the project. The Cooperative Agreement states that the City will be the lead agency for CEQA and Caltrans will be the lead agency for NEPA.

The Cooperative Agreement will be active until completion of this phase of the Caltrans Project Development Process which concludes with completion and approval of the final Environmental Document and Project Report. The Cooperative Agreement includes a Closure Statement which will then signed by Caltrans and the City indicating that both parties agree that they have completed all scope, cost, and schedule commitments included in the agreement and final signature on the Closure Statement terminates the agreement. At the end of the Project Approval and Environmental Documentation Phase the City will then enter into a new cooperative agreement with Caltrans for the design and right-of-way phase (which is an ATP funded phase) of the Project.

Public Works recommends that the City Council approve and authorize the City Manager to enter into a Project Cooperative Agreement with Caltrans for the San Jose Creek Multipurpose Path Project, including both the Middle Extent – Segment 2 and the Southern Extent Projects for the Project Approval and Environmental Documentation phase of the project development process, and authorize the Mayor, City Clerk and City Attorney to sign the Cooperative Agreement on behalf of the City Council

**FISCAL IMPACTS:**

There are no fiscal impacts associated with the execution of the Cooperative Agreement.

**ALTERNATIVES:**

The Council may elect not to approve the Cooperative Agreement; however, if the City of Goleta does not execute the Cooperative Agreement with Caltrans, work cannot continue for the project.

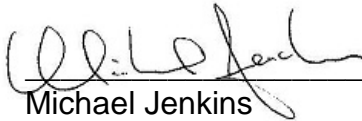
**Reviewed By:**

**Legal Review By:**

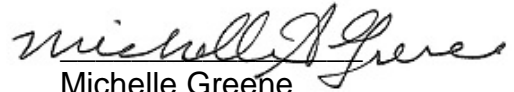
**Approved By:**



Kristine Schmidt  
Deputy City Manager



Michael Jenkins  
City Attorney



Michelle Greene  
City Manager

**ATTACHMENTS:**

1. Cooperative Agreement (Agreement #05-0339) between the City of Goleta and the State of California, acting through its Department of Transportation (Caltrans) for the San Jose Creek Multipurpose Path Project.

### **Attachment 1**

Cooperative Agreement (Agreement #05-0339) between the City of Goleta and the State of California, acting through its Department of Transportation (Caltrans) for the San Jose Creek Multipurpose Path Project.




# Memorandum

*Making Conservation  
a California Way of Life.*

**To:** TIMOTHY M. GUBBINS  
DIRECTOR  
DISTRICT 5


**Date:** July 15, 2019

**File:** SB-217-0.8/2.0  
San Jose Creek Bike Path  
EA 05-1K630

  
**From:** PAUL MARTINEZ  
Project Manager  
District 5

**Subject:** JUSTIFICATION FOR DELEGATION OF CEQA LEAD AGENCY STATUS

**Approved by:**

  
\_\_\_\_\_  
Timothy M. Gubbins  
District Director

**Date:** 7/17/19

**cc:** JKetchum  
JLuchetta  
LBertaina

This memo is prepared in accordance with the June 24, 2004 memo from Gary Winters in the Division of Environmental Analysis, which provides guidance regarding the "Department as CEQA lead agency for Projects on State Highway System". The City of Goleta (City) and the Department agree that the City would be the CEQA lead agency.

The City proposes to construct a multi-use path to improve bicycle and pedestrian access to the University of California Santa Barbara and to Goleta beach. The project proposes to tie into the previously constructed north segment of the path between Cathedral Oaks Road and Calle Real within the City, and into an existing path along northbound Route 217 at the San Jose Creek Bridge (51-0217). The middle segment of the path would cross under Route 101 at the San Jose Creek Bridge (51-0163) and the Union Pacific railroad between Calle Real and Hollister Avenue. Between Hollister Avenue and the San Jose Creek Bridge on Route 217 the southern segment of the path would continue as a class 2 bikeway along Kellogg Avenue to approximately Ekwil street where it crosses San Jose Creek to the Route 217 right-of-way. The southern segment would continue parallel to Route 217 within the state right-of-way to just north of the San Jose Creek Bridge where it will go through a tunnel constructed under Route 217. Thereafter it would tie into the existing path on the San Jose Creek Bridge that leads to the University and the beach. Construction of the middle segment would cross about 200 feet of state highway right-of way and the southern segment parallel to Route 217 within approximately 0.8 miles state highway right-of way.

The project provides a benefit to the State system by transferring some trips that would have otherwise been in automobiles to bicycle and walking modes. The City will operate and maintain the entire path within the state highway right-of-way. Caltrans will execute an operation and maintenance agreement with the City prior to construction of the path.

Additional justification for delegating CEQA lead agency status to the City for this project includes:

1. The City may claim lead agency status per CEQA Guidelines (Guidelines) §15051, which states:

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

- (a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

and

- (d) Where the provisions of subsections (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

2. Per Guidelines §15053, the City has the right to request that the Office of Planning & Research (OPR) designate it as CEQA lead agency. The conditions for OPR's denying



the City lead agency status, listed in §15052 and §15053(d) of the Guidelines, are not present.

3. The Department will continue to represent the FHWA as the NEPA lead agency throughout the environmental review process. The City has been directed to follow the Department's annotated outlines for NEPA documents, per agreement with FHWA, and time has been incorporated into the schedule for the Department's QA/QC process. All environmental documentation is being reviewed and approved by Department staff.
4. Cooperative Agreement 05-0339 will be executed that spells out the responsibilities of the City and the Department. It identifies the City as the CEQA lead agency and the Department as a CEQA responsible agency. It also defines the activities assigned to each agency. In general, the City will assess the environmental impacts of the project and prepare the necessary CEQA and/or NEPA documents; and will provide all data for and prepare drafts of the Supplemental Project Study Report, Draft Project Report and Project Report. The Department will review and approve the draft and final environmental documentation and will review and approve the design reports. Specific duties of the City and the Department are detailed in the Scope of Work of the Cooperative Agreement.
5. The City has been the lead CEQA agency for the preparation of other environmental documents (Mitigated Negative Declarations, EIRs, and Notices of Exemption) for several projects in the project vicinity over the last ten years. Many of the projects have/had grant funding from various sources (ATP, State Parks grant) including Federal Funds (Highway Bridge Program). Further, there have been several large-scale private development projects in this part of the City that City staff has also managed through complex CEQA and public hearing processes. Experience shows that the City has already successfully managed the CEQA process through its own undertakings. These previous projects have also required extensive coordination with other agencies including Caltrans, the County of Santa Barbara, County Flood Control District, the City of Santa Barbara, which also operates the Santa Barbara Airport, and Union Pacific Railroad; as well as experience working with permitting agencies including California Coastal Commission, California Department of Fish and Wildlife, and Army Corps of Engineers, to name a few. This recent experience in the immediate vicinity of the Project means the City is intimately familiar with the process, the community, the agencies involved, and environmental hot points. The City believes that separating the CEQA and NEPA documents will allow efficiencies in the process which will benefit the project's tight schedule.

The City is already extensively involved in preparation of design plans and the environmental documentation. Department staff will be attending regular PDT meetings and participating fully in the project planning and design.

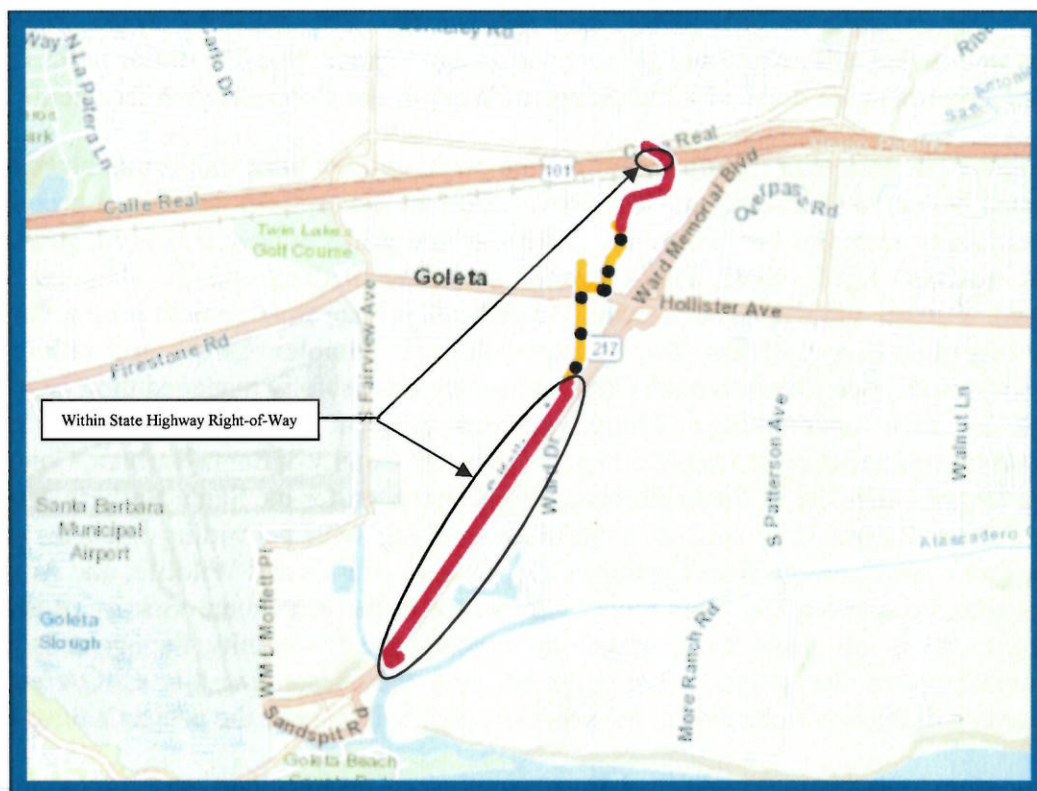
This project is of local importance and does not have a significant bearing on a State facility. Furthermore, it is in the spirit of cooperation that we should allow local governments to conduct projects that are integral to managing the entities to which they are entrusted, while maintaining interests that are of importance to the State. At minimum, the Department will remain an invested

PDT member, an FHWA representative, and a responsible agency under CEQA. The Department will maintain its stewardship of the State highway system by approval authority of the Project Report and by controlling work done within the right of way through the Encroachment Permit process.

This memorandum was prepared in consultation with the Central Region Environmental Division.

### Recommendation

It is recommended that CEQA lead agency responsibility be delegated to the City of Goleta.



Project Map

#### Attachments:

Draft Cooperative Agreement #05-0339

Letter from City of Goleta dated 7/11/2019

## **COOPERATIVE AGREEMENT COVER SHEET**

### **Work Description**

ON ROUTE 101 AT SAN JOSE CREEK BRIDGE AND ON ROUTE 217 FROM HOLLISTER AVE TO SAN JOSE CREEK BRIDGE, CONSTRUCT A CLASS I BICYCLE/PEDESTRIAN PATH

### **Contact Information**

#### **CALTRANS**

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#### **CITY OF GOLETA**

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**Please note:**

1. CITY may only be designated CEQA lead agency with written approval of the District Director. It is the District's responsibility to obtain this approval before execution of the agreement.

## **COOPERATIVE AGREEMENT**

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

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

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

### **RECITALS**

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per the California Streets and Highways Code, Sections 114 and 130.
2. For the purpose of this AGREEMENT, *On Route 101 at San Jose Creek Bridge and on Route 217 from Hollister Ave to San Jose Creek Bridge, construct a Class I bicycle/pedestrian path* will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g. Project Study Report, Permit Engineering Evaluation Report, or Project Report).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:
  - PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT (PA&ED)

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

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

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

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

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

PARTIES agree to sign a CLOSURE STATEMENT to terminate this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

5. The following work associated with this PROJECT has been completed or is in progress:
  - CITY completed the Project Initiation Document as an Active Transportation Program application, which was approved on January 30, 2019.
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.



## **RESPONSIBILITIES**

### **Sponsorship**

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. CITY is the SPONSOR for the WORK in this AGREEMENT.

### **Implementing Agency**

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

- CITY is the Project Approval and Environmental Document (PA&ED) IMPLEMENTING AGENCY.

PA&ED includes the completion of the Final Environmental Document and the Project Report (documenting the project alternative selection).

11. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for the WORK in that component. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and approval.
12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

### **Funding**

13. The WORK does not use funds administered by CALTRANS. PARTIES will amend this AGREEMENT should this condition change.

14. Each PARTY is responsible for the costs they incur in performing the WORK unless otherwise stated in this AGREEMENT.

**CALTRANS' Quality Management**

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

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

17. CALTRANS, as the owner/operator of the State Highway System, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
18. Per National Environmental Policy Act (NEPA) assignment and California Environmental Quality Act (CEQA) statutes, CALTRANS will perform environmental document quality control and NEPA assignment review procedures for environmental documentation. CALTRANS quality control and quality assurance procedures for all environmental documents are described in the NEPA Assignments memorandums, available at [http://www.dot.ca.gov/ser/memos.htm#LinkTarget\\_705](http://www.dot.ca.gov/ser/memos.htm#LinkTarget_705). This also includes the independent judgement analysis and determination under CEQA that the environmental documentation meets CEQA requirements.
19. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

20. CITY, including any employee, agent, consultant or sub-consultant retained by the CITY, shall implement uniform document control policies necessary to retain all records and electronically stored information associated with the WORK, including but not limited to those records identified in California Public Resources Code, Section 21167.6, and including email and attachments, in a manner consistent with the CALTRANS Uniform Filing System and the "Final Caltrans Environmental Records Retention Policy", available at <http://www.dot.ca.gov/ser/vol1/sec6/ch38nepa/pdf/cal-env-rec-retention-policy.pdf>. These records, along with an index of the records, shall be provided to CALTRANS within 60 days of CALTRANS' written request.
21. The cost of CALTRANS' quality management work is to be borne by CALTRANS.

**CEQA/NEPA Lead Agency**

22. CITY is the CEQA Lead Agency for the PROJECT.
23. CALTRANS is a CEQA Responsible Agency for the PROJECT.
24. CALTRANS is the NEPA Lead Agency for the PROJECT.

**Environmental Permits, Approvals and Agreements**

25. CITY will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to CITY's responsibilities in this AGREEMENT.
26. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.

27. It is expected that the PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS	
404, US Army Corps of Engineers	
401, Regional Water Quality Control Board	
State Waste Discharge Requirements (Porter Cologne), Regional Water Quality Control Board	
National Pollutant Discharge Elimination System (NPDES), State Water Resources Control Board	
Coastal Development Permit, California Coastal Commission	
1602 California Department of Fish and Wildlife	
2080.1 California Department of Fish and Wildlife	
2081 California Department of Fish and Wildlife	
Local Agency Concurrence/Permit	
NOAA/NMFS (Section 7 BO)	
NOAA/NMFS (Section 7 FESA)	
US Fish and Wildlife Service (Section 7 BO)	
US Fish and Wildlife Service (section 7 FESA)	
Essential Fish Habitat Consultation, NOAA Fisheries	

**Project Approval and Environmental Document (PA&ED)**

28. As the PA&ED IMPLEMENTING AGENCY, CITY is responsible for all PA&ED WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.

29. CALTRANS will be responsible for completing the following PA&ED activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)
100.10.10.xx Quality Management
165.15.15.xx Essential Fish Habitat Consultation
165.15.15.xx Section 7 Consultation
165.25.25 Approval to Circulate Resolution
180.10.05.05.xx CEQA Lead Final Env. Doc QA/QC and Approval
180.10.05.45 Section 7 Consultation
180.15.05 Record of Decision (NEPA)
180.15.10 Notice of Determination (CEQA)

30. Any PARTY preparing environmental documentation, including studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that the PROJECT remains in environmental compliance.
31. CITY will provide written notice of the initiation of environmental studies to the NEPA Lead Agency prior to completing any other PA&ED phase work.

California Environmental Quality Act (CEQA)

32. The CEQA Lead Agency will determine the type of CEQA documentation and will cause that documentation to be prepared in accordance with CEQA requirements.
33. Any PARTY involved in the preparation of CEQA documentation will prepare the documentation to meet CEQA requirements and follow the CEQA Lead Agency's standards that apply to the CEQA process.
34. CALTRANS is a CEQA Responsible Agency for the PROJECT and will review, comment, and concur on all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

35. Any PARTY preparing any portion of the CEQA documentation, including any studies and reports, will submit that portion of the documentation to the CEQA Lead Agency for review, comment, and approval at appropriate stages of development prior to public availability.
36. If the CEQA Lead Agency makes any changes to the CEQA documentation, the CEQA Lead Agency will allow CALTRANS to review, comment, and concur on those changes prior to the CEQA Lead Agency's approval at appropriate stages of development prior to public availability.
37. If the CEQA Lead Agency makes any changes to CEQA-related public notices, then the CEQA Lead Agency will allow CALTRANS to review, comment, and concur on those changes prior to publication and circulation.
38. The CEQA Lead Agency will attend all CEQA-related public meetings.
39. If a PARTY who is not the CEQA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the CEQA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the CEQA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The CEQA Lead Agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities.

National Environmental Policy Act (NEPA)

40. Pursuant to Chapter 3 of Title 23, United States Code (23 U.S.C. 326) and 23 U.S.C. 327, CALTRANS is the NEPA Lead Agency for the PROJECT. CALTRANS is responsible for NEPA compliance, will determine the type of NEPA documentation, and will cause that documentation to be prepared in accordance with NEPA requirements.

CALTRANS, as the NEPA Lead Agency for PROJECT, will review, comment, and approve all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination and obtain, renew, or amend approvals pursuant to the Federal Endangered Species Act, and Essential Fish Habitat.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination approvals pursuant to Section 106 of the National Historic Preservation Act.

41. Any PARTY involved in the preparation of NEPA documentation will follow FHWA and CALTRANS standards that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook (available at [www.fhwa.dot.gov/hep/index.htm](http://www.fhwa.dot.gov/hep/index.htm)) and the CALTRANS Standard Environmental Reference.
42. Any PARTY preparing any portion of the NEPA documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.
43. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.
- CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.
44. The NEPA Lead Agency will attend all NEPA-related public meetings.
45. CITY will submit all NEPA-related public meeting materials to CALTRANS for CALTRANS' review, comment, and approval at least ten (10) working days prior to the public meeting date.

46. If a PARTY who is not the NEPA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the NEPA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the NEPA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the NEPA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the NEPA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The NEPA Lead Agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

47. CITY will ensure that the PROJECT is included in the approved Federal Statewide Transportation Improvement Program (FSTIP) prior to the NEPA Lead Agency's approval of the environmental document.

### **Schedule**

48. PARTIES will manage the WORK schedule to ensure the timely use of obligated funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.



## **Additional Provisions**

### **Standards**

49. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:

- CADD Users Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual (PDPM)
- Workplan Standards Guide
- Standard Environmental Reference
- Highway Design Manual

### **Qualifications**

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

### **Consultant Selection**

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

### **Encroachment Permits**

52. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. CITY, their contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to CITY, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.

53. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

Protected Resources

54. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

Disclosures

55. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code, Section 6254.5(e) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.

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

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

Hazardous Materials

57. HM-1 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, irrespective of whether it is disturbed by the PROJECT or not.

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

The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.

58. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
59. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing State Highway System right-of-way. CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CALTRANS, independent of the PROJECT will pay, or cause to be paid, the cost of HM-1 MANAGEMENT related to HM-1 found within the existing State Highway System right-of-way.

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

CITY, independent of the PROJECT, will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside of the existing State Highway System right-of-way.

61. CITY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and CITY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. CITY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.
62. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

### Claims

63. CITY may accept, reject, compromise, settle, or litigate claims of any consultants or contractors hired to complete WORK without concurrence from the other PARTY.

64. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
65. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.
66. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.
67. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

#### Interruption of Work

68. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
69. If WORK stops for any reason, each PARTY will continue with environmental commitments included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

#### Penalties, Judgements and Settlements

70. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

### Project Files

71. CITY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on State Highway System within sixty (60) days following the completion of each PROJECT COMPONENT. CITY will prepare the Project History File in accordance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and on a CD ROM in PDF format.

## **GENERAL CONDITIONS**

### **Venue**

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

### **Exemptions**

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

### **Indemnification**

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

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

### **Non-parties**

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

### **Ambiguity and Performance**

78. CITY will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. CITY waives the provisions of California Civil Code, Section 1654.

A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

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

### **Defaults**

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

### **Dispute Resolution**

81. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of CITY will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS District Office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

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

### **Prevailing Wage**

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

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

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

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



## **SIGNATURES**

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

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

### **STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION**

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Timothy M. Gubbins  
District Director

### **VERIFICATION OF FUNDS AND AUTHORITY:**

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Julia Bolger  
Resource Manager

### **CITY OF GOLETA**

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Paula Perotte  
Mayor

Attest:

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Deborah Lopez  
City Clerk

Approved as to form and procedure:

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Winnie Cai  
Deputy City Attorney

## **CLOSURE STATEMENT INSTRUCTIONS**

Did PARTIES complete all scope, cost and schedule commitments included in this AGREEMENT and any amendments to this AGREEMENT?

YES / NO

Did CALTRANS accept and approve all final deliverables submitted by other PARTIES?

YES / NO

Did the CALTRANS HQ Office of Accounting verify that all final accounting for this AGREEMENT and any amendments to this AGREEMENT were completed?

YES / NO

If construction is involved, did the CALTRANS District Project Manager verify that all claims and third-party billings (utilities, etc.) have been settled before termination of the AGREEMENT?

YES / NO

Did PARTIES complete and transmit the As-Built Plans, Project History File, and all other required contract documents?

YES / NO

If ALL answers are "YES", this form may be used to TERMINATE this AGREEMENT.

## **CLOSURE STATEMENT**

PARTIES agree that they have completed all scope, cost, and schedule commitments included in Agreement 05-0339 and any amendments to the agreement. The final signature date on this document terminates agreement 05-0339 except survival articles. All survival articles in agreement 05-0339 will remain in effect until expired by law, terminated or modified in writing by the PARTIES' mutual agreement, whichever occurs earlier.

The people signing this agreement have the authority to do so on behalf of their public agencies.

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### **CALTRANS**

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Name  
District Director

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Date

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### **CITY OF GOLETA**

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Name  
Mayor

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Date



July 11, 2019

**CITY COUNCIL**

Paula Perotte  
*Mayor*

Kyle Richards  
*Mayor Pro Tempore*

Roger S. Aceves  
*Councilmember*

Stuart Kasdin  
*Councilmember*

James Kyriaco  
*Councilmember*

**CITY MANAGER**  
Michelle Greene

Paul Martinez, Project Manager  
Caltrans District 5  
50 Higuera Street  
San Luis Obispo, CA 93401

RE: COOPERATIVE AGREEMENT (AGREEMENT 05-0339) BETWEEN CALTRANS AND THE CITY OF GOLETA FOR THE SAN JOSE CREEK MULTIPURPOSE/BIKE PATH PROJECT (PROJECT NO. 0518000229, EA 1K630, 05-SB-101 21.63 AND 05-SB-217 1.0/2.2)

Dear Mr. Martinez,

The City has reviewed the Cooperative Agreement (No. 05-0339) (Agreement) for the San Jose Creek Multipurpose/Bike Path Middle and Southern Extent projects (Project) described in the Cooperative Agreement as follows: "On Route 101 at San Jose Creek Bridge and on Route 217 from Hollister Ave to San Jose Creek Bridge, Construct Class I Bicycle/Pedestrian Path". The City is requesting a change to the Agreement in Article 22 under "CEQA/NEPA Lead Agency". The Agreement currently lists Caltrans as the CEQA Lead Agency for the Project. The City requests that this section be changed to read "City of Goleta is the CEQA Lead Agency for the Project".

The City believes that this change would have a benefit to the Project and will aid in the timely completion of the CEQA documents which will be required for the project. The City believes that separating the CEQA and NEPA documents will allow efficiencies in the process which will benefit the Project's tight schedule.

The City has been the lead CEQA agency for the preparation of other environmental documents (Mitigated Negative Declarations, EIRs, and Notices of Exemption) for several projects in the vicinity of the Project over the last ten years. These projects include the Ekwil and Fowler Street Extensions project (which includes the roundabouts at Hollister Avenue and SR217 which are located within State right of way), the San Jose Creek Channel Capacity Improvement Project, the Jonny D. Wallis Neighborhood Park (which also included a portion of the SJC Bike Path adjacent to the park), Ward Drive Class II Bike Lanes project, the Old Town Sidewalk Project, and the Hollister Avenue Bridge Replacement Project. Many of the projects have/had grant funding from various sources (ATP, State Parks grant) including Federal Funds (Highway Bridge Program). Further, there have been several large-scale private development projects in this part of the City that City staff has also managed through complex CEQA and public hearing processes.

Experience shows that the City has already successfully managed the CEQA process through its own undertakings. These previous projects have also required extensive coordination with other agencies including Caltrans, the County of Santa Barbara, County Flood Control District, the City of Santa Barbara, which also operates the Santa Barbara Airport, and Union Pacific Railroad; as well as experience working with permitting agencies including California Coastal Commission, California Department of Fish and Wildlife, and Army Corps of Engineers, to name a few. This recent experience in the immediate vicinity of the Project means the City is intimately familiar with the process, the community, the agencies involved, and environmental hot points.

A key factor for the San Jose Creek Bike Path Southern Extent portion of the Project is its location partially in the California Coastal Zone. Because the City of Goleta does not have an adopted Local Coastal Plan, City projects in the Coastal Zone must secure their Coastal Development Permit (CDP) directly from the California Coastal Commission (CCC), which tends to be a complex process and often politically sensitive. While the City has a long history of working with California Coastal Commission and has a good working relationship with the local CCC office, the City is still in the process of working with the CCC in developing its Local Coastal Plan (LCP) for eventual CCC approval, which has a complicated history. As the City's lead policy document for coastal development, the pending LCP will be important to keep in mind for the application details of the Project to ensure consistency with CCC and the City. Therefore, the City is uniquely experienced in dealing with the CCC through recent permitting and the LCP process that affects all future development in Goleta's Coastal Zone areas.

The City has extensive experience as the CEQA Lead Agency and we feel we are more than qualified to function in this role for the San Jose Creek Multipurpose Path Project. As the CEQA Lead Agency for the Middle and Southern Extent projects, the City will continue to work closely and collaboratively with Caltrans through regular communication and Caltrans reviews, and coordinate with Caltrans working together through the NEPA process.

Should you have any questions regarding this request or require further information, please feel free to contact me at (805) 961-7500, Email: [cebeling@cityofgoleta.org](mailto:cebeling@cityofgoleta.org) or the Project Manager, Teresa Lopes, at (805) 961-7563; Email: [tlopes@cityofgoleta.org](mailto:tlopes@cityofgoleta.org).

Sincerely,

Charles W. Ebeling, P.E., T.E.  
Director of Public Works

Enclosures: Cooperative Agreement