State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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To: DISTRICT DIRECTORS
DEPUTY DISTRICT DIRECTORS
Environmental
DISTRICT OFFICE/BRANCH CHIEFS
Environmental

Date: June 24, 2004

File: EMO

From: GARY R. WINTERS
Chief
Division of Environmental Analysis

Subject: Department as CEQA Lead Agency for Projects on State Highway System

With its enactment in January 1998, Senate Bill 45 (SB 45) brought major changes in the responsibility for programming of available funds for projects in the State Transportation Improvement Program (STIP). SB 45 placed the primary responsibility for programming 75% of these funds on the Regional Transportation Planning Agencies (RTPA) and Metropolitan Planning Organizations (MPO). These projects may or may not be on the State Highway System (SHS). In addition, many regions have enacted local tax measures to fund locally important transportation improvement projects. Together these actions have led to an increase in the number of projects on the SHS with local agency participation and an escalation of discussions over which agency, the Department or the local agency, should be the CEQA lead agency for these projects.

The current and long-standing policy is for the Department to be CEQA lead agency for improvement projects on the SHS. This applies even if the project is financed by others. None of the above legislation alters that responsibility.

The Department's practice of acting as lead agency for projects on the SHS is based on the Department's statutory obligation to plan, design, construct, operate and maintain the SHS as well as its actual ownership of the SHS. Further, as owner of the right of way, the Department is the entity ultimately responsible for proper stewardship of all resources within State right of way. This stewardship obligation cannot be delegated to others. Having the Department act as CEQA lead agency promotes the proper management of the SHS, including resources located within the State right of way. This also ensures that State concerns will not be overlooked or made secondary to local concerns.

In certain limited cases, and only when it is in the best interests of the State, the Department may delegate CEQA lead agency status to a local agency. Such delegations can only be made by the District Director. The District Director will provide a written justification for the delegation, which becomes the authorizing document for a cooperative agreement between the Department and the local agency. The delegation is then formalized through an executed written agreement, which outlines the roles and responsibilities of each party. These delegations are the exception, rather than the rule.

The attachment to this memorandum sets forth the Department's policy regarding CEQA lead agency status for projects with local participation and provides guidance and considerations to assist districts in determining CEQA lead agency status on local participation projects consistent with the Department's existing legal authority.

If you have any questions regarding this memorandum or the attached guidance, please contact Cindy Adams, Chief, Environmental Management Office, at (916) 653-5157.

Attachment

Guidance for Determining CEQA Lead Agency Status for Projects on the State Highway System

Issue Overview

With its enactment in January 1998, Senate Bill 45 (SB 45) brought major changes in the responsibility for programming of available funds for projects in the State Transportation Improvement Program (STIP). SB 45 placed the primary responsibility for programming 75% of these funds on the Regional Transportation Planning Agencies (RTPA) and Metropolitan Planning Organizations (MPO). These projects may or may not be on the State Highway System (SHS). In addition, many regions have enacted local tax measures to fund locally important transportation improvement projects. Together these actions have led to an increase in the number of projects on the SHS with local agency participation and an escalation of discussions over which agency, the Department or the local agency, should be the CEQA lead agency for these projects.

This guidance is to clarify the Department's position and policy regarding CEQA lead agency status on projects with local participation including: local sales-tax measure projects, locally funded projects, encroachment permit projects, privately funded projects, public toll road projects, and jointly funded or cooperative projects.

Department as CEQA Lead Agency

As owner-operator of the SHS, the Department is the CEQA lead agency for all improvement projects on the SHS. The Department maintains overall responsibility for the preparation and processing of environmental documents for projects on the SHS.

One or more cooperative agreements between the Department and the local agency will be required to set forth the responsibilities and funding for the various phases of project development and construction. Please see the section on cooperative agreements below.

The Department's Authority and What It Means to be CEQA Lead Agency

For purposes of CEQA, "lead agency" means the public agency that has the principal responsibility for carrying out or approving a project. The lead agency will decide what type of environmental document or approval will be required for the project and will cause the appropriate document to be prepared. The lead agency also makes key determinations as to the content and analysis that is presented in the environmental document, including determinations of significance and potential mitigation measures.

The Department's practice of acting as the CEQA lead agency for projects on the SHS is based on the Department's statutory obligation to maintain and operate the SHS as well as its actual ownership of the SHS. (Please see Appendix A of this guidance, particularly CA Government Code Section 14520.3, for information regarding the Department's legal authority.)

As owner of the right of way, the Department is the entity ultimately responsible for proper stewardship of all resources within State right of way. This stewardship obligation cannot be delegated to others. Having the Department act as CEQA lead agency promotes the proper management of the SHS and resources within the right of way. It also ensures that State concerns will not be overlooked or made secondary to local concerns.

Regardless of whether the Department is CEQA lead agency or not, the Department maintains its responsibility for the planning, design, operation, maintenance and expansion of the SHS. The fact that the Department retains this underlying responsibility is a major reason why it is almost always in the Department's best interest to be CEQA lead agency.

CEQA Lead Agency Status, Project Sponsors and Implementing Agencies

Every STIP project must have a project sponsor. The Department is generally the project sponsor for interregional improvements, while regional or local governmental entities act as sponsor for regional improvements. One duty of the project sponsor is to designate which agency shall be implementing agency for the completion of each of the following four project components [see CA Government Code Section 14529(b)]:

1. Completion of all permits and environmental studies
2. Preparation of plans, specifications and estimates
3. Acquisition of right-of-way
4. Construction, construction management and engineering

When the Legislature enacted Senate Bill 45, which changed the programming aspects of the STIP, it specifically stated that the intent was to give local agencies more input into establishing the priority of transportation projects but that the Department remains responsible for the planning, design, construction, maintenance, and operation of the SHS. It further stated, "Senate Bill 45 is not intended to alter that responsibility [CA Government Code Section 14520.3(b)]."

For projects that do not include STIP funds, the local agency or a developer is generally the implementing agency. Regardless of which agency or entity is listed as project sponsor and/or which agency or entity is designated as implementing agency for the completion of environmental studies, the Department still maintains CEQA lead agency status for projects on the SHS.

Delegation of Activities versus Delegation of CEQA Lead Agency Status

In certain limited circumstances, the Department may agree to delegate all or some of its project development activities for projects with local participation to a local agency. The delegation of such activities does not constitute a delegation of lead agency status for purposes of CEQA. The delegation of lead agency status can only be done through a written justification by the District Director and an executed written agreement.

1. Mainline Improvement Projects—Inability to Comply with Local Agency's Schedule. The Department will normally be lead agency for locally sponsored State highway projects that involve new mainline development, new mainline capacity, or relief of existing highway traffic safety or congestion problems. This would include projects like mainline improvements, new interchanges, conversion of expressways to freeways, adding new lanes, and traffic relief improvements such as auxiliary lanes and ramp revisions that are not related to local improvements.

   If the Department is unable to comply with the schedules established by the local agency for the environmental document, the local agency may undertake this work at the agency's expense, with

appropriate quality assurance provided by the Department. This is not a delegation of lead agency status by the Department, but is merely a delegation of activities.

As lead agency, the Department must approve the environmental document and remains responsible for the adequacy and objectivity of the environmental document. The environmental document must reflect the independent judgment of the Department. However, the Department can use information prepared by the local agency or project sponsor. The local agency may draft the environmental document, but the Department must still review and approve the content of the draft. The Department remains the ultimate decision maker for the type and content of the environmental document. In addition, the Department will usually handle all required public notices.

One or more written agreements between the State and the local agency will be required to set forth the responsibilities and funding for the various phases of project development and construction. Please see page 5 of this guidance for additional information.

2. Non-mainline Improvement Projects. The Department may delegate some or all of its project development activities to a local agency for non-mainline improvement projects if doing so is in the best interest of the State. This may be appropriate for a project such as a local overcrossing of a new freeway. In these circumstances, the Department may delegate its role as CEQA lead agency to the local agency if doing so is in the best interest of the State. However, the Department would remain a responsible agency for purposes of CEQA. Normally locally funded encroachment permit projects are handled in this manner, with the local agency as CEQA lead agency and the Department acting as a responsible agency.

   As a responsible agency, the Department must actively participate in the lead agency's CEQA process and consider the lead agency's environmental document prior to acting upon or approving the project (e.g. approving the project report or granting the encroachment permit). The Department must certify that it reviewed and considered the information contained in the EIR or Negative Declaration on the project. In addition, the Department must prepare and issue its own findings regarding the project.

   Generally, as a responsible agency, the Department must accept the lead agency's environmental document as legally adequate. There are very narrow exceptions where the Department may reject the lead agency's environmental document and step in to take the lead agency role; however, they are extreme cases such as when the lead agency has failed to consult with responsible agencies as required by CEQA (See CEQA Guidelines Section 15052). Therefore, the Department must participate early and actively in the lead agency's CEQA process to ensure its concerns are met.

   One or more written agreements between the State and the local agency may be required to set forth the responsibilities and funding for the various phases of project development and construction. Please see page below for additional information.

For additional information, see Chapter 2 of the Project Development Procedures Manual.

Lead Agency for NEPA

If there is federal involvement (e.g. federal aid, or federal permits or approvals), the project must comply with the National Environmental Policy Act (NEPA) and other federal laws and regulations. For most projects on the SHS with federal involvement, the Federal Highway Administration (FHWA) will be the NEPA lead agency. Federal-aid local streets and roads projects follow the local assistance procedures. For local assistance projects, the local agency is the CEQA lead agency and FHWA is the NEPA lead agency; the Department acts as an agent for FHWA in a quality assurance role.

For additional information on local assistance, see the Division of Local Assistance website.

Key Considerations When Deciding Whether to Delegate Project Development Activities and/or CEQA Lead Agency Authority

The key determination in deciding whether or not to delegate project development activities or lead agency status is whether the delegation is in the best interest of the State. This involves a careful balancing of a number of factors, including but not limited to:

1. *Does the Department have the time and resources to do the work?*

   Whether the Department has the time, staff and other resources to complete the necessary project development activities is obviously a prime concern in deciding whether to delegate the activities to a local agency. If the Department does not have the resources to meet the local agency's schedule, then, for locally funded projects and local sales-tax measure projects, the local agency has the option of preparing and submitting the environmental document. The Department would provide quality assurance; note this is not a delegation of lead agency status. It is just a delegation of specified project development activities.

2. *Is the improvement project part of a larger development project?*

   The more a State highway improvement project is part of a larger local agency project that is not funded out of the State Highway Account, the more consideration should be given to allowing the local agency to assume project development activities and CEQA lead agency status. This is especially true of improvement projects tied to larger developments that have been labeled as growth inducing or are otherwise tied to public or resource agency controversy.

   Where the highway improvement is part of a larger project, the environmental document for the overarching project may not fully analyze the impacts of the highway improvement. The document may mention the needed improvements but remain silent on the impacts to resources within the State's right of way. If the local agency fails to address the Department's concerns in its environmental document, then an addendum or supplement to the local agency's document or the preparation of a separate environmental document may be needed to approve the highway improvements. In this case, the Department should strongly consider maintaining lead agency status for the highway improvements only.

   As stewards of the Department's right of way, the district environmental staff is the most familiar with resources and environmental concerns along and within the State right of way. Through dedicated coordination efforts, a local agency may be made familiar with the resources in the right of way; this process may not, however, be the most efficient one.

3. *Are there possible precedent setting implications?*

   There may be instances where the local agency and the Department have fundamental differences when it comes to methods of analyzing impacts and the assessments of the impacts themselves. Impacts a local agency may consider significant for its local projects may differ from what the Department considers significant for projects on the SHS. This difference is especially likely to occur where the local agency has adopted overreaching CEQA thresholds of significance.

Who Has the Authority to Decide Whether to Delegate CEQA Lead Agency Status?

The District Director is the ultimate decision-maker regarding CEQA lead agency status. In order to delegate the Department's role as CEQA lead agency, the District Director must write and sign a justification for the delegation. A copy of the written justification for the delegation is to be sent to the Chief of the Division of Environmental Analysis.

The decision to delegate preparation of the environmental studies and document may only be made by the Deputy District Director for Environmental.

Include a summary of the decision and justification in the appropriate engineering document (e.g. project initiation document, supplemental project initiation document, or project report).

Steps to Take if the Decision is Made to Delegate Project Development Activities or CEQA Lead Agency Authority

As soon as possible after the decision is made to delegate all or part of the Department's project development activities or CEQA lead agency status, the Department must enter into a formal written agreement that is a legally binding contract between the agencies. It outlines the understandings and responsibilities for the various phases of project development to be performed by each agency.

A formal written agreement should be prepared as early as possible in the project development process. The formal agreement must contain appropriate language that lays out the respective obligations of each party for the remainder of project development and for construction, where appropriate. This is important because the Department has no legal obligation to pay for costs incurred by another party in the absence of a formal executed agreement. Likewise, the Department cannot expect reimbursement for doing work, including quality assurance, on a cooperative project *prior* to having a formal executed agreement. Therefore, a formal agreement must always be executed prior to incurring any costs for preliminary engineering, environmental studies, right-of-way activities (including acquisition, right of way engineering and right of way utilities, reviews), etc.

While many members of the Project Development Team (PDT) may be involved in the development and execution of a written agreement, each district/region has a separate contact person or unit that assists in the writing and processing of agreements.

It is anticipated that most of these agreements will be cooperative agreements. In general, the cooperative agreement process works as follows:

1. Authorize: A cooperative agreement for the delegation of CEQA lead agency status cannot be executed without a written justification by the District Director.

2. Draft: The project manager, with input from the PDT, works with the appropriate contact person in the district to draft the cooperative agreement. Often, the draft is based on one of several examples in the Cooperative Agreement Manual.

3. Review: The draft cooperative agreement is reviewed by functional units within the district, then by headquarters staff, including Legal, and lastly by the local agency.

4. Revise: The agreement is revised as necessary.

5. Execute: The Department and the local agency sign the agreement.

For additional information on the preparation and processing of cooperative agreements, see the Cooperative Agreement Manual. The appendices of the Cooperative Agreement Manual include many examples of pre-approved cooperative agreements. Appendix B of this document contains sample language for use in cooperative agreements regarding lead agency status.

Appendix A: California Law Regarding the Authority of the Department and Lead Agency Status

The pertinent authority of the Department is set forth in the California Streets and Highways Code. The code sections below set forth the Department's authority over the SHS and the Department's ability to enter into formal agreements.

Streets and Highways Code

§90. The department shall have full possession and control of all state highways and all property and rights in property acquired for state highway purposes. The department is authorized and directed to lay out and construct all state highways between the termini designated by law and on the locations as determined by the commission.

§91. The department shall improve and maintain the state highways, including all traversable highways which have been adopted or designated as state highways by the commission, as provided in this code.

§92. The department may do any act necessary, convenient or proper for the construction, improvement, maintenance or use of all highways which are under its jurisdiction, possession or control.

§94. The department may make and enter into such contracts in the manner provided by law as are required for performance of its duties.

§100.2. The department is authorized to enter into an agreement with the city council or board of supervisors having jurisdiction over the street or highway and, as may be provided in such agreement, to close any city street or county highway at or near the point of its interception with any freeway or to make provision for carrying such city street or county highway over or under or to a connection with the freeway and may do any and all work on such city street or county highway as is necessary therefor. No city street or county highway shall be closed, either directly or indirectly, by the construction of a freeway except pursuant to such an agreement or while temporarily necessary during construction operations. No city street, county road, or other public highway of any kind shall be opened into or connected with any freeway unless and until the commission adopts a resolution consenting thereto and fixing the terms and conditions on which such connection shall be made and the commission may give or withhold its consent or fix such terms and conditions as, in its opinion, will best serve the public interest.

§100.25. In addition to the other matters that may be covered by the agreements authorized under Section 100.2, provisions for improvements, revisions or extensions of city streets or county highways leading to or from a freeway, deemed by the department to be necessary in accommodating the freeway traffic in making proper connections between the existing system of city streets or county roads and the freeway, may be included in such agreements and the department may perform such work as a part of the freeway construction.

§113. Upon a request from the department the governing body of any city may acquire any real property or interest therein needed for state highway purposes and lying within such city. The title to such real property or interest therein may be taken in the name of the State or of the city.

Any city may aid in the construction, improvement or maintenance of any state highway located in whole or in part within its boundaries by contributing any part of the expense thereof to the department out of

any city funds available or to become available for construction, improvement or maintenance of streets within the city.

§113.5. A city or county may enter into a cooperative agreement with the department to fund the construction or improvement of a segment of a state highway located in whole or in part within its jurisdiction when the project is included in the state transportation improvement program pursuant to Section 14529 of the Government Code. The project shall be constructed by the department, and, upon completion of construction, the highway segment shall be in the possession and control of, and operated and maintained by, the department.

§114. (a) When the commission or other public entity has allocated any funds for the construction, improvement, or maintenance of any portion of a state highway within a city or a county, the department may enter into a cooperative agreement with the city or the county or other public entity for the performance of the work by the department or by the city or the county or other public entity, or for the apportionment of the expense of the work between the department and the city or the county or other public entity.

(b) The department shall enter into a cooperative agreement with a city, county, or other public entity to perform professional and technical project development services, if the department determines that the city, county, or other public entity in which the project is located has qualified and available staff to perform the necessary project services.

§116. The department may delegate to any such city or county any part of the powers and jurisdiction vested by law in the department, except the power of approval, with respect to any portion of any such state highway within such city or county, and may withdraw such delegation.

§130. The department and any county, city, or joint highway district, or any of them, may enter into a contract in respect to the proportion of the expense of the acquisition, construction, improvement or maintenance of any state highway to be borne by the respective parties to such contract. Any such contract may provide for the advancement of funds, for the acquisition of rights of way and for the doing of the work, or any portion thereof, by any party to the contract, pursuant to the laws governing such party with reference to such type of acquisition or such character of work.
Any money appropriated for the acquisition of rights of way for the construction, improvement or maintenance of county highways, city streets, or joint highway district roads may be expended in such acquisition, construction, improvement or maintenance of any state highway located in whole or in part within the limits of such city, county, or joint highway district, pursuant to such contract, and shall be made available therefor by resolution of the governing body of the city, county, or joint highway district, as the case may be.

§130.2. Upon receipt of the resolution of completion by the director, the control of the state highway, or the portion thereof, declared completed by the resolution shall revert to the State of California and the state shall be liable for its future maintenance and care.

§131. Upon the application of the governing authority of any county, city, or other governmental agency, the department may:
(a) Aid in establishing grades and drainage systems for highways.
(b) Advise with any such authority as to the construction, improvement, or maintenance of highways.
(c) Prepare plans, specifications, or estimates for the construction, improvement, or maintenance of highways.
(d) Act as the consulting engineer for any such authority.

(e) Accept moneys from any such governmental unit for deposit in the State Treasury to the credit of any state fund which the department designates. The department shall use such moneys for the acquisition, construction, improvement, or maintenance of highways situated within such governmental unit, in accordance with the plans, specifications, and terms agreed upon. The governing authority of any such governmental unit may pay into the State Treasury, as provided in this subdivision, any moneys in its treasury or raised by the issuance of bonds, which moneys are available for use by such authority for highway purposes.

Any county, by resolution of the board of supervisors, may authorize the State Controller to deduct, from any apportionments to it from the Motor Vehicle Account in the State Transportation Fund or the Motor Vehicle Fuel Account in the Transportation Tax Fund, such amounts as the county may desire to be paid to the department for any work to be done in accordance with this subdivision. Upon such authorization, the State Controller shall transfer such moneys to such fund as the department may designate.

(f) Accept such compensation as may be agreed upon by such authority and the director for engineering services rendered to such authority.

(g) Advance moneys, where the director determines that such advance can be made without interference with state highway work, for emergency construction or maintenance work on highways by state forces, or by state contractor, in cases of disaster due to storms or floods where (1) the Governor has declared an emergency pursuant to Section 188.1, and (2) the agency or agencies having jurisdiction over such highway or highways have, by resolution or contract, agreed to reimburse the department, from succeeding Highway User Tax Account in the Transportation Tax Fund apportionments or other sources specified in such resolution or contract and available to such agency or agencies for highway purposes, for the entire cost of the work, including not to exceed 10 percent for overhead and administration. In the event such resolution or contract specifies reimbursement from future apportionments to the agency or agencies by the State Controller, the State Controller shall transfer such moneys, in such manner and over such period as may be specified in the resolution or contract, to such fund as the department may designate.

Senate Bill 45 and the California Government Code

The intent of the legislature not to narrow the role of the Department when enacting Senate Bill 45 on January 1, 1998 is clearly stated. The following language is taken directly from Senate Bill 45:

> Section 14520.3 is added to the Government Code, to read:
>
> §14520.3. (a) The Legislature, through the enactment of Senate Bill 45 during the 1997-98 Regular Session, intends to establish priorities and processes for the programming and expenditure of state transportation funds that are at the discretion of the Legislature and the Governor.
>
> (b) The department is responsible for the planning, design, construction, maintenance, and operation of the state highway system and Senate Bill 45 is not intended to alter that responsibility.

CEQA Guidelines 15051. Criteria for Identifying the Lead Agency

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. [See Existing Case Law Section below.]

(b) If the project is to be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The Local Agency Formation Commission shall act as a Responsible Agency.

(c) Where more than one public agency equally meet the criteria in subsection (b), the agency which will act first on the project in question shall be the Lead Agency.

(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.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21165, Public Resources Code.

Existing Case Law

The language of CEQA Guideline 15051(a) could be misinterpreted to mean that a local agency should be lead agency for a project on the State Highway System as the local agency may be the agency funding the improvements (i.e. "carrying out" the project through funding) even though the project is within the jurisdiction of the Department. California case law, however, makes it clear that this is a misinterpretation of the guideline. *Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District* (1994) 28 Cal.App.4th 419 is of particular significance. In that case, a property owned by the State Department of Fish and Game (DFG) was managed under contract by a local agency. A question arose as to which agency should be lead agency under CEQA with respect to establishing a hunting season. The Court held that DFG was clearly the CEQA lead as 1) it owned the property, and 2) it had statutory authority to manage fish and game, including the establishment of a hunting season.

Similarly, with respect to projects on the SHS, the Department owns the property in question and also has statutory authority to maintain and operate the SHS.

The San Francisco Airport (SFO) provides a good example of the reasoning behind the language of CEQA Guideline 15051(a). The City and County of San Francisco (CCSF) has statutory authority and duty to act as the owner and operator of SFO; CCSF also owns the land on which SFO is located.

However, SFO is located entirely within the jurisdiction of San Mateo County. Nevertheless, CCSF is the lead agency for all SFO projects. The guideline was written to address such a situation; unfortunately it results in some confusion when applied to State Highway projects.

Appendix B: Sample Language for Use in Agreements Regarding Lead Agency Status

Include this sentence in the Recitals portion of the cooperative agreement:

> *This agreement will define the CEQA lead agency, CEQA responsible agency, and the roles and responsibilities of the CEQA lead agency and CEQA responsible agency regarding environmental documents, studies and reports and compliance with CEQA and NEPA.*

Part A. Use the table below to determine, which of the following sample articles is appropriate for the proposed project. Then proceed to Part B and Part C. Include the appropriate language from Parts A, B and C in Section 3 (the mutually agreed upon section) of the cooperative agreement.

Use Sample Cooperative Agreement Article #	***Anticipated Environmental Approval Type***	***Who is CEQA Lead Agency?***	***Who is CEQA Responsible Agency?***	***Who is Preparing Document and Studies?***
1	CEQA-only CE	Department	Local Agency	Local Agency
2	CEQA-only CE	Delegated to Local Agency	Department	Local Agency
3	CEQA-only CE	Delegated to Local Agency	Department	Department
4	CE/CE	Department	Local Agency	Local Agency
5	CE/CE	Delegated to Local Agency	Department	Local Agency
6	CEQA-only Higher Level ED	Department	Local Agency	Local Agency
7	CEQA-only Higher Level ED	Delegated to Local Agency	Department	Local Agency
8	CEQA-only Higher Level ED	Delegated to Local Agency	Department	Department
9	Joint CEQA/NEPA Higher Level ED	Department	Local Agency	Local Agency
10	Joint CEQA/NEPA Higher Level ED	Delegated to Local Agency	Department	Local Agency

Sample Article #1. Use the following alternative Article when STATE is CEQA Lead Agency, [Local Agency] is a CEQA Responsible Agency, CE and associated technical reports/studies are prepared by the Local Agency, and there is no NEPA component.

> STATE will be the CEQA Lead Agency and [Local Agency] will be a CEQA Responsible Agency. [Local Agency] will perform all necessary investigative studies and prepare all required environmental technical reports in order to document and support the CEQA CE determination. [Local Agency] will submit to STATE, for STATE's

review, comment and approval of the investigative studies, the environmental technical reports and CEQA CE determination.

If, during preliminary engineering, preparation of the PS&E, or PROJECT construction, new information is obtained which requires the preparation of a NEPA and/or CEQA Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by [Local Agency].[1]

Sample Article #2. Use the following alternative Article when CEQA lead agency status has been delegated to [Local Agency], State is CEQA Responsible Agency, and Local Agency is responsible for preparing CE and associated technical studies/reports, and there is no NEPA component.

[Local Agency] will be the CEQA Lead Agency and STATE will be a CEQA Responsible Agency. [Local Agency] will perform all studies necessary to document and support the CEQA CE. STATE's review, comment, and concurrence on the technical studies is required.

If, during preliminary engineering, preparation of the PS&E, or PROJECT construction, new information is obtained which requires the preparation of a NEPA and/or CEQA Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by [Local Agency].[2]

Sample Article #3. Use the following alternative Article when CEQA lead agency status has been delegated to [Local Agency], STATE is a CEQA Responsible Agency, CE and associated technical reports/studies are prepared by the STATE and there is no NEPA component.

[Local Agency] will be the CEQA Lead Agency and STATE will be a CEQA Responsible Agency. STATE will perform all studies necessary to document and support the CEQA CE.

Sample Article #4. Use the following alternative Article when STATE is CEQA Lead Agency and liaison to NEPA Lead Agency, Local Agency is a CEQA Responsible Party, and Local Agency prepares CE and associated technical studies/reports.

STATE will be both the CEQA Lead Agency and [Local Agency] will be a CEQA Responsible Party. The [Federal Highway Administration (FHWA) or Federal Transit Authority (FTA)] will be the Federal Lead Agency for NEPA with the STATE acting as FHWA's agent for NEPA and will provide oversight for the NEPA process. [Local Agency] agrees to performs all investigative studies and complete all required environmental technical reports to document and support the NEPA Categorical Exemption (NEPA-CE) and CEQA Categorical Exclusion (CE) determination(s). [Local Agency] will submit to STATE, for

[1] Note: This will require language to be inserted in the carry-through portion of the cooperative agreement.
[2] See Note 1 above.

STATE's review, comment and approval, the investigative studies, the environmental technical reports and CEQA CE determination .If STATE concurs with the investigative studies, the environmental technical reports, and NEPA-CE/CE determination, STATE will sign the NEPA-CE/CE determination sheet and coordinate any required reviews and approvals with Federal Agency.

If, during preliminary engineering, preparation of the PS&E, and PROJECT construction, new information is obtained which requires the preparation of an Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by [Local Agency].[3]

Sample Article #5. Use the following alternative Article when CEQA lead agency status has been delegated to [Local Agency], STATE is a CEQA Responsible Agency and liaison to NEPA Lead Agency, and Local Agency prepares CE and associated investigative studies and technical environmental reports. Note: Under this scenario, the scope of the STATE's work is to be limited to the improvements on the State Highway System. Therefore, please confirm that the definition of "PROJECT" in the recitals is for the portion of the project on the State's Highway System not the overall project. If the PROJECT includes the local project, the word "PROJECT" in this article will need to be removed and the acronym inserted that defines just the STATE project inserted.

[Local Agency] will be the Lead Agency for CEQA and STATE will be the a CEQA Responsible Agency. The [Federal Highway Administration (FHWA) or Federal Transit Authority (FTA)] will be the Federal Lead Agency for NEPA with STATE acting as FHWA's agent for NEPA and providing oversight for the NEPA process. [Local Agency] will perform all investigative studies and complete all required environmental technical reports to document and support the NEPA Categorical Exclusion (NEPA-CE) and CEQA Categorical Exemption (CE) determination(s). [Local Agency] will submit to STATE, for STATE's review, comment and concurrence on the investigative studies, the environmental technical reports and CE determination is required. STATE will coordinate any required reviews and approvals regarding the NEPA CE with Federal Agency.

If, during preliminary engineering, preparation of the PS&E or PROJECT construction, new information is obtained which requires the preparation of an Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by [Local Agency]. [4]

Sample Article #6. Use the following alternative Article when STATE is the CEQA Lead Agency, [Local Agency] is CEQA Responsible Agency and prepares Environmental Document (ED) and technical studies/reports, and there is no NEPA component.

STATE will be the CEQA Lead Agency and [Local Agency] will be a CEQA Responsible Agency. [Local Agency] will assess impacts of PROJECT on the environment and [Local Agency] will prepare the Environmental Document (ED), including the necessary associated investigative studies and complete all technical environmental reports, in order to meet the

[3] Note: This will require language to be inserted in the carry-through portion of the cooperative agreement.
[4] See 3 above.

requirements of CEQA. The administrative draft, draft administrative final, and final ED will require STATE's review, comment and approval prior to public availability. [Local Agency] must also submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. STATE will be responsible for the public hearing process.

If, during preliminary engineering, preparation of the PS&E, or PROJECT construction new information is obtained which requires the preparation of an additional NEPA and/or CEQA Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by [Local Agency].[5]

Sample Article #7. Use the following alternative Article when CEQA lead agency status has been delegated to [Local Agency], STATE is a CEQA Responsible Agency, there is no NEPA component, and Local Agency is responsible for preparing Environmental Document (ED) and associated technical studies/reports.

[Local Agency] will be the Lead Agency and STATE will be a CEQA Responsible Agency. [Local Agency] will assess impacts of PROJECT on the environment and [Local Agency] will prepare the Environmental Document (ED), and necessary associated technical studies/reports, in order to meet the requirements of CEQA. [Local Agency] will submit to STATE, for STATE's review, comment, and concurrence on all investigative studies and technical environmental reports. The administrative draft, draft, administrative final, and final ED will require STATE's review, comment and concurrence prior to public availability. [Local Agency] will be responsible for the public hearing process.

If, during preliminary engineering, preparation of the PS&E or PROJECT construction, new information is obtained which requires the preparation of an additional NEPA and/or CEQA Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by [Local Agency].[6]

[5] Note: This will require language to be inserted in the carry-through portion of the cooperative agreement..
[6] See Note 5 above.

Sample Article #8. Use the following alternative Article when CEQA lead agency status has been delegated to [Local Agency], STATE is a CEQA Responsible Agency and prepares the Environmental Document (ED) and associated technical studies/reports, and there is no NEPA component. Note: Under this scenario, the scope of the STATE's work is to be limited to the improvements on the State Highway System. Therefore, please confirm that the definition of "PROJECT" in the recitals is for the portion of the project on the State's Highway System not the overall project. If the PROJECT includes the local project, the word "PROJECT" in this article will need to be removed and the acronym inserted that defines just the STATE project inserted.

[Local Agency] will be the CEQA Lead Agency and STATE will be a CEQA Responsible Agency. STATE will assess impacts of PROJECT on the environment and STATE will prepare the Environmental Document (ED), including the necessary investigative studies and technical environmental reports, in order to meet the requirements of CEQA. The administrative draft, draft, administrative final, and final ED will require [Local Agency] review, comment and approval prior to public availability. [Local Agency] will provide STATE pertinent data for the ED and investigative studies and technical environmental reports. [LOCAL AGENCY] will be responsible for the public hearing process.

If, during preliminary engineering, preparation of the PS&E, or PROJECT construction new information is obtained which requires the preparation of an additional NEPA and/or CEQA Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by "STATE."

Sample Article #9. Use the following alternative Article when STATE is CEQA Lead Agency and liaison to Federal Lead Agency, [Local Agency] is a CEQA Responsible Agency, and [Local Agency] prepares Environmental Document (ED) and associated technical studies/reports.

STATE will be the CEQA Lead Agency and [Local Agency] will be a Responsible Agency for CEQA. The [Federal Highway Administration (FHWA) or Federal Transit Agency (FTA] will be the Federal Lead Agency for NEPA with STATE acting as FHWA's agent for NEPA and providing oversight for the NEPA process. [Local Agency] will assess impacts of PROJECT on the environment and, if necessary, [Local Agency] will prepare the Environmental Document (ED), including the necessary associated investigative studies and technical environmental reports, in order to meet the requirements of CEQA and NEPA. [Local Agency] will submit to STATE for STATE's review, comment and approval the investigative studies and technical environmental reports. The administrative draft, draft, administrative final, and final ED will require both STATE's and [FHWA's or FTA's] review, comment and approval prior to public availability. STATE will reviewthe technical environmental reports and request approval of the environmental technical reports and ED by FHWA. STATE and FHWA or FTA] will be responsible for the public hearing process

If, during preliminary engineering, preparation of the PS&E, or PROJECT construction, new information is obtained which requires the preparation of an additional NEPA and/or CEQA Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by [Local Agency].[7]

[7] Note: This will require language to be inserted in the carry-through portion of the cooperative agreement.

Sample Article #10. Use the following alternative Article when CEQA lead agency status has been delegated to [Local Agency], STATE is a CEQA Responsible Agency and liaison to NEPA Lead Agency, and Local Agency Prepares Environmental Document (ED) and associated technical studies/reports. Note: Under this scenario, the scope of the STATE's work is to be limited to the improvements on the State Highway System. This should be clearly spelled out in the definition of "PROJECT" in the cooperative agreement.

[Local Agency] will be the Lead Agency for CEQA and STATE will be the CEQA Responsible Agency. The [Federal Highway Administration (FHWA) or Federal Transit Agency (FTA)] will be the Federal Lead Agency for NEPA with STATE acting as FHWA's agent for NEPA and providing oversight for the NEPA process. [Local Agency] will assess impacts of PROJECT on the environment and, if necessary, will prepare the Environmental Document(s) (ED), including the necessary investigative studies and environmental technical reports in order to meet the requirements of CEQA and NEPA. STATE's review, comment, and concurrence on investigative studies and technical environmental reports is required. The administrative draft, draft, administrative final, and final ED will require STATE's review, comment, and concurrence, as well as [FHWA's or FTA's] review, comment, and approval, prior to public availability. STATE will review and request approval of the environmental technical reports and ED by the [FHWA or FTA]. [Local Agency] and [FHWA or FTA] will be responsible for the public hearing process.

If, during preliminary engineering, preparation of the PS&E, or PROJECT construction new information is obtained which requires the preparation of an additional NEPA and/or CEQA Environmental Document (ED), this Agreement will be amended to include completion of these additional tasks by [Local Agency].[8]

B. FREEWAY AGREEMENTS AND OTHER CLAUSES (Use Section A as appropriate plus appropriate Articles from this section).

1. Use the following when an existing freeway agreement needs to be revised.

   STATE will prepare the revised freeway agreement and obtain approval for the new public road connection(s) from the CTC.

2. Use, as appropriate, in all agreements.

   All phases of a PROJECT, whether done by [Local Agency] or STATE, will be developed in accordance with all policies, procedures, practices, and standards that STATE would normally follow and in compliance with laws, regulations, executive orders, and permit requirements

3. Use, as appropriate, in all agreements.

   Detailed steps in the Project Delivery process are attached to this Scope of Work. These Attachments are intended as a guide to STATE's and [Local Agency's] staff.

[8] Note: This will require language to be inserted in the carry-through portion of the cooperative agreement

C. CONFIDENTIALITY CLAUSE

1. Use when local agency is preparing the ED and studies:

[LOCAL AGENCY] shall act as an agent of STATE for PROJECT purposes and will conduct the investigative studies and prepare the technical environmental reports and environmental document necessary for NEPA and CEQA compliance for PROJECT. [LOCAL AGENCY] shall act as STATE's agent throughout the STUDY period.

All administrative draft reports, studies, materials, and documentation, including, but not limited to, all PR and ED administrative draft reports and administrative final reports, relied upon, produced, created or utilized by [LOCAL AGENCY] as STATE's agent, will be held in confidence. [LOCAL AGENCY] agrees that said material will not be distributed, released or shared with any other organization, person or group other than STATE, [LOCAL AGENCY] employee and its agents without prior written approval by STATE authorizing said release or distribution except as required or authorized by statutory authority.