

04-012**JAN 14 2004**City of Bakersfield – Agreement No. _____, Approved _____
County of Kern – Agreement No. _____, Approved _____

MEMORANDUM OF UNDERSTANDING

Kern Regional Traffic Count Program

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 15th day of January, 2004 by and among the COUNTY OF KERN ("COUNTY" herein), a subdivision of the State of California, the CITY OF BAKERSFIELD ("CITY" herein) a charter government of the State of California, the California Department of Transportation ("CALTRANS" herein) and the KERN COUNCIL OF GOVERNMENTS ("KERN COG" herein), a Joint Powers Agency formed pursuant to the California Government Code.

R E C I T A L S

WHEREAS, California Government Code Section 6502 authorizes cities and counties to enter into agreements for their mutual benefit; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG have a compelling and mutual interest in developing and maintaining accurate traffic counts around Kern County, metropolitan Bakersfield and small cities; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that KERN COG maintains an inventory of traffic counters available for use by the these agencies; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG each expends thousands of dollars annually to monitor traffic flow in the region; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG agree that inconsistencies in counts occur when count locations are annexed from the COUNTY into the CITY.

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that a county-wide traffic count program will benefit the citizens of Kern County by reducing local agency staff requirements, improving the efficiency of local government, providing greater consistency, better quality, improved transportation model forecasts; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG desire the traffic count information be retained in the public domain available to the public free of charge whenever appropriate; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG agree that each will share the costs and responsibilities associated with a regional traffic count program and collaboration on grant applications.

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG agree that failure to fund the core regional traffic count program will negatively affect the ability to achieve the goals in item 3 of this agreement.

NOW, THEREFORE, BE IT UNDERSTOOD AND AGREED by CITY, COUNTY, CALTRANS, and KERN COG that:

1. The foregoing recitals are true and correct.
2. CITY, COUNTY, CALTRANS, and KERN COG agree to support a core regional traffic count program by directly funding and/or supporting the allocation of funding in the Kern COG Regional Transportation Improvement Program (RTIP) at a minimum of \$30,000 (thirty-thousand dollars) each annually in in-kind staff time and overhead and/or consulting costs as resources and annual budget adoptions allow.

3. CITY, COUNTY, CALTRANS, and KERN COG agree that KERN COG will act as lead on a regional traffic count improvement program with the following goals:
 - a. Provide the information required for the Federally mandated Highway Performance Monitoring System (HPMS)
 - b. Support planning, design and construction of federal aid projects
 - c. Support apportionment or allocation of federal funds
 - d. Support air quality and environmental impact analyses
 - e. Predict commodity flow and freight movements
 - f. Improve calibration of the Kern COG regional transportation model
 - g. Monitor directional splits for calibration of the Kern COG peak hour model
 - h. Monitor speed data for posted speed limit change analysis and improved model calibration
 - i. Provide for pavement maintenance and research and the supporting of Strategic Highway Research Program (SHRP)
 - j. Monitor recurring unsafe speed locations additional speed enforcement activity
 - k. Support signalization safety improvement analysis

4. CITY, COUNTY, CALTRANS, and KERN COG agree that KERN COG, shall, to the extent they have the resources necessary:
 - a. Publish an annual traffic count census combining all the regions traffic counts into a single resource.
 - b. Act as lead on a consulting contract to develop a regional count improvement plan.
 - c. Apply for collaborative grants to implement the regional count improvement plan.

5. CITY, COUNTY, CALTRANS, and KERN COG agree that the regional count program will not replace the one-time spot count programs of each agency.

6. CITY, COUNTY, CALTRANS, and KERN COG agree that Kern COG Metropolitan Planning (PL) funds (authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134) are not appropriate for use in funding consultant or member agency traffic counts.

7. The failure of any party to enforce against another a provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

8. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

CITY: CITY OF BAKERSFIELD
 City Clerk
 1501 Truxtun Avenue,
 Bakersfield, California 93301

COUNTY: COUNTY OF KERN
 Clerk of the Board
 1115 Truxtun Avenue, 5th Floor
 Bakersfield, California 93301

CALTRANS: California Department of Transportation, District 6
 Director
 PO BOX 12616
 FRESNO, CA 93778

KERN COG: KERN COUNCIL OF GOVERNMENTS
1401 19th Street, Suite 300
Bakersfield, California 93301

9. This Agreement sets forth the entire Agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the County Board of Supervisors and the Kern Council of Governments, Board of Directors.

10. Any services of COUNTY, CITY, CALTRANS or KERN COG are provided as independent contractors. No party is an agent or employee of any other party for any purpose and is not entitled to any of the benefits provided by any party to its employees. This Agreement shall not be construed as forming a partnership or any other association between COUNTY, CALTRANS, and KERN COG other than that of an independent contractor.

11. No party shall be liable to any other party for any loss, damage, liability, claim or cause of action for damage to or destruction of property or for injury to or death of persons arising from any act or omission of the other party's officers, agents, or employees. Further, no party is liable to any other party for loss or inaccuracy of traffic count data. Each party is encouraged to have current backup storage of all compiled traffic count data and other relevant information. Further, no party is liable to any other party for any damage to information or equipment, which results from the transfer of data.

12. A party against whom any claim arising from any subject matter of this Agreement is filed shall give prompt written notice of the filing of the claim to all other parties.

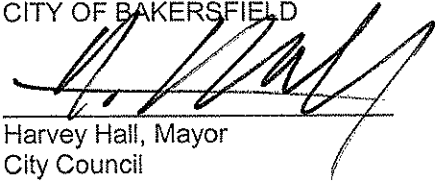
13. This Agreement is effective upon execution. It is the product of negotiation and, therefore, shall not be construed against any party.

14. Any party to this Memorandum of Understanding may terminate its participation in the activities herein described upon thirty (30) days' written notification to the other parties. Termination by one party does not terminate the agreement between the remaining parties.

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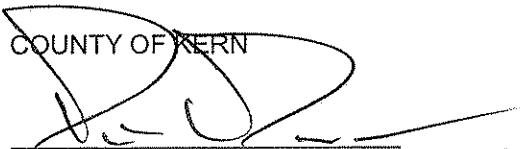
IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed, the day and year first-above written.

CITY OF BAKERSFIELD



Harvey Hall, Mayor
City Council

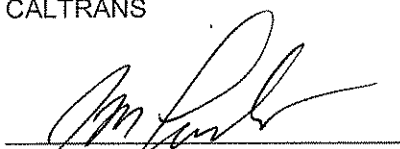
COUNTY OF KERN



Pete Parra, Chairman
Board of Supervisors

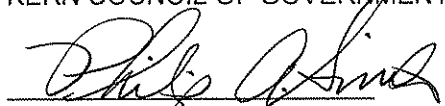
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CALTRANS



Mike Leonardo, District Director
District 6

KERN COUNCIL OF GOVERNMENTS



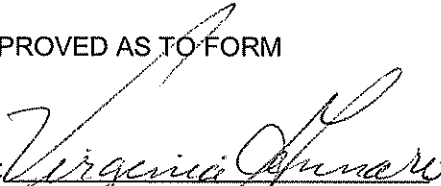
Philip A. Smith, Chairman
Kern Council of Governments


"CITY"

APPROVED AS TO CONTENT

BY: 
Raul Rojas
Director, Public Works Department


APPROVED AS TO FORM

BY: 
Virginia Gennaro
City Attorney

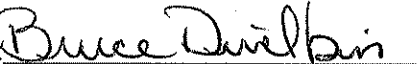
BY: 
Gregory J. Klimko
Finance Director

"COUNTY"

APPROVED AS TO CONTENT

BY: 
Craig Pope
Director, Roads Department

APPROVED AS TO FORM

BY: 
BERNARD BARMANN
County Counsel

"CALTRANS"

APPROVED AS TO CONTENT

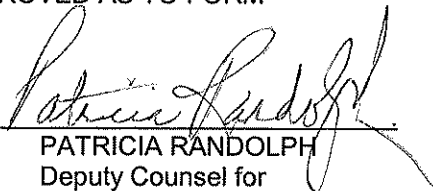
BY: 
Alan McCuen
Director, Planning

"KERN COG"

APPROVED AS TO CONTENT

BY: 
RONALD E. BRUMMETT
Executive Director
Kern Council of Governments

APPROVED AS TO FORM

BY: 
PATRICIA RANDOLPH
Deputy Counsel for
Kern Council of Governments

**CERTIFICATE OF ADOPTION OF RESOLUTION
AUTHORIZING CHAIRMAN TO SIGN INSTRUMENT**

The undersigned, Clerk of the Board of Supervisors of the County of Kern, hereby certifies that the following resolution was adopted by said Board of Supervisors at a regular meeting duly convened on the 16th day of December, 2003:

"WHEREAS, this Board has determined that the County of Kern should approve a Memorandum of Understanding with the City of Bakersfield, Kern Council of Governments and California Department of Transportation (Caltrans) re Kern Regional Traffic County Program (Kern County Agreement 1075-2003), bearing the date of January 15, 2004.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Kern, State of California, that said instrument be, and it is hereby executed on behalf and in the name of said County of Kern, and the Chairman of this Board is hereby authorized and directed to sign his name thereto on behalf of said County."

The undersigned further certifies that on the date last mentioned the person who so signed said instrument was the duly elected Chairman of said Board and that his signature on said instrument is genuine.

The undersigned further certifies that said resolution was adopted by the following vote:

Ayes: McQuiston, Maben, Patrick, Watson, Parra

Noes: None

Absent: None

Dated: December 16, 2003



DENISE PENNELL
Clerk of the Board of Supervisors
County of Kern

By: Judy A. Denny
Deputy Clerk

Reference: Item No. 34

MEMORANDUM OF UNDERSTANDING

Amendment No. 1

Kern Regional Traffic Count Program

THIS MEMORANDUM OF UNDERSTANDING was made and entered into this 15th day of January, 2004 by and among the COUNTY OF KERN ("COUNTY" herein), a subdivision of the State of California, the CITY OF BAKERSFIELD ("CITY" herein) a charter government of the State of California, the California Department of Transportation ("CALTRANS" herein), and the KERN COUNCIL OF GOVERNMENTS ("KERN COG" herein), a Joint Powers Agency formed pursuant to the California Government Code.

RECITALS

WHEREAS, there is a need to modify the Agreement by all parties; and

WHEREAS, California Government Code Section 6502 authorizes cities and counties to enter into and amend agreements for their mutual benefit; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG have a compelling and mutual interest in developing and maintaining accurate traffic counts around Kern County, metropolitan Bakersfield and small cities; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that a county-wide traffic count program will benefit the citizens of Kern County by reducing local agency staff requirements, improving the efficiency of local government, providing greater consistency, better quality, improved transportation model forecasts; and

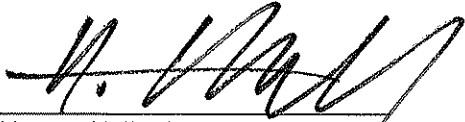
NOW, THEREFORE, the parties to the Agreement Amend Section 2 and 9 as follows:

2. CITY, COUNTY, CALTRANS, and KERN COG agree to support a core regional traffic count program by directly funding and/or supporting the allocation of funding in the Kern COG Federal Transportation Improvement Program (FTIP) at a minimum of \$30,000 (thirty-thousand dollars) each annually in-kind staff time and overhead and/or consulting costs as resources and annual budget adoptions allow.
9. This Agreement sets forth the entire Agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in writing approved by the CITY Council, County Board of Supervisors, CALTRANS District 6 Director, and the Kern Council of Governments, Board of Directors.

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IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed, the day and year first-above written.

CITY OF BAKERSFIELD



Harvey Hall, Mayor
City Council


COUNTY OF KERN



Jon McQuiston, Chairman
Board of Supervisors

OCT 5 - 2004

CALTRANS



for Mike Leonardo, Director
District 6

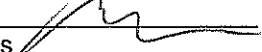
KERN COUNCIL OF GOVERNMENTS




Philip A. Smith, Chairman
Kern Council of Governments


"CITY"

APPROVED AS TO CONTENT

BY: 
Raul Rojas
Director, Public Works Department

APPROVED AS TO FORM

BY: 
Virginia Gennaro
City Attorney

BY: 
Gregory J. Klimko
Finance Director

"COUNTY"

APPROVED AS TO CONTENT

BY: 
Craig Pope
Director, Roads Department

APPROVED AS TO FORM

BY: 
BERNARD BARMANN
County Counsel

"CALTRANS"

APPROVED AS TO CONTENT

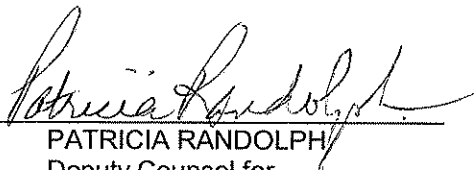
BY: 
Alan McCuen
Director, Planning

"KERN COG"

APPROVED AS TO CONTENT

BY: 
RONALD E. BRUMMETT
Executive Director
Kern Council of Governments

APPROVED AS TO FORM

BY: 
PATRICIA RANDOLPH
Deputy Counsel for
Kern Council of Governments

**CERTIFICATE OF ADOPTION OF RESOLUTION
AUTHORIZING CHAIRMAN TO SIGN INSTRUMENT**

The undersigned, Clerk of the Board of Supervisors of the County of Kern, hereby certifies that the following resolution was adopted by said Board of Supervisors at a regular meeting duly convened on the 5th day of October, 2004:

"WHEREAS, this Board has determined that the County of Kern should approve a certain Amendment No. 1 to Memorandum of Understanding No. 1075-2003 with the City of Bakersfield, Kern Council of Governments and California Department of Transportation for Kern Regional Traffic Count Program (Kern County Agreement 927-2004), bearing the date of January 15, 2004.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Kern, State of California, that said instrument be, and it is hereby executed on behalf and in the name of said County of Kern, and the Chairman of this Board is hereby authorized and directed to sign his name thereto on behalf of said County."

The undersigned further certifies that on the date last mentioned the person who so signed said instrument was the duly elected Chairman of said Board and that his signature on said instrument is genuine.

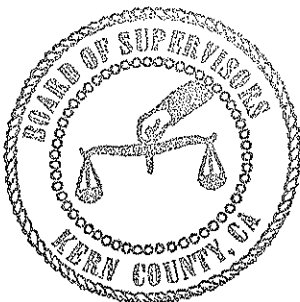
The undersigned further certifies that said resolution was adopted by the following vote:

Ayes: McQuiston, Maben, Watson, Parra

Noes: None

Absent: Patrick

Dated: October 5, 2004



Reference: Item No. 20

DENISE PENNELL
Clerk of the Board of Supervisors
County of Kern

By: _____

Judy A. Denny
Deputy Clerk