

Kern COG Travel Model Use Guidelines

Kern COG Travel Model Distribution

- Kern COG operates and maintains a regional travel demand model at in accordance to agreements and policies adopted by the Kern COG Board and its member agencies.
- Kern COG annually budgets funds to perform model runs at the request of member agencies.
- Kern COG can perform model runs for nonmember agencies for \$275 per hour or other rate set by the Kern COG Board (the rate includes a prorated portion of model development costs, staff expense and overhead) with the concurrence of affected member jurisdictions.
- Kern COG can distribute model files at the request of member and nonmember agencies given they have the appropriate proprietary software to use the files.
- Kern COG uses an attorney approved “shrink wrap” style Model Use Disclaimer Contract where use of the model and its output is deemed acceptance of the Contract (*see below*).
- **The disclaimer shall be printed in any model output documentation and the words “*This is NOT an official Kern COG model output*” shall be legibly displayed on all Kern COG Model output such as maps and tables.**

Kern COG Model Use Disclaimer Contract - 5/25/06

Kern COG provides modeling services, data and code to local developers and others as a courtesy and reserves the right to deny use of the software code. The Kern COG Model was developed for the regional air quality conformity analysis. The Kern COG Model contains millions of variables that could be modified to alter results. Kern COG is not responsible for ensuring that all model assumptions are identical to the latest planning assumptions used in the Kern COG Model at the time the files are provided. Kern COG may provide telephone and e-mail support, as staffing is available, on an hourly basis at a rate set by the Kern COG board.

This transportation model output uses data and software code received from the Kern Council of Governments (“Kern COG”). Kern COG makes no representation or warranty that the data and software code is accurate or consistent with Kern COG’s latest planning assumptions. Output from the data and software you have received from the Kern COG is not an official Kern COG Model output and Kern COG is not bound by the results. Kern COG makes no warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose, as to the timeliness, accuracy, quality and completeness of the Kern COG Model data and software code. In no event will Kern COG be liable for any special, incidental, indirect, or consequential costs or damages, including, but not limited to, any lost revenues or profits, based upon any claim, whether in contract or tort, arising out of related to this transportation model output. Kern COG is not responsible and shall be held harmless by a user of the Kern COG Model against any damages, claims, judgments, costs and expenses (including reasonable attorney’s fees) arising out of any use or misuse of the transportation model output. The associated software code may not be redistributed, modified, or used for any purpose other than those authorized by Kern COG in writing. **This disclaimer shall be printed in any model output documentation and the words “*This is NOT an official Kern COG model output*” shall be legibly displayed on all Kern COG Model output.**

Adjustment Methodology for Traffic Assignment Results

Kern COG recommends that travel model users avoid using link level raw traffic volumes directly from the model. An adjustment process is recommended for traffic volume forecasts on specific road segments that accounts for travel model validation errors. Where base year traffic counts are available (see *Kern COG Traffic Count Program website* <http://www.kerncog.org/traffic-counts/>), forecast traffic volumes are calculated based on the increment between the base year and future year model results:

$$\text{Adjusted Forecast Volume} = \text{Base Year Count} + (\text{Model Forecast Volume} - \text{Base Year Model Volume})$$

An incremental adjustment is recommended instead of an adjustment based on ratios. A ratio adjustment factor does not guarantee continuity of traffic volumes between adjacent road segments, and can result in very large adjustments on low-volume links. However, circumstances exist where a ratio or growth factor adjustment is appropriate. For example, a growth factor based on daily model volumes can be applied to peak hour traffic counts to generate approximate peak hour forecasts. If a new road or ramp connection is tested in a forecast, no traffic count would exist and the model forecast volume would be used directly.

Kern COG Travel Model Applications

The regional travel model provides a common source for land use and travel forecasts for the entire Kern Region, saving member agencies thousands of dollars annually in maintaining separate models for each jurisdiction. Typical travel model forecast applications include:

- Regional measures for input to air quality analysis
- Project level traffic studies
- Identify traffic "hot spots"
- Forecast effectiveness of major road or transit improvements
- Impacts of land use changes
- Compare land use or transportation alternatives using regional performance measures
- Countywide VMT assessment with and without a project

Kern COG Travel Model Documentation and Support Contacts

Full model documentation is available online at:

<http://www.kerncog.org/category/data-center/transportation-modeling/>

Socio-economic forecasts are available online at:

<http://www.kerncog.org/category/data-center/census-projections/>

Socio-economic transportation analysis zone maps and data are available online at:

<http://www.kerncog.org/category/data-center/data/>

Support and training for nonmembers may be subject to the adopted hourly support rate. Here are the primary Kern COG Travel Model support contacts:

- Ed Flickinger, Travel Model Operator, 661-635-2005, eflickinger@kerncog.org
- Vincent Liu, Travel Model Operator, 661-635-2913, vlui@kerncog.org
- Ben Raymond, Socio-economic Data, 661-635-2911, braymond@kerncog.org
- Rob Ball, Planning Director, 661-635-2902, rball@kerncog.org

04-011

JAN 14 2004

City of Bakersfield – Agreement No. _____, Approved _____
County of Kern – Agreement No. _____, Approved _____

MEMORANDUM OF UNDERSTANDING

Kern Regional Modeling Coordination

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 an accurate, consistent and current Regional Transportation Model ("MODEL" herein) for Kern County, Metropolitan Bakersfield and communities throughout the County. Component sub-models to the MODEL include the regional population growth forecast, and the regional mobile source air quality model, and other models that provide input data or use output data from the MODEL; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that KERN COG expends considerable resources annually maintaining, upgrading and running the MODEL; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that a single county-wide MODEL will benefit the citizens of Kern County by improving local government efficiency through the avoidance of duplicate maintenance costs for separate transportation models and avoiding conflicting modeling results that may adversely affect the MODEL's perceived integrity; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that the MODEL is complex and difficult to exactly replicate results on separate machines with each iterative run of the MODEL using the same assumptions; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that KERN COG is required by the Federal Clean Air Act to maintain a MODEL for performing an air quality conformity analysis on planned transportation projects; KERN COG is the State affiliate data center and designated Census key entity, and is formally recognized by the COUNTY Board of Supervisors as the official source for regional population growth forecasts in Kern County; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that each needs quick access to the latest MODEL for running alternative scenarios and more detailed analysis for internal staff use; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that the CITY and COUNTY have recently acquired copies of the software to run the MODEL in-house; and

WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that tremendous cost savings in maintenance of the MODEL will be achieved if the CITY, COUNTY, CALTRANS, and KERN COG use the model maintained by KERN COG; and

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

1. The foregoing recitals are true and correct.
2. In accordance with the Regional Transportation Modeling Section of the Kern COG Policy and Procedure Manual (attached as EXHIBIT "A"), the Kern Regional Transportation Modeling Committee ("RMC" herein) shall be established as a Sub-Committee of the Kern COG Transportation Technical Advisory Committee ("TTAC" herein). The committee shall include representatives from each of the parties to this agreement and will act as an advisory committee to the TTAC. The RMC shall also include representatives from the remaining cities and transit districts in Kern County.

The purpose of the RMC shall be to provide a forum to:

- a. Maintain communications among Kern COG member agencies, the consultant community, and the public on issues related to MODEL development, validation, and component applications.
 - b. Review and enhance input data and assumptions in the MODEL and FORECAST including: network, traffic counts, speeds, analysis zones, growth forecast, and socio-economic land use distribution.
 - c. Comply with State and Federal Transportation Modeling Guidelines and best available practices for agencies similar in size and purpose to KERN COG.
 - d. Improve integration of the MODEL with micro-simulations, GIS and other new technologies.
 - e. Train and support users of the MODEL.
 - f. Recommend revisions to the Regional Transportation Modeling Section of the KERN COG Policy and Procedure Manual.
3. No party hereto shall incur any financial obligations hereunder other than the use of staff personnel to assist in performing the activities described herein.
 4. 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.
 5. 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

6. 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, CALTRANS District 6 Director, and the Kern Council of Governments, Board of Directors.
7. This Agreement calls for the performance of the service of CITY, COUNTY, CALTRANS and KERN COG 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 CITY, COUNTY, CALTRANS, and KERN COG other than that of an independent contractor.
8. 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 transportation model data. Each party is encouraged to have current backup storage of all compiled transportation model 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.
9. 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.
10. This Agreement is effective upon execution. It is the product of negotiation and, therefore, shall not be construed against any party.
11. 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

DEC 16 2003

CALTRANS


Mike Leonardo, District Director
District 6

KERN COUNCIL OF GOVERNMENTS


Philip A. Smith, Chairman
Kern Council of Governments

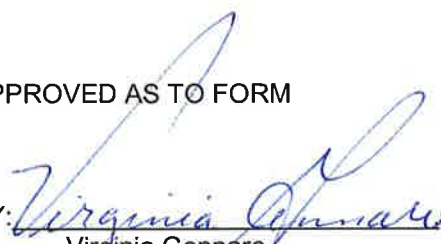
"CITY"

APPROVED AS TO CONTENT

BY: 
Raul Rojas
Director, Public Works Department

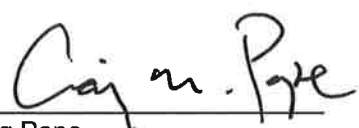
BY: 
Gregory J. Klimko
Finance Director

APPROVED AS TO FORM

BY: 
Virginia Gennaro
City Attorney

"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

EXHIBIT "A"

KERN COG POLICY AND PROCEEDURES MANUAL

REGIONAL TRANSPORTATION MODELING POLICY AND PROCEDURE

The following policy and procedure is a stand-alone document to be incorporated into a future revision of the Kern COG Policy and Procedure Manual. References are made to other sections of the Manual and other documents. This document is not intended to be a comprehensive methodology. The purpose of this document is to facilitate compliance with regulatory requirements for regional transportation modeling.

Section 1. Definition

Kern COG maintains and runs a regional travel demand forecast model or "transportation model" for the Kern County region. The model is used to forecast the demand for future transportation infrastructure by predicting future travel patterns based on a variety of factors including locally approved general plan land use entitlements, input from local planning departments on socio-economic growth areas, and state and federal data sources. Some of the forecast input variables include populations, households, employment, school enrollment, income, traffic counts, speeds, intersection configuration, existing and planned transportation networks, etc. These variables are maintained for approximately 1000 transportation analysis zones covering the 8,200 square mile County. One of the primary purpose of the model is to demonstrate conformity with the Federal Clean Air Act goals requiring substantial reductions from all pollution sources, including air pollutants from the transportation sector called mobile source emissions. Travel Demand Forecast Modeling is also used in support of the Kern COG Regional Transportation Plan (RTP) Congestion Management System (CMS), the Kern COG Regional Transportation Improvement Program (RTIP) as required by the RTIP Policy and Procedure Guidelines, and numerous environmental documents prepared for locally identified projects throughout the region. The Kern COG Regional Transportation Model provides a savings to its member agencies that without the regional model, would be required to maintain duplicate, overlapping, and potentially conflicting transportation forecasts.

Section 2. Regulatory Requirements

Regulatory requirements and guidance for regional transportation modeling are found in the State and Federal Clean Air Acts, Federal Transportation Enhancement Act requirements for Congestion Management Systems, the Kern COG RTIP Policy and Procedure Guidelines, and State and Federal Environmental Law.

In the Federal Clean Air Act (EPA Title 40 CFR §93.122 (b)), network based travel models used in developing travel activity estimates for the Regional Transportation Plan (RTP) and Federal/Regional Transportation Improvement Program (FTIP/RTIP) must, at a minimum, satisfy the following requirements in air quality determination.

- (i) *"Network-based travel models must be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination.*
- (ii) *Model forecasts must be analyzed for reasonableness and compared to historical trends and other factors, and the results must be documented.*
- (iii) *Land use, population, employment, and other network-based travel model assumptions must be documented and based on the best available information.*
- (iv) *Scenarios of land development and use must be consistent with the future transportation system alternatives for which emissions are being estimated. The distribution of employment and residences for different transportation options must be reasonable.*
- (v) *A capacity-sensitive assignment methodology must be used, and emissions estimates must be based on a methodology that differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes.*
- (vi) *Zone-to-zone travel impedances used to distribute trips between origin and*

- destination pairs must be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes.*
- (vii) Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits.*
 - (viii) Network-based travel models must be reasonably sensitive to changes in the time(s), cost(s), and other factors affecting travel choices.*
 - (ix) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.*
 - (x) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the non-attainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of 93.105(c)(1)(i)."*

Additional air quality conformity guidance for minimum and advanced transportation modeling practices are found in the California Department of Transportation Travel Forecasting Guidelines (1994) and the National Association of Regional Councils Manual of Transportation Modeling Practice for Air Quality Analysis (1998).

Regional socio-economic forecasts are a critical component to transportation modeling. Regional forecasting guidelines are provided under the California Transportation Commission Regional Transportation Plan (RTP) Guidelines (2000) prepared pursuant to Government Code, Section 14522 and effective. Section V. C. of the guidelines state:

"Generally, there are two procedures (methods) used for forecasting; (1) a 'market based' approach (referred to as a 'tops down' approach) based on demographic and economic trends, or (2) a 'build out' approach based on General Plans and other adopted plans. The 'tops down' approach is based on national, state, regional economic and demographic trends in the region. The 'build out' approach, by contrast allocates growth to specific geographic locations. The ideal forecasting approach combines both methods, identifying and resolving differences between General Plans and economic trends.

Data forecasting should address the following:

- Population (including migration and immigration);*
- Households;*
- Employment;*
- Income;*
- Land use changes and growth for the transportation alternatives under study;*
- Traffic forecasts for the transportation alternatives under study and;*
- Environmental conditions and potential conflicts.*

Projections should be based upon available data (such as from the Bureau of the Census), use acceptable forecasting methodologies, and be consistent with the Department of finance baseline for the region. The RTP should identify and discuss any differences between the agency projections and those of the Department of Finance."

The Federal Transportation Enhancement Act includes requirements for a Congestion Management System (CMS) that require the monitoring of congestion on the congestion management routes. California

Government Code 65089, Congestion Management Program (CMP) contains similar requirements. These requirements are found in the CMP/CMS Section or the Kern COG RTP. This section of the RTP requires the quarterly reporting of General Plan amendments to Kern COG.

The Federal Transportation Enhancement Act includes requirements for maintenance of a Highway Performance Monitoring System that tracks traffic counts and pavement conditions.

The adopted Kern COG FTIP/RTIP Policy and Procedure Guidelines require transportation modeling as a part of the technical criterion used to rank projects.

The National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA) (California Public Resource Code 21000 et seq.) require an analysis of cumulative effects to the environment for identified projects. The California Resources Agency, Office of Planning Research has developed a CEQA Guidelines (California Code of Regulations Title 14 Division 6, Chapter 3, sections 15000-15387) requiring the assessment of cumulative effects on transportation circulation. Preparation of the transportation impact analysis sections of NEPA and CEQA required environmental documents are accomplished with better accuracy and economy when using a regional maintained transportation model to analyze potential cumulative effects of a project.

Section 3. Model Maintenance Procedure

1. Model Base Year Validation – Network-based travel models must be validated against observed counts for a base year from which future projections will be made:
 - a. Observed counts used in base year validation shall not be more than 10 years prior to the date of a conformity determination.
 - b. Base year validation shall take place after the release of the decennial Federal Bureau of Transportation Statistics, Census Transportation Planning Package (CTPP), which is approximately 4 years after the date of the most recent decennial Census.
 - c. Revalidations prior to release of the next CTPP should be spaced a minimum of three years apart to allow conformity review agencies time to complete state and federal review processes and develop air quality budgets using the modeling results. A minimum of three years between revalidations is also needed to allow responsible state and federal agencies to complete their review of large environmental documents without major changes to transportation circulation modeling results.
2. Land Use Data – General Plan land use capacity data or “Build-out capacity” is used to distribute the forecasted County totals, and may be updated as new information becomes available, and is revised in regular consultation with local planning departments.
3. Socio-Economic Forecast Data – Countywide forecasts for households, employment and other socio-economic data shall be updated not less than 3 years from the time of the Socio-economic forecast. A minimum of three years between Countywide forecast revisions is needed to allow responsible state and federal agencies time to complete their review of large environmental documents without major changes to transportation circulation modeling results. Redistribution of forecasts for sub county areas may be made on an as needed basis to better reflect existing general plan land entitlements as long as Countywide forecast totals remain unchanged.
4. Highway Performance Monitoring System (HPMS) data collection and reporting shall be performed annually in the Spring and submitted to the California Department of Transportation prior to June 15.
5. Network Updates – Added as needed to model existing, planned and proposed future transportation facilities.
6. Transportation Analysis Zone Updates – Added as needed in response to additional network to allow appropriate loading of trips on the network.
7. Local Scenario Modeling – Due to the scale and complexity of a countywide model, not all network links can be validated and calibrated adequately. For links that are not calibrated, an adjustment factor may be applied to future years based on how far off the model assigns trips in comparison to the actual count. In addition, alternative models may be developed for community and site specific analysis on behalf of a member agency. Local scenario models may not be used for determining air quality conformity of a project, or FTIP/RTIP and RTP project rankings.

Section 4. Public Participation

Public participation and input is triggered at the adoption process of socio-economic forecasts data, conformity findings, the FTIP/RTIP, and the RTP. Public participation is outlined in the Public Participation Guidelines Section.

Section 5. Oversight

See SECTION I. PART II. Kern Regional Transportation Modeling Sub-Committee of the Transportation Technical Advisory Committee By-Laws of the Kern COG Policy and Procedures Manual.

**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 Modeling Coordination (Kern County Agreement 1074-2003), 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

04-013

JAN 14 2004

City of Bakersfield - Agreement No. _____, Approved _____
County of Kern - Agreement No. _____, Approved _____

MEMORANDUM OF UNDERSTANDING

Kern Regional Transportation Model Distribution

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WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that a single county-wide MODEL will benefit the citizens of Kern County by improving local government efficiency through the avoidance of duplicate maintenance costs for separate transportation models and avoiding conflicting modeling results that may adversely affect the MODEL's perceived integrity; and

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WHEREAS, CITY, COUNTY, CALTRANS, and KERN COG recognize that tremendous cost savings in maintenance of the MODEL will be achieved if the CITY, COUNTY, CALTRANS, and KERN COG use the model maintained by KERN COG; and

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 each entity may use the MODEL and MODEL data supplied by the others, in-house, for any legitimate governmental use and purpose. The parties further agree that each grants to the others a nonexclusive, nontransferable license for the sole purpose of carrying out legitimate governmental purposes. It shall not include giving, selling, trading or otherwise transferring the MODEL, the MODEL data, the MODEL software, or other forms of data to any other person or entity, whether for profit or not unless otherwise stated herein.
3. CITY, COUNTY, CALTRANS and KERN COG represent that the MODEL data and MODEL output supplied by each of them to KERN COG is public record information available upon request and tender of any applicable retrieval and/or copying costs, in its original form, from each of the contributing parties. MODEL data and MODEL output in-use by the parties to this agreement other than KERN COG are works in progress and are not public record until the changes are incorporated into the MODEL. MODEL software and scripts are software programs and are exempt from public record.
4. CITY, COUNTY, CALTRANS and KERN COG further agree that all requests for the MODEL, MODEL data, MODEL output shall be directed to Kern COG to promote consistency of MODEL output. Kern COG may charge fees for staff time and computer processing time in set-up, running, retrieval and/or copying cost as set by the Kern COG Board as allowed by the public records act.
5. No party hereto shall incur any financial obligations hereunder other than the use of staff personnel to assist in performing the activities described herein.
6. 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.
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1115 Truxtun Avenue, 5th Floor
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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

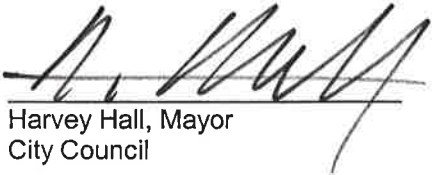
8. This Agreement sets forth the entire Agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the County Board of Supervisors, CALTRANS District 6 Director, and the Kern Council of Governments, Board of Directors.
9. This Agreement calls for the performance of the service of CITY, COUNTY, CALTRANS and KERN COG 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 CITY, COUNTY, CALTRANS, and KERN COG other than that of an independent contractor.
10. 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 transportation model data. Each party is encouraged to have current backup storage of all compiled transportation model 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.
11. 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.
12. This Agreement is effective upon execution. It is the product of negotiation and, therefore, shall not be construed against any party.
13. 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

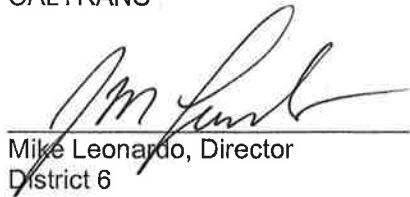
COUNTY OF KERN



Pete Parra, Chairman
Board of Supervisors

DEC 16 2003

CALTRANS


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

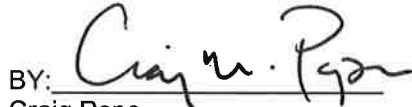
APPROVED AS TO FORM

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 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 Transportation Model Distribution (Kern County Agreement 1076-2003), 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:


Deputy Clerk

Reference: Item No. 34

City of Bakersfield – Agreement No. 04-012, Approved (1) **APR 14 2004**
County of Kern – Agreement No. _____, Approved _____ **OCT 5 2004**

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.

R E C I T A L S

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:

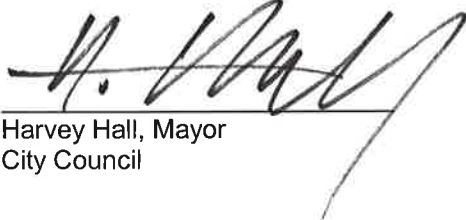
2. CITY, COUNTY, CALTRANS, and KERN COG agree to support a core regional traffic count program by directly funding and/or supporting the allocation of funding in the Kern COG Federal Transportation Improvement Program (FTIP) at a minimum of \$30,000 (thirty-thousand dollars) each annually in in-kind 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

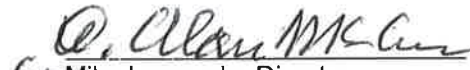
COUNTY OF KERN



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

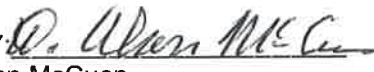
BY: 
Craig Pope
Director, Roads Department

APPROVED AS TO FORM

BY: 
BERNARD BARMANN
County Counsel

"CALTRANS"

APPROVED AS TO CONTENT

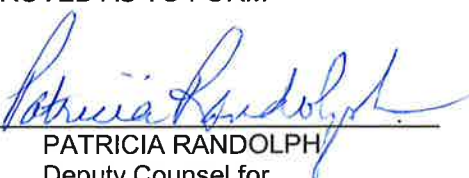
BY: 
Alan McCuen
Director, Planning

"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



DENISE PENNELL
Clerk of the Board of Supervisors
County of Kern

By: _____


Deputy Clerk

Reference: Item No. 20