

Via USPS & Electronic Mail

August 28, 2009

Mr. Bijan Sartipi, District Director
CalTrans
Department of Transportation, District 4
P.O. Box 23660
Oakland, CA 94623-0660



Re: Doyle Drive Reconstruction Project

Dear Mr. Sartipi:

I am writing in follow up to the telephone conversation that took place earlier today between you and Denis Mulligan, District Engineer, which was aimed at progressing the discussions concerning traffic management during the reconstruction of Doyle Drive. In light of Caltrans' planned imminent award of the first of several major construction contracts, we want to be certain that we are doing everything possible at our end to discuss the details associated with continuation of or transition of lane diversion services now provided by the Bridge District prior to the commencement of construction.

The existing agreement between our agencies for lane diversion services needs to be altered substantially if continued services by the District during construction are desirable. The existing agreement does not address the operational characteristics and attendant risks associated with the provision of services during a prolonged period of major construction and cannot be continued in its current form given the substantial changes that are forthcoming on Doyle Drive in Contract #3. Accordingly, it is necessary for the District to advise you at this time of its intention to terminate our March 11, 1980 agreement and by this communication we provide you with the 60-day notice provision contemplated by the agreement.

At the same time, I hasten to add, that we are committed to working with you to effect a replacement agreement within that same 60-day time frame. Moreover, if there is any delay in the Caltrans schedule relative to award of the first Doyle Drive Reconstruction Project contract and actual commencement of construction, we assuredly will be willing to continue to provide services under the existing agreement beyond the 60-day time frame provided by this letter.

In my letter of August 14th to José Luis Moscovich and in response to Mr. Moscovich's letter of August 13th, I stated that the District is committed to a smooth transition of traffic lane diversion services "in a manner that works best for the contractor and the traveling public." I further advised that "the District is open to continuing to provide these services for a few months, even after construction begins, " provided we are given full indemnification from liability arising from accidents on Doyle Drive and potential contractor delay claims.

As of today, we have not received a response to this letter from either Mr. Moscovich or from Caltrans. As a result, in recognition of the sense of urgency expressed by Mr. Moscovich in his letter and in meetings since that date with Caltrans, the District wants to reiterate its willingness to work with you to bring closure to the issue of how lane diversion services will be managed prospectively.

Based on conversations among our staffs, it appears that Caltrans has three options for the lane diversions during construction:

1. Caltrans can cease the traffic diversions, which would avoid the risks attendant to those operations, recognizing the trade-off arising from the loss of flexibility that the lane diversions provide in improving mobility;
2. Caltrans can direct their construction contractor to perform the lane diversions immediately upon commencing physical work on site; or
3. The Bridge District can perform the lane diversions for a few months after the award of the Contract #3 until the contractor assumes this daily task.

So that we can move this process forward as quickly as possible, we take this moment to delineate the core elements of liability risk protection the District seeks. Based on our understanding that you are interested in having us continue to provide lane diversion services, here is what the District would need by means of indemnification if you choose to have us provide these services once the project construction begins.

From the District's perspective, full indemnification from liability from accidents on Doyle Drive and potential contractor delay claims would require defense and indemnity protection covering liability arising from:

1. injury or death of any person, including construction workers and members of the public travelling on the roadway from any cause;
2. property damage claims from any cause;
3. contractor delay, extra work, inefficiency or other claims, including claims for loss or damage to the construction work, equipment or materials;
4. claims that the design scheme for the lane configuration system and decisions made by Caltrans, its contractor and/or the District from time to time to modify the system in order to deal with traffic conditions, accidents or emergencies; and
5. claims alleging negligent placement of pylons or other lane diversion devices by the District.

We trust you will understand that the liability risk protection we propose is attributable to the fact that the District would be responding to a request to provide services (1) on a roadway it neither owns nor controls and (2) under substantially higher than normal risk circumstances attributable to the changed condition arising from the commencement of major, multi-year construction activities. Additionally, particularly at a time of severe recession which has caused significant financial hardship to the many local agencies, including the District, we are not in a position to assume additional financial risk in providing services of this type.

In the event that you seek the Bridge District's performance of the lane diversion service discussed above, we seek Caltrans' agreement with the framework outlined above by written response to this letter. In that event, we will direct our attorney to proceed immediately with the drafting of an agreement incorporating these features. Additionally, we will need to meet to discuss other elements of a new agreement, including operational issues associated with development by Caltrans, in consultation with the District, of the lane diversion manual that will apply compensation arrangements for District services and termination rights.

We look forward to being of continued support and assistance.

Sincerely,

Handwritten signature of Celia G. Kupersmith in cursive script.

Celia G. Kupersmith
General Manager

CC: Members, GGBHTD Board of Directors