

## **COOPERATIVE AGREEMENT**

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

San Mateo County Transportation Authority, a public corporation/entity, referred to hereinafter as SMCTA; and;

City/County Association of Governments of San Mateo County, referred to hereinafter as C/CAG.

### **RECITALS**

1. CALTRANS, ~~SMTCA~~SMCTA, AND C/CAG, collectively referred as PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per the California Streets and Highways Code, Sections 114 and 130.
2. For the purpose of this AGREEMENT, the modifications to incorporate managed lanes on U.S. 101 from 0.3 Mile north of San Antonio Road Interchange (SC - PM 50.6) in Santa Clara County to Whipple Ave in San Mateo County (SM PM 6.7) will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the approved Project Report dated 10/31/2018.
3. PARTIES have agreed to utilize the CONSTRUCTION MANAGER/GENERAL CONTRACTOR method to deliver PROJECT. CONSTRUCTION MANAGER/GENERAL CONTRACTOR is defined as the project delivery method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The contract for construction services may be entered into at the same time as the contract for preconstruction services, or at a later time. The execution of the design and the construction of the project may be in sequential phases or concurrent phases.

4. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:

#### CONSTRUCTION

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

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

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

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

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

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

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

6. The following work associated with this PROJECT has been completed or is in progress:
  - CALTRANS developed the Environmental Impact Report (Cooperative Agreement No. 04-2595).
  - CALTRANS developed the Environmental Assessment under NEPA (Cooperative Agreement No. 04-2595).
  - SMCTA completed the Project Initiation Document (PID) and Supplemental PID on May 4, 2015 and June 3, 2016 respectively (Cooperative Agreement No. 04-2407).

- CALTRANS completed the Project Report (Cooperative Agreement No. 04-2595).
- CALTRANS completed the R/W Certification (Cooperative Agreement No. 04-2687).
- ~~• CALTRANS completed the Plans, Specifications and Estimate on December 10, 2018 (Cooperative Agreement No. 04-2687).~~
- CALTRANS selected and entered into a preconstruction services contract with CONSTRUCTION MANAGER/GENERAL CONTRACTOR on April 24, 2018, CONSTRUCTION MANAGER/GENERAL CONTRACTOR is defined as a business entity that is able to provide appropriately licensed contracting and engineering services as needed pursuant to a Construction Manager/General Contractor delivery method.
- ~~• CALTRANS completed the Plans, Specifications and Estimate on December 10, 2018 (Cooperative Agreement No. 04-2687).~~

7. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
8. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

## **RESPONSIBILITIES**

### **Sponsorship**

9. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.
10. SMCTA, Caltrans and C/CAG are the SPONSORS for the work in this agreement.
11. The PARTIES will sponsor the WORK included in this AGREEMENT as shown in the table below:

PROJECT COMPONENT	SPONSOR
CONSTRUCTION	CALTRANS, SMCTA & C/CAG (3 ways equally)

## **Implementing Agency**

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

CALTRANS and SMCTA will work together as an integrated team for the CONSTRUCTION COMPONENT.

- CALTRANS is the IMPLEMENTING AGENCY for the WORK (~~is the CONSTRUCTION is the IMPLEMENTING AGENCY~~).

CONSTRUCTION includes construction contract administration, surveying/staking, inspection, quality assurance, and assuring regulatory compliance. The CONSTRUCTION component budget identifies the capital costs of the construction contract/furnished materials (CONSTRUCTION CAPITAL) and the cost of the staff work in support of the construction contract administration (CONSTRUCTION SUPPORT).

13. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

## **Funding**

14. Funding sources, PARTIES committing funds, funding amounts, and invoicing/payment details are documented in the Funding Summary section of this AGREEMENT.

PARTIES will amend this AGREEMENT by updating and replacing the Funding Summary, in its entirety, each time the funding details change. Funding Summary replacements will be executed by a legally authorized representative of the respective PARTIES. The most current fully executed Funding Summary supersedes any previous Funding Summary created for this AGREEMENT.

15. PARTIES will not be reimbursed for costs beyond the funds obligated in this AGREEMENT.

- ~~16. Unless otherwise documented in the Funding Summary, overall liability for project costs within a PROJECT COMPONENT will be in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.~~

~~Unless otherwise documented in the Funding Summary, any savings recognized within a PROJECT COMPONENT will be credited or reimbursed, when allowed by policy or law, in proportion to the amount contributed to that PROJECT COMPONENT by each fund type.~~

~~18. Funding Agreement Costs.pda.funding.070a.oca.2016-10-01~~

~~19.16.~~ WORK costs, except those that are specifically excluded in this AGREEMENT, are to be paid from the funds obligated in the Funding Summary. Costs that are specifically excluded from the funds obligated in this AGREEMENT are to be paid by the PARTY incurring the costs from funds that are independent of this AGREEMENT.

**CEQA/NEPA Lead Agency**

~~20.17.~~ CALTRANS is the CEQA Lead Agency for the PROJECT.

~~21.18.~~ CALTRANS is the NEPA Lead Agency for the PROJECT.

**Environmental Permits, Approvals and Agreements**

~~22.19.~~ PARTIES will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTIES responsibilities in this AGREEMENT.

~~23.20.~~ Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.

~~24.21.~~ The PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS
404, US Army Corps Of Engineers
401, Regional Water Quality Control Board
Federal Endangered Species Act Consultation
BO Section 7 USFWS
BCDC Permit
1602 California Department of Fish and Wildlife
NPDES SWRCB
State Waste Discharge Requirements (Porter Cologne) RWQCB

## CONSTRUCTION

~~25-22.~~ As the CONSTRUCTION IMPLEMENTING AGENCY, CALTRANS is responsible for all CONSTRUCTION WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT. CALTRANS and SMCTA are utilizing the integrated team concept, as per article 12 of this agreement and per the signed agreements for the PA&ED and PS&E phases; therefore, SMCTA will provide portion of the design support and portion of the construction support.

~~26-23.~~ Physical and legal possession of the right-of-way must be completed prior to award of construction contract, unless PARTIES mutually agree to other arrangements in writing.

~~27-24.~~ Right-of-way conveyances must be completed prior to WORK completion, unless PARTIES mutually agree to other arrangements in writing.

~~28-25.~~ CALTRANS will negotiate the price, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code. By accepting responsibility to award the construction contract, CALTRANS also accepts responsibility to administer the construction contract.

~~29-26.~~ If the negotiated price, or the lowest responsible construction contract bid if advertised, is greater than the funding commitment to CONSTRUCTION CAPITAL, PARTIES must agree in writing on a course of action within fifteen (15) working days. If no agreement is reached within fifteen (15) work days the IMPLEMENTING AGENCY will not award the construction contract.

~~30-27.~~ Upon WORK completion, ownership or title to all materials and equipment, except the toll system infrastructure and equipment, constructed or installed for the operations and/or maintenance of the State Highway System (SHS) within SHS right-of-way as part of WORK become the property of CALTRANS.

CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right-of-way.

Do we need to include a reference the need for a future maintenance agreement (We have include this language in the past with Construction Coops?)

28. PARTIES confirm that upon WORK completion, no maintenance agreement will be necessary for CALTRANS property. There will be a maintenance agreement needed for the toll system infrastructure and equipment.

## **Schedule**

~~31.29.~~ PARTIES will manage the WORK schedule to ensure the timely use of obligated funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.

~~32.30.~~ The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with a final report of the WORK completed.

## **Additional Provisions**

### *Standards*

~~33.31.~~ PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; FHWA standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:

- CADD Users Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual
- Workplan Standards Guide
- Construction Manual
- WORK BREAKDOWN STRUCTURE (WBS) – A WBS is a standardized hierarchical listing of project work activities/products in increasing levels of detail. The CALTRANS WBS defines each PROJECT COMPONENT as a group of work activities/products. The CALTRANS Work Breakdown Structure is defined in the CALTRANS Workplan Standards Guide.
- Due to the Integrated Team approach to delivering this PROJECT, the PROJECT MANGEMENT PLAN will include agreed upon project specific procedures between signatories for the execution of the work called for in this AGREEMENT.

### *Qualifications*

~~34.32.~~ Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

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

#### Protected Resources

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

#### Disclosures

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

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

38.36. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public documents. PARTIES will consult with each other prior to the release of any public documents related to the WORK.

#### Hazardous Materials

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

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

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



40.38. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.

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

CALTRANS will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the existing State Highway System right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

42.40. If HM-1 is found within the PROJECT limits and outside the existing State Highway System right-of-way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. SMCTA, in concert with the local agency having land use jurisdiction, will ensure that HM-1 MANAGEMENT is undertaken with minimum impact to PROJECT schedule.

The cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way will be paid from funds that are independent of the funds obligated in this AGREEMENT and will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.

43.41. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.

44.42. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

### Claims

45.43. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK without concurrence from the other PARTY.

46.44. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.

47.45. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.

#### Accounting and Audits

48.46. PARTIES will maintain, and will ensure that any consultant hired by PARTIES to participate in WORK will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.

49.47. PARTIES will maintain and make available to each other all WORK-related documents, including financial data, during the term of this AGREEMENT.

PARTIES will retain all WORK-related records for three (3) years after the final voucher.

PARTIES will require that any consultants hired to participate in the WORK will comply with this Article.

~~50.48.~~ PARTIES have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA (if the PROJECT utilizes federal funds), and SMCTA will have access to all WORK -related records of each PARTY, and any consultant hired by a PARTY to participate in WORK, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTY will be permitted to make copies of any WORK-related records needed for the audit.

The audited PARTY will review the draft audit, findings, and recommendations, and provide written comments within thirty (30) calendar days of receipt.

Upon completion of the final audit, PARTIES have forty-five (45) calendar days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTIES is subject to mediation. Mediation will follow the process described in the General Conditions section of this AGREEMENT.

~~51.49.~~ If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.

~~52.~~ ~~When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.~~

### Interruption of Work

~~53.50.~~ If WORK stops for any reason, each PARTY will continue to implement the obligations of this AGREEMENT, including the commitments and conditions included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

### Penalties, Judgements and Settlements

~~54.51.~~ The cost of awards, judgements, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.

~~55.52.~~ The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.

~~56.53.~~ Any PARTY who action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

### Environmental Compliance

~~57.54.~~ If during performance of WORK additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTIES will amend this AGREEMENT to include completion of those additional tasks.

## **ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017 (SB 1)**

~~58.55.~~ In those instances where PARTIES have signed a PROJECT scope, cost, and schedule and benefit baseline data agreement (**PROJECT** BASELINE AGREEMENT), PARTIES agree to abide by the terms and conditions of that PROJECT BASELINE AGREEMENT. The PROJECT BASELINE AGREEMENT is attached to and made a part of this AGREEMENT, by reference.

~~59.56.~~ Notwithstanding anything to the contrary in this AGREEMENT, PARTIES are not permitted to make changes to the scope, cost, schedule or benefits of the PROJECT, unless approved by the California Transportation Commission (CTC).

~~60.57.~~ PARTIES will meet the requirements of The Road Repair and Accountability Act of 2017 (SB 1), Chapter 5, Statutes of 2017, ~~California Transportation Commission (CTC)~~ Resolution G-18-09: SB1 Accountability and Transparency Guidelines and the CTC's Local Partnership Program (LPP) Guidelines Resolution G-17-33.

PARTIES agree that contributed funds originating from the LPP can be expended on any item identified in the PROJECT. Should a SMCTA, C/CAG, or MTC nominated project encounter a cost over-run, LPP will not fund the cost increase. Any costs increases should be funded from other fund sources.

## **GENERAL CONDITIONS**

### **Venue**

~~61.58.~~ PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.

## **Exemptions**

~~62.59.~~ All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming of funds by the ~~California Transportation Commission (CTC)~~ and the allocation thereof by the CTC.

## **Indemnification**

~~63.60.~~ Neither CALTRANS, C/~~CGAC~~, nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by SMCTA, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon SMCTA under this AGREEMENT. It is understood and agreed that SMCTA, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS, C/CAG, and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by SMCTA, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

~~64.61.~~ Neither SMCTA, C/~~CGAC~~, nor any of their officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS to the extent permitted by law, will defend, indemnify, and save harmless SMCTA, C/~~CGAC~~, and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

~~65.62.~~ Neither CALTRANS, SMCTA, nor any of their respective officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by C/CAG, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon C/CAG under this AGREEMENT. It is understood and agreed that C/CAG, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS, SMCTA, -and all of their respective officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by C/CAG, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

## **Non-parties**

~~66.~~~~63.~~ PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.

~~67.~~~~64.~~ PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

## **Ambiguity and Performance**

~~68.~~~~65.~~ SMCTA and C/CAG will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. SMCTA and C/CAG waives the provisions of California Civil Code, Section 1654.

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

~~69.~~~~66.~~ A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

## **Defaults**

~~70.~~~~67.~~ If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

## **Dispute Resolution**

~~71.~~~~68.~~ PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as ~~will be~~ described in the Quality Project Management Plan~~PROJECT MANAGEMENT PLAN~~. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officers of SMCTA and C/CAG will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

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

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

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

~~72-69.~~ PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

### **Prevailing Wage**

~~73-70.~~ When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

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

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

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

## **DEFINITIONS**

PARTY – Any individual signatory party to this AGREEMENT.

PARTIES – The term that collectively references all of the signatory agencies to this AGREEMENT.

PROJECT MANAGEMENT PLAN (PMP) - A document used to guide the PROJECT' s execution and control.

WORK BREAKDOWN STRUCTURE (WBS) – A WBS is a standardized hierarchical listing of project work activities/products in increasing levels of detail. The CALTRANS WBS defines each PROJECT COMPONENT as a group of work activities/products. The CALTRANS Work Breakdown Structure is defined in the CALTRANS Workplan Standards Guide.



**Contact Information**

**CALTRANS**

Mohammad Suleiman, Project Manager  
111 Grand Avenue  
Oakland, CA 94612  
Office Phone: (510) 622-5943  
Email: mohammad\_suleiman@dot.ca.gov

**SAN MATEO COUNTY TRANSPORTATION AUTHORITY**

Joseph M. Hurley, Director, SMCTA Program  
1250 San Carlos Avenue  
San Carlos, CA 94070  
Office Phone: (650) 508-7942  
Email: [jmhurleyj@smcta.com](mailto:jmhurleyj@smcta.com)

**CITY/COUNTY ASSOCIATION OF GOVERNMENTS**  
**SAN MATEO COUNTY**

Sandy Wong, Executive Director  
555 County Center  
Redwood City, CA 94603-1665  
Office Phone: (650) 559-1409  
Email: [slwong@smcgov.org](mailto:slwong@smcgov.org)

## SIGNATURES

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

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

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

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Helena (Lenka) Culik-Caro  
Deputy District Director, Design

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

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Jeffrey Armstrong  
District Budget Manager

Approved as to form and procedure:

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Attorney  
Department of Transportation

### **CERTIFIED AS TO FINANCIAL TERMS AND POLICIES:**

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Tamara Warren  
HQ Accounting Supervisor

### **SAN MATEO COUNTY TRANSPORTATION AUTHORITY**

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Jim Hartnett  
Executive Director

Attest:

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[Dora Seamans](#)  
Authority Secretary

Approved as to form and procedure:

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Joan Cassman  
Attorney

~~SAN MATEO COUNTY TRANSPORTATION AUTHORITY~~

\_\_\_\_\_  
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Jim Hartnett  
Executive Director

Attest:

\_\_\_\_\_  
\_\_\_\_\_  
Authority Secretary

Approved as to form and procedure:

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Joan Cassman  
Attorney

**CITY/COUNTY ASSOCIATION OF GOVERNMENTS**  
**SAN MATEO COUNTY**

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Maryann Moise Derwin  
Chair

Attest:

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Jean Higaki  
Transportation System Coordinator

Approved as to form and procedure:

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~~Nirit Eriksson~~ Matthew Sanders  
Legal Counsel

**FUNDING SUMMARY NO. 01**

<b><u>FUNDING TABLE</u></b> <span style="float: right;">v. 2</span>					
<b><u>IMPLEMENTING AGENCY →</u></b>			<b><u>CALTRANS</u></b>		<b>Totals</b>
<b>Source</b>	<b>FUNDING Party</b>	<b>Fund Type</b>	<b>CONST. SUPPORT</b>	<b>CONST. CAPITAL</b>	
STATE	CALTRANS	STATE SCC	7,000,000	67,500,000	74,500,000
<b>Totals</b>			7,000,000	67,500,000	74,500,000

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<b><u>SPENDING SUMMARY</u></b>					
Fund Type	CONST. SUPPORT		CONST. CAPITAL		Totals
	<u>CALTRANS</u>	SMCTA	<u>CALTRANS</u>	DFM CALTRANS	
SCC	6,500,000	500,000	67,500,000	0	74,500,000
<b>Totals</b>	6,500,000	500,000	67,500,000	0	74,500,000

- CALTRANS and SMCTA are utilizing the integrated team concept, SMCTA will provide portion of the design support and a portion of the construction support.

**Funding**

1. If there are insufficient funds available in this AGREEMENT to place the PROJECT right-of-way in a safe and operable condition, the appropriate IMPLEMENTING AGENCY will fund these activities until such time as PARTIES amend this AGREEMENT.

That IMPLEMENTING AGENCY may request reimbursement for these costs during the amendment process.

2. If there are insufficient funds in this AGREEMENT to implement the obligations and responsibilities of this AGREEMENT, including the applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, and/or approvals that are in effect at a time that WORK stops, each PARTY accepts responsibility to fund their respective WORK until such time as PARTIES amend this AGREEMENT.

Each PARTY may request reimbursement for these costs during the amendment process.

**ICRP Rate**

3. The cost of any engineering support performed by CALTRANS includes all direct and applicable indirect costs. CALTRANS calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds administered by CALTRANS are subject to the current Program Functional Rate. All other funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and Administration Rate are adjusted periodically.

**Invoicing and Payment**

4. PARTIES will invoice for funds where the SPENDING SUMMARY shows that one PARTY provides funds for use by another PARTY. PARTIES will pay invoices within forty-five (45) calendar days of receipt of invoice when not paying with Electronic Funds Transfer (EFT). When paying with EFT, SMCTA will pay invoices within five (5) calendar days of receipt of invoice.
5. If SMCTA has received EFT certification from CALTRANS then SMCTA will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.

When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

CONSTRUCTION Support

7. SMCTA will invoice CALTRANS for and CALTRANS will reimburse SMCTA for, actual costs incurred and paid.

CONSTRUCTION Capital

8. No invoicing or reimbursement will occur for the CONSTRUCTION CAPITAL PROJECT COMPONENT.