

RESOLUTION NO. 257-21 (CM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING COOPERATIVE AGREEMENT (AGREEMENT 05-0386) BETWEEN THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) AND THE CITY OF WATSONVILLE FOR PREPARATION OF PLANS, SPECIFICATIONS, AND A CONSTRUCTION COST ESTIMATE FOR THE NEW PEDESTRIAN BRIDGE AND UPGRADED BICYCLE FACILITIES AT THE HARKINS SLOUGH ROAD CROSSING OF STATE ROUTE 1, FOR AN AMOUNT NOT TO EXCEED \$3,147,000; AUTHORIZING A BUDGET APPROPRIATION OF \$2,629,000 FROM THE EAST HIGHWAY 1 AREA IMPACT FEE FUND; AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE SAME

Rescinds Resolution No. 216-21 (CM)

WHEREAS, on August 24, 2021, the Council adopted Resolution No. 216-21 (CM) approving Cooperative Agreement with the California Department of Transportation (Caltrans) for preparation of plans, specifications, and a construction cost estimate for the new pedestrian bridge and upgraded bicycle facilities at the Harkins Slough Road Crossing of State Route 1; and

WHEREAS, Caltrans informed City staff that the Cooperative Agreement adopted by Council on August 24th was not the most current and a new Agreement must be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:

1. That the Cooperative Agreement (Agreement 05-0386) between the California Department of Transportation (Caltrans) and the City of Watsonville for the preparation of plans, specifications, and a construction cost estimate for the new pedestrian bridge and upgraded bicycle facilities at the Harkins Slough Road crossing of

State Route 1, a copy of which Agreement is attached hereto and incorporated herein by this reference, is fair and equitable and is hereby ratified and approved.

2. That the budget appropriation of \$2,629,000 from the East Highway 1 Area Impact Fee Fund [0344] is hereby authorized.

3. That the City Manager is hereby authorized and directed to execute the Agreement for and on behalf of the City of Watsonville.

The foregoing resolution was introduced at a regular meeting of the Council of the City of Watsonville, held on the 28th day of September, 2021, by Member García, who moved its adoption, which motion being duly seconded by Member Estrada, was upon roll call carried and the resolution adopted by the following vote:

AYES: COUNCIL MEMBERS: **Estrada, García, Hurst, Montesino, Parker, Dutra**

NOES: COUNCIL MEMBERS: **None**

ABSENT: COUNCIL MEMBERS: **None**

DocuSigned by:
Jimmy Dutra
49273AB2E4924F0
Jimmy Dutra, Mayor

ATTEST:

DS
DocuSigned by:
Beatriz Flores
26A00ECC30A14E3
City Clerk

9/30/2021 | 11:45 AM PDT
Date

APPROVED AS TO FORM:

DocuSigned by:
Alan J. Smith
0B4152C19B34A4
City Attorney

I, Beatriz Vázquez Flores, City Clerk of the City of Watsonville, do hereby certify that the foregoing Resolution No. 257-21 (CM) was duly and regularly passed and adopted by the Watsonville City Council at a meeting thereof held on the 28th day of September, 2021, and that the foregoing is a full, true and correct copy of said Resolution.

DocuSigned by:
Beatriz Flores
26A00ECC30A14E3
Beatriz Vázquez Flores, City Clerk

9/30/2021 | 11:45 AM PDT
Date

COOPERATIVE AGREEMENT COVER SHEET

Work Description

IN SANTA CRUZ COUNTY AT HARKINS SLOUGH ROAD. CONSTRUCT IMPROVEMENTS AND BIKE/PED BRIDGE

Contact Information

CALTRANS

Heidi Borders, Project Manager

50 Higuera Street

San Luis Obispo, CA 93401

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Email: heidi.borders@dot.ca.gov

CITY OF WATSONVILLE

Maria Esther Rodriguez, Assistant Director of Public Works

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Watsonville, CA 95076

Office Phone: (831)768-3112

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COOPERATIVE AGREEMENT

This AGREEMENT, executed on and effective from Oct 6, 2021, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Watsonville, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

RECITALS

1. 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, *in Santa Cruz County at Harkins Slough Road. Construct improvements and Bike/Ped bridge* will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g. Project Study Report, Permit Engineering Evaluation Report, or Project Report).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENTS will be referred to hereinafter as WORK:
 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)
 - RIGHT-OF-WAY

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.

4. 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.

5. The following work associated with this PROJECT has been completed or is in progress:
 - CALTRANS approved the Categorical Exemption on February 4, 2020 (Cooperative Agreement No. 05-0318).
 - CALTRANS completed the Project Initiation Document on January 24, 2017 (Cooperative Agreement No. 05-0297).
 - CALTRANS completed the Project Report on June 30, 2020 (Cooperative Agreement No. 05-0318).
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

RESPONSIBILITIES

Sponsorship

8. 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.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. CITY is the SPONSOR for the WORK in this AGREEMENT.

Implementing Agency

10. 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 is the Plans, Specifications, and Estimate (PS&E) IMPLEMENTING AGENCY.

PS&E includes the development of the plans, specifications, and estimate; obtaining any resource agency permits; and the advertisement/award of the construction contract.

- CALTRANS is the RIGHT OF WAY IMPLEMENTING AGENCY

RIGHT OF WAY includes coordination with utility owners for the protection, removal, or relocation of utilities; the acquisition of right-of-way interests; and post-construction work such as right-of-way monumentation/recordation, relinquishments/vacations, and excess land transactions. The RIGHT OF WAY component budget identifies the cost of the capital costs of right-of-way acquisition (RIGHT-OF-WAY CAPITAL) and the cost of the staff work in support of the acquisition (RIGHT-OF-WAY SUPPORT).

11. CITY will provide a Quality Management Plan (QMP) for the WORK in every PROJECT COMPONENT that they are the IMPLEMENTING AGENCY of. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and approval.

12. 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

13. 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.

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

If an IMPLEMENTING AGENCY anticipates that funding for the WORK will be insufficient to complete the WORK, the IMPLEMENTING AGENCY will promptly notify the SPONSOR.

15. 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.
16. 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.
17. 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.

CALTRANS' Quality Management

18. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
19. CALTRANS' Quality Management Assessment (QMA) efforts are to ensure that CITY's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's quality management plan (QMP). QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs QMA, it does so for its own benefit. No one can assign liability to CALTRANS due to its QMA.

20. CALTRANS, as the owner/operator of the State Highway System, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
21. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

CEQA Lead Agency

22. CALTRANS is the CEQA Lead Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

23. 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 PARTY's responsibilities in this AGREEMENT.
24. 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.

25. The PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS
Coastal Development Permit, California Coastal Commission

Plans, Specifications, and Estimate (PS&E)

26. As the PS&E IMPLEMENTING AGENCY, CALTRANS is responsible for all PS&E WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
27. CITY will be responsible for completing the following PS&E activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
260 Contract Bid Document Ready to List	No
265 Awarded and Approved Construction Contract	No

28. CALTRANS will prepare Utility Conflict Maps identifying the accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the PROJECT or that violate CALTRANS' encroachment policy.
29. CALTRANS will determine the cost to positively identify and locate, accommodate, protect, relocate, or remove any utility facilities whether inside or outside the State Highway System right-of-way in accordance with federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements including but not limited to Freeway Master Contracts.

RIGHT-OF-WAY

30. As the RIGHT-OF-WAY IMPLEMENTING AGENCY, CALTRANS is responsible for all RIGHT-OF-WAY WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
31. The California Transportation Commission is responsible for hearing and adopting Resolutions of Necessity.

32. CALTRANS will provide Right-of-Way Certification prior to PROJECT advertisement.
33. Physical and legal possession of the right-of-way must be completed prior to advertising the construction contract, unless PARTIES mutually agree to other arrangements in writing.
34. Right-of-way conveyances must be completed prior to WORK completion unless PARTIES mutually agree to other arrangements in writing.

Schedule

35. 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.
36. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with written quarterly progress reports during the completion of the WORK.

Additional Provisions

Standards

37. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (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 (PDPM)
- Workplan Standards Guide
- Standard Environmental Reference
- Highway Design Manual
- Right of Way Manual

Qualifications

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

Consultant Selection

39. CITY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

40. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. CITY, their contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to CITY, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.

41. CITY will issue any encroachment permits that are necessary for WORK within its jurisdiction and outside the State Highway System right-of-way. CITY will provide encroachment permits to CALTRANS, its contractors, consultants and agents, at no cost.
42. 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

43. 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

44. 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.

45. 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 records.

Hazardous Materials

46. 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.

47. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
48. 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.

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

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

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

CITY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and CITY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. CITY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

51. 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

52. 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.
53. 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.
54. 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

55. 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.

56. 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.

57. 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 CITY 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.

58. 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.

59. 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

60. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.

61. If WORK stops for any reason, each PARTY will continue with environmental commitments 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

62. The cost of awards, judgements, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
63. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
64. Any PARTY whose 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.

Project Files

65. CITY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on State Highway System within sixty (60) days following the completion of each PROJECT COMPONENT. CITY will prepare the Project History File in accordance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and on a CD ROM in PDF format.

Environmental Compliance

66. 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)

67. 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) SB1 Accountability and Transparency Guidelines and the CTC's Active Transportation Program (ATP) guidelines.

GENERAL CONDITIONS

68. All portions of this AGREEMENT, including the Recitals Section, are enforceable.

Venue

69. 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

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

Indemnification

71. Neither CALTRANS nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CITY under this AGREEMENT. It is understood and agreed that CITY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS 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 CITY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
72. Neither CITY nor any of its 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 CITY 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.

Non-parties

73. 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.
74. 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

75. Neither PARTY will interpret any ambiguity contained in this AGREEMENT against the other PARTY. PARTIES waive 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.

76. 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

77. 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

78. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of CITY 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.

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

Prevailing Wage

80. 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.

SIGNATURES

PARTIES are empowered by the law 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.

This AGREEMENT may be executed and delivered in counterparts, and by each PARTY in a separate counterpart, each of which when so executed and delivered shall constitute an original and all of which taken together shall constitute one and the same instrument.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**



Timothy M. Gubbins
District Director

Verification of funds and authority:




Cheryl Berry
Resource Manager

Certified as to financial terms and policies:



Gina Schumacher
HQ Accounting Supervisor

CITY OF WATSONVILLE



Matt Huffaker (Sep 30, 2021 16:23 PDT)

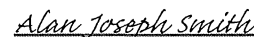
Matthew Huffaker
City Manager

Attest:



Beatriz Vasquez Flores
City Clerk

Approved as to form and procedure:



Alan Joseph Smith (Sep 30, 2021 15:43 PDT)

Alan J. Smith
City Attorney

FUNDING SUMMARY NO. 01

<u>FUNDING TABLE</u>						
<u>IMPLEMENTING AGENCY →</u>			<u>CALTRANS</u>	<u>CALTRANS</u>		Totals
Source	Party	Fund Type	PS&E	R/W SUPPORT	R/W CAPITAL	
STATE	CITY	ATP(SB1)	0	0	518,000	518,000
LOCAL	CITY	Local	2,444,000	185,000	0	2,629,000
Totals			2,444,000	185,000	518,000	3,147,000

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<u>SPENDING SUMMARY</u>						
Fund Type	PS&E		R/W Support		R/W CAPITAL	Totals
	<u>CALTRANS</u>	CITY	<u>CALTRANS</u>	CITY	<u>CALTRANS</u>	
ATP(SB1)	0	0	0	0	518,000	518,000
Local	2,444,000	0	185,000	0	0	2,629,000
Totals	2,444,000	0	185,000	0	518,000	3,147,000

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.

In accordance with California Senate Bill 848, the Administration Rate is capped at 10 percent until July 1, 2021, for Self-Help Counties with a countywide sales tax measure dedicated to transportation improvements.

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, CITY will pay invoices within five (5) calendar days of receipt of invoice.

5. If CITY has received EFT certification from CALTRANS then CITY will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
6. CALTRANS will draw from state and federal funds that are provided by CITY without invoicing CITY when CALTRANS administers those funds and CALTRANS has been allocated those funds by the CTC and whenever else possible.
7. 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.

Plans, Specifications, and Estimate (PS&E)

8. CALTRANS will invoice CITY for a \$125,000 initial deposit after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of PS&E expenditures. This deposit represents two (2) months' estimated costs.

Thereafter, CALTRANS will invoice and CITY will reimburse for actual costs incurred and paid.

RIGHT-OF-WAY Support

9. CALTRANS will invoice CITY for a \$15,000 initial deposit after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of R/W SUPPORT expenditures. This deposit represents two (2) months' estimated costs.

Thereafter, CALTRANS will invoice and CITY will reimburse for actual costs incurred and paid.

RIGHT-OF-WAY Capital

10. CALTRANS will invoice and CITY will reimburse for actual costs incurred and paid.

CLOSURE STATEMENT INSTRUCTIONS

1. Did PARTIES complete all scope, cost and schedule commitments included in this AGREEMENT and any amendments to this AGREEMENT?

YES / NO

2. Did CALTRANS accept and approve all final deliverables submitted by other PARTIES?

YES / NO

3. Did the CALTRANS HQ Office of Accounting verify that all final accounting for this AGREEMENT and any amendments to this AGREEMENT were completed?

YES / NO

4. If construction is involved, did the CALTRANS District Project Manager verify that all claims and third party billings (utilities, etc.) have been settled before termination of the AGREEMENT?

YES / NO

5. Did PARTIES complete and transmit the As-Built Plans, Project History File, and all other required contract documents?

YES / NO

If ALL answers are "YES", this form may be used to TERMINATE this AGREEMENT.

CLOSURE STATEMENT

PARTIES agree that they have completed all scope, cost, and schedule commitments included in Agreement 05-0386 and any amendments to the agreement. The final signature date on this document terminates agreement 05-0386 except survival articles. All survival articles in agreement 05-0386 will remain in effect until expired by law, terminated or modified in writing by the PARTIES' mutual agreement, whichever occurs earlier.

The people signing this agreement have the authority to do so on behalf of their public agencies.

This AGREEMENT may be executed and delivered in counterparts, and by each PARTY in a separate counterpart, each of which when so executed and delivered shall constitute an original and all of which taken together shall constitute one and the same instrument.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

CITY OF WATSONVILLE

District Director

City Manager

Date: _____

Date: _____

**Certified as to all financial
obligations/terms and policies**

Resource Manager

Date: _____