

## **COOPERATIVE AGREEMENT COVER SHEET**

### **Work Description**

THE INTENT OF THIS COOPERATIVE AGREEMENT IS TO PROVIDE CLEAN CALIFORNIA FUNDING FOR CONSTRUCTION OF THE CASTROVILLE HISTORIC MAIN STREET LANDMARK RESTORATION BEAUTIFICATION PROJECT BY THE CASTROVILLE COMMUNITY SERVICES DISTRICT (CASTRO CSD). THE PROJECT WILL RESTORE A VALUED ICONIC LANDMARK, IN KEEPING WITH THE AESTHETICS OF ITS HISTORIC 'MAIN STREET' ARCHITECTURAL SETTING. THIS PROJECT WILL INCLUDE REPLACEMENT OF OLD SUPPORT STRUCTURE DETERMINED TO BE PAST ITS USEFUL LIFE AND INCLUDE MAST ARMS FOR COLORFUL BANNERS TO HIGHLIGHT COMMUNITY EVENTS CONTRIBUTING TO LOCAL ECONOMIC VITALITY. THE SIGN WILL BE REPLACED WITH ONE THAT IS COMPATIBLE WITH THE EXISTING SIGN STYLE IN THE HISTORIC DISTRICT. LIGHTING WILL BE UPDATED TO ENERGY EFFICIENT SOLAR LIGHTING, COMPATIBLE WITH DARK SKIES AND TRAFFIC CONSIDERATIONS. THIS PROJECT WILL CONSTRUCT A DESIRED ELEMENT IN THE COMMUNITY'S DOWNTOWN PLAN AND BENEFIT FROM PRELIMINARY DESIGN WHICH HAS ALREADY BEEN CREATED TO COMMUNITY SPECIFICATIONS BY THE CASTRO CSD'S PREFERRED CONTRACTOR. THE PROJECT WILL BE CONSTRUCTED UNDER AN APPROVED CALTRANS ENCROACHMENT PERMIT.

### **Contact Information**

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**Please note:**

1. Caltrans administered funds must be expended proportionally with all other funds. All project funds must be shown in the Funding Summary. Local funds committed to the project cannot be omitted from the funding summary.

## **COOPERATIVE AGREEMENT**

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

Castroville Community Services District, a public corporation/entity, referred to hereinafter as CASTRO CSD.

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**

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.

For the purpose of this AGREEMENT, funding provided by the Clean California Beautification Program will be used to construct the Castroville Historic Main Street Landmark Restoration Beautification Project. The project will restore a valued iconic landmark, in keeping with the aesthetics of its historic 'main street' architectural setting. This will include replacement of old support structure determined to be past its useful life and include mast arms for colorful banners to highlight community events contributing to local economic vitality. The sign will be replaced with a more durable one that is compatible with the existing sign style in the historic district. Lighting will be updated to an energy efficient solar light, compatible with dark skies and traffic considerations. This project will construct a desired element identified in the community's downtown plan and will benefit from cost savings from preliminary design which has already been created to community specifications and will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the Clean California Enhancement Proposal (CCEP) project initiation and approval document.

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

- PROJECT DESIGN
- 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.

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.

The following work associated with this PROJECT has been completed or is in progress:

- CALTRANS approved the Categorical Exemption on January 27, 2022.
- CALTRANS completed the R/W Certification on March 21, 2022.
- CALTRANS completed the Clean California Enhancement Proposal Project Initiation Document on December 12, 2021.

In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.

PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

## RESPONSIBILITIES

### Sponsorship

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.

The PARTIES will sponsor the WORK included in this AGREEMENT as shown in the table below:

PROJECT COMPONENT	SPONSOR
COOPERATIVE AGREEMENT FOR CLEAN CALIFORNIA PROJECT FUNDING	CALTRANS
ENCROACHMENT PERMIT REVIEW AND APPROVAL	CALTRANS
ENCROACHMENT PERMIT CONSTRUCTION INSPECTION	CALTRANS
MAINTENANCE AGREEMENT	CALTRANS
PROJECT DESIGN	CASTRO CSD
CONSTRUCTION	CASTRO CSD

### Implementing Agency

The IMPLEMENTING AGENCY is the PARTY responsible for managing the PROJECT DESIGN including plans, specifications, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

- CASTRO CSD is the PROJECT DESIGN IMPLEMENTING AGENCY.
- PROJECT DESIGN includes plans, specifications, calculations, quality assurance, and assuring regulatory compliance.

- **CASTRO CSD is the CONSTRUCTION IMPLEMENTING AGENCY.**

**CONSTRUCTION** includes construction contract administration, surveying/staking, underground utility location, 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**).

CASTRO CSD 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.

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**

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**.

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

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.



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**

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.

CALTRANS' Quality Management Assessment (QMA) efforts are to ensure that Castro CSD'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.

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.

CASTRO CSD will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

### **CEQA Lead Agency**

CALTRANS is the CEQA Lead Agency for the PROJECT.

### **Environmental Permits, Approvals and Agreements**

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.

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.

The PROJECT will not require environmental permits/approvals.

**CONSTRUCTION**

As the CONSTRUCTION IMPLEMENTING AGENCY, CASTRO CSD 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 will be responsible for completing the following CONSTRUCTION SUPPORT activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.20.10.xx Quality Management	No

CALTRANS will not issue an encroachment permit to CASTRO CSD for construction work until the following conditions are met:

- CALTRANS accepts the final plans, specifications, and estimate
- Any new or amended maintenance agreements required for the WORK are executed.

CASTRO CSD will require their construction contractor to furnish payment and performance bonds naming CASTRO CSD as obligee, and CALTRANS as additional obligee, and to carry liability insurance in accordance with CALTRANS Standard Specifications.

The CASTRO CSD accepts responsibility to administer the construction contract.

CALTRANS will not issue an encroachment permit to Castro CSD' until CALTRANS accepts:

- The payment and performance bonds
- The CONSTRUCTION Quality Management Plan
- A MAINTENANCE AGREEMENT has been signed.

The CONSTRUCTION Quality Management Plan (QMP) will describe how construction material verification and workmanship inspections will be performed at manufacturing sources and the PROJECT job-site. The construction material and Source Inspection QMP (SIQMP) are subject to review and approval by the State Materials Engineer.

The CONSTRUCTION Quality Management Plan will address the radiation safety requirements of the California Code of Regulations 17 CCR § 30346 when the work requires Gamma-Gamma Logging acceptance testing for Cast in Drilled Hole (CIDH) pile or whenever else it is applicable. In accordance with these regulations CASTRO CSD, as the "well operator", will have a written agreement with any consultant or external entity performing these tests.

CASTRO CSD will provide a Resident Engineer and CONSTRUCTION SUPPORT staff that are independent of the construction contractor. The Resident Engineer will be a Civil Engineer, licensed in the State of California, who is responsible for construction contract administration activities.

CASTRO CSD will implement changes to the construction contract through Change Orders. PARTIES will review and concur on all Change Orders over \$1,500.

CALTRANS will review and concur with:

- Change Orders affecting public safety, public convenience, protected environmental resources, the preservation of property, all design and specification changes, and all major changes as defined in the CALTRANS Construction Manual. These Change Orders must receive written concurrence by CALTRANS prior to implementation.
- The Water Pollution Control Plan (WPCP).
- The Traffic Control Plan

CASTRO CSD will administer and process all construction contract claims pursuant to the requirements set forth under Public Contract Code, Section 9204. In addition, all public works claims of \$375,000 or less shall be resolved in accordance with Public Contract Code Section 20104, et seq. and other applicable laws.

CASTRO CSD is designated as the Legally Responsible Person pursuant to the Construction General Permit, State Water Resources Control Board (SWRCB) Order Number 2009-0009-DWQ, as defined in Appendix 5, Glossary, and assumes all roles and responsibilities assigned to the Legally Responsible Person as mandated by the Construction General Permit. CASTRO CSD is required to comply with the CALTRANS MS4 National Pollutant Discharge Elimination System (NPDES) permit for all work within the State Highway System.

As the CONSTRUCTION IMPLEMENTING AGENCY, CASTRO CSD is responsible for maintenance of the State Highway System (SHS) within the PROJECT limits as part of the construction contract until the following conditions are met:

- Any required maintenance agreements are executed for the portions of SHS for which relief of maintenance is to be granted.
- CALTRANS approves a request from CASTRO CSD for relief from maintenance of the PROJECT or a portion thereof.

Upon WORK completion, ownership and title to all materials and equipment constructed or installed for the operation and/or maintenance of the State Highway System (SHS) within the SHS right-of-way as part of the WORK become the property of CALTRANS, except:

- Castroville Historic Main Street Landmark will become the property of CASTRO CSD  
CALTRANS and CASTRO CSD will develop and execute a new or amended maintenance agreement for this property prior to issuance of the Encroachment Permit.

Property owners will operate, maintain, relocate, remove, and protect their property within the State Highway system at their own expense including removing, relocating, or protecting said property when required for future improvements or whenever else required by CALTRANS.

CALTRANS will assume no responsibility for the property which it does not own. Property owners will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of said property.

Within one hundred eighty (180) calendar days following the completion and acceptance of the PROJECT construction contract, CASTRO CSD will furnish CALTRANS with a complete set of "As-Built" plans and Change Orders, including any changes authorized by CALTRANS, using an approved transfer mechanism, such as a CD ROM, flash drive, Filr. The submitted digital files must be completed in accordance with Caltrans specifications, policies, and manuals, including requirements in Sections 2 and 3, of Chapter 17 in the Project Development Procedures Manual, then current CADD User's Manual (Section 4.3), Plans Preparation Manual, and CALTRANS practice. The plans will have the Resident Engineer's name, contract number, and construction contract acceptance date printed on each plan sheet, and with the Resident Engineer's signature only on the title sheet. The As-Built plans will be in Microstation DGN format, version 8.0. When applicable, the digital submittal must also include high accuracy locating and underground facilities data. In addition, CASTRO CSD will provide one set of As-Built plans and addenda in TIFF format.

The submittal must also include all CALTRANS requested contract records, and land survey documents. The land survey documents include monument preservation documents and records of surveys prepared to satisfy the requirements of the California Land Surveyors Act (Business and Professions Code, Sections 8700 – 8805). Copies of survey documents and Records of Surveys filed in accordance with Business & Professions Code, Sections 8762 and 8771, will contain the filing information provided by the county in which filed.

### **Schedule**

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.

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

### **Additional Provisions**

#### *Standards*

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:

- CALTRANS policies and directives
- Highway Design Manual
- Right of Way Manual
- Construction Manual
- Construction Manual Supplement for Local Agency Resident Engineers
- Local Agency Structure Representative Guidelines

#### *Noncompliant Work*

CALTRANS retains the right to reject noncompliant WORK. CASTRO CSD agrees to suspend WORK upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in the best interest of the State Highway System.

### Qualifications

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

### Consultant Selection

CASTRO CSD will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

### Encroachment Permits

CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. CASTRO CSD, 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 CASTRO CSD, 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.

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

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

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.

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

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.

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

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.

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. CASTRO CSD, 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.

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

CASTRO CSD 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 CASTRO CSD each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. CASTRO CSD 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.

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

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.

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.

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

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.

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.

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 CASTRO CSD 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.

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.

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

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

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

The cost of awards, judgements, fines, interest, penalties, attorney's fees, and/or settlements generated by the WORK are considered WORK costs.

The cost of legal challenges to the environmental process or documentation are considered WORK costs.

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

delete

### Environmental Compliance

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.

## **GENERAL CONDITIONS**

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

### **Venue**

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**

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**

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 CASTRO CSD, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CASTRO CSD under this AGREEMENT. It is understood and agreed that CASTRO CSD, 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 CASTRO CSD, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

Neither CASTRO CSD 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 CASTRO CSD 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**

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.

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**

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.

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**

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**

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 CASTRO CSD 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.

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

### **Prevailing Wage**

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.

**SIGNATURES**

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and hereby covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

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  
D5 Resource Manager

**Certified as to financial terms and policies:**

\_\_\_\_\_  
Gina Schumacher  
HQ Accounting Supervisor

**CASTROVILLE COMMUNITY  
SERVICES DISTRICT**

\_\_\_\_\_  
J. Eric Tynan  
General Manager

**Attest:**

\_\_\_\_\_  
James Cochran  
Board President

**Approved as to form and procedure:**

\_\_\_\_\_  
Name Tbd  
Title TBD

**FUNDING SUMMARY NO. 01**

<b><u>FUNDING TABLE</u></b>					
<b><u>IMPLEMENTING AGENCY</u></b> →					
Source	Party	Fund Type	<b><u>CASTRO CSD</u></b>		Totals
			CONST. SUPPORT	CONST. CAPITAL	
STATE	CALTRANS	Clean CA	0	442,019	442,019
Totals			0	442,019	442,019

<b><u>SPENDING SUMMARY</u></b>					
Fund Type		<b><u>CONST. SUPPORT</u></b>		CONST. CAPITAL	Totals
		CALTRANS	CASTRO CSD	CASTRO CSD	
Clean CA		0	0	442,019	442,019
Totals		0	0	442,019	442,019

**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 January 1, 2023, for Self-Help Counties with a countywide sales tax measure dedicated to transportation improvements.

4. If the WORK is funded with state or federal funds, any PARTY seeking CALTRANS reimbursement of indirect costs must submit an indirect cost rate proposal and central service cost allocation plan (if any) in accordance with Local Assistance Procedures Manual, 2 CFR, Part 200 and Chapter 5. These documents are to be submitted annually to CALTRANS' Audits and Investigations for review and acceptance prior to CALTRANS' reimbursement of indirect costs.



5. Travel, per diem, and third-party contract reimbursements for WORK are to be paid from the funds in this AGREEMENT only after the contractor performs the work and incurs said costs.

Payments for travel and per diem will not exceed the rates paid rank and file state employees under current California Department of Human Resources (CalHR) rules current at the effective date of this AGREEMENT.

If CASTRO CSD invoices for rates in excess of CalHR rates, CASTRO CSD will fund the cost difference and reimburse CALTRANS for any overpayment.

### **Invoicing and Payment**

6. 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, CASTRO CSD will pay invoices within five (5) calendar days of receipt of invoice.
7. If CASTRO CSD has received EFT certification from CALTRANS then CASTRO CSD will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
8. 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.
9. If an executed Program Supplement Agreement (PSA) or STIP Planning, Programming, and Monitoring Program Fund Transfer Agreement (PPM) exists for this PROJECT then CASTRO CSD will abide by the billing and payment conditions detailed for the fund types identified in the PSA or PPM.
10. If CALTRANS reimburses CASTRO CSD for any costs later determined to be unallowable, CASTRO CSD will reimburse those funds.

CONSTRUCTION Capital

11. CASTRO CSD will invoice and CALTRANS will reimburse for actual costs incurred and paid.

**CLOSURE STATEMENT INSTRUCTIONS**

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

YES / NO

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

YES / NO

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

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

Did PARTIES complete and transmit the As-Built Plans, 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 05-0408 and any amendments to the agreement. The final signature date on this document terminates agreement 05-0408 except survival articles. All survival articles in agreement 05-0408 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. By signing below, the PARTIES each expressly agree to execute this AGREEMENT electronically.

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**

**CASTROVILLE COMMUNITY  
SERVICES DISTRICT**

\_\_\_\_\_  
District Director

\_\_\_\_\_  
General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

\_\_\_\_\_  
D5 Resource Manager

Date: \_\_\_\_\_