

## **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:

San Francisco Public Utilities Commission, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as SFPUC.

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 California Streets and Highways Code, Sections 114 and 130 and California Government Code, Section 65086.5.
2. For the purpose of this AGREEMENT, installation of a 10-foot inside diameter new sewer and 14-foot outside diameter tunnel to convey stormwater away from Lower Alemany area will be referred to hereinafter as PROJECT. SFPUC desires to utilize a Project Study Report - Project Report (PSR-PR) for both project initiation and approval.
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:
  - PROJECT INITIATION DOCUMENT (PID)

The PROJECT will also contain obligations and responsibilities that are typically assigned to the Project Approval & Environmental Document (PA&ED) project component. 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.

AGREEMENT will terminate 180 days after PSR-PR is signed by PARTIES or as mutually agreed by PARTIES in writing. 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. No PROJECT deliverables have been completed prior to this AGREEMENT.
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. SFPUC 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.

- SFPUC is the PID IMPLEMENTING AGENCY.

The PSR-PR identifies the PROJECT need and purpose, stakeholder input, project alternatives, anticipated right-of-way requirements, initial cost estimates, potential funding sources, the completion of the Final Environmental Document and the Project Report (documenting the project alternative selection).

11. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will provide a Quality Management Plan (QMP) for the WORK in that component. 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. SFPUC is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the WORK in accordance with this AGREEMENT.

If, in the future, CALTRANS is allocated state funds and Personnel Years (PYs) for PSR-PR review or development of this PROJECT, PARTIES will agree to amend this AGREEMENT to change the reimbursement arrangement for PSR-PR review.

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 should this condition change 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.
17. 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. Each PARTY is responsible for the costs they incur in performing the WORK unless otherwise stated in this AGREEMENT.
19. 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**

20. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA), environmental document quality control, and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
21. CALTRANS' QMA efforts are to ensure that SFPUC's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's 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.

22. CALTRANS, as the owner/operator of the SHS, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.

### **CEQA/NEPA Lead Agency**

23. SFPUC is the CEQA Lead Agency for the PROJECT.
24. CALTRANS is the CEQA Responsible Agency for the PROJECT.
25. CALTRANS is the NEPA Lead Agency for the PROJECT, if NEPA is required.

Per National Environmental Policy Act (NEPA) assignment and California Environmental Quality Act (CEQA) statutes, CALTRANS will perform environmental document quality control and NEPA assignment review procedures for environmental documentation. CALTRANS quality control and quality assurance procedures for all environmental documents are described in the NEPA Assignments memorandums, available at [https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos#LinkTarget\\_705](https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/policy-memos#LinkTarget_705). This also includes the independent judgement analysis and determination under CEQA that the environmental documentation meets CEQA requirements.

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

27. SFPUC, including any employee, agent, consultant or sub-consultant retained by the SFPUC, shall implement uniform document control policies necessary to retain all records and electronically stored information associated with the WORK, including but not limited to those records identified in California Public Resources Code, Section 21167.6, and including email and attachments, in a manner consistent with the CALTRANS Uniform Filing System and the “Final Caltrans Environmental Records Retention Policy”, available at <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/nepa-recordretention-policy-final-all.pdf>. These records, along with an index of the records, shall be provided to CALTRANS within 60 days of CALTRANS’ written request.
28. The cost of CALTRANS’ quality management work is to be borne by SFPUC.

**Environmental Permits, Approvals and Agreements**

29. SFPUC 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 SFPUC's responsibilities in this AGREEMENT.
30. 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.
31. It is expected that the PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS
Air Quality Permits

**Project Initiation Document (PID)**

32. As the PID IMPLEMENTING AGENCY, SFPUC is responsible for all PID WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
33. Should SFPUC request CALTRANS to perform any portion of PID preparation work, except as otherwise set forth in this AGREEMENT, SFPUC agrees to reimburse CALTRANS for such work and PARTIES will amend this AGREEMENT.

34. CALTRANS will be responsible for completing the following PSR-PR activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.xx.10 Quality Management	Yes
150.05.xx Review of Existing Reports, Data, Studies, and Mapping	Yes
150.25.20 PSR-PR Circulation, Review, and Approval	Yes
175.20 Project Preferred Alternative	Yes
180.10.05.05 QA/QC Review	Yes
180.10.05.30 CEQA Certification	Yes
180.15.20 Environmental Commitments Record	Yes

35. CALTRANS will provide relevant existing proprietary information and maps related to:

- Geologic and Geotechnical information
- Utility information
- Environmental constraints
- Traffic modeling/forecasts
- Topographic and Boundary surveys
- As-built centerline and existing right-of-way

Due to the potential for data loss or errors, CALTRANS will not convert the format of existing proprietary information or maps.

36. When required, CALTRANS will perform pre-consultation with appropriate resource agencies in order to reach consensus on need and purpose, avoidance alternatives, and feasible alternatives.

37. CALTRANS will actively participate in the Project Delivery Team meetings.

38. The PSR-PR will be signed on behalf of SFPUC by a Civil Engineer registered in the State of California.

39. CALTRANS will review and approve the PSR-PR as required by California Government Code, Section 65086.5.

CALTRANS will complete a review of the draft PSR-PR and provide its comments to SFPUC within 60 calendar days from the date CALTRANS received the draft PSR-PR from SFPUC. SFPUC will address the comments provided by CALTRANS. If any interim reviews are requested of CALTRANS by SFPUC, CALTRANS will complete those reviews within 30 calendar days from the date CALTRANS received the draft PSR-PR from SFPUC.

After SFPUC revises the PSR-PR to address all of CALTRANS' comments and submits the revised draft PSR-PR and all related attachments and appendices, CALTRANS will complete its review and final determination of the revised draft PSR-PR within 30 calendar days from the date CALTRANS received the revised draft PSR-PR from SFPUC. Should CALTRANS require supporting data necessary to defend facts or claims cited in the revised draft PSR-PR, SFPUC will provide all available supporting data in a reasonable time so that CALTRANS may conclude its review. The 30- day CALTRANS review period will be stalled during that time and will continue to run after SFPUC provides the required data.

No liability will be assigned to CALTRANS, its officers and employees by SFPUC under the terms of this AGREEMENT or by third parties by reason of CALTRANS' review and approval of the PSR-PR.

40. Any PARTY preparing environmental documentation, including studies and reports, will ensure that qualified personnel remain available to help resolve environmental issues and perform any necessary work to ensure that the PROJECT remains in environmental compliance.
41. SFPUC will provide written notice of the initiation of environmental studies to the CEQA and NEPA Lead Agencies prior to completing any other PID phase work.

California Environmental Quality Act (CEQA)

42. Environmental documentation will be prepared in compliance with the California Public Resources Code §§ 21080.3.1(d)(e). CALTRANS will provide, and SFPUC will use, a letter template and a list of California Native American tribes requesting notification. SFPUC will prepare consultation documentation for CALTRANS' signature and transmittal in compliance with the statutorily required time frames.
43. The CEQA Lead Agency will determine the type of CEQA documentation and will cause that documentation to be prepared in accordance with CEQA requirements.



44. Any PARTY involved in the preparation of CEQA documentation will prepare the documentation to meet CEQA requirements and follow the CEQA Lead Agency's standards that apply to the CEQA process.
45. Any PARTY preparing any portion of the CEQA-documentation, including any studies and reports, will submit that portion of the documentation to the CEQA Lead Agency for review, comment, and approval at appropriate stages of development prior to public availability.
46. SFPUC will submit CEQA-related public notices to CALTRANS for review, comment, and approval prior to publication and circulation.
47. SFPUC will submit all CEQA-related public meeting materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to the public meeting date.

If the CEQA Lead Agency makes any changes to the materials, then the CEQA Lead Agency will allow SFPUC to review, comment, and concur on those changes at least three (3) working days prior to the public meeting date.

48. The CEQA Lead Agency will attend all CEQA-related public meetings.
49. If a PARTY who is not the CEQA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the CEQA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the CEQA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the CEQA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the CEQA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The CEQA Lead Agency maintains final editorial control with respect to text or graphics that could lead to public confusion over CEQA-related roles and responsibilities.

National Environmental Policy Act (NEPA) (if applicable)

50. Pursuant to Chapter 3 of Title 23, United States Code (23 U.S.C. 326) and 23 U.S.C. 327, CALTRANS is the NEPA Lead Agency for the PROJECT. CALTRANS is responsible for NEPA compliance, will determine the type of NEPA documentation, and will cause that documentation to be prepared in accordance with NEPA requirements.

CALTRANS, as the NEPA Lead Agency for PROJECT, will review, comment, and approve all environmental documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) at appropriate stages of development prior to approval and public availability.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination and obtain, renew, or amend approvals pursuant to the Federal Endangered Species Act, and Essential Fish Habitat.

When required as NEPA Lead Agency, CALTRANS will conduct consultation and coordination approvals pursuant to Section 106 of the National Historic Preservation Act.

51. Any PARTY involved in the preparation of NEPA documentation will follow FHWA and CALTRANS standards that apply to the NEPA process including, but not limited to, the guidance provided in the FHWA Environmental Guidebook (available at <http://environment.fhwa.dot.gov/index.asp>) and the CALTRANS Standard Environmental Reference.
52. Any PARTY preparing any portion of the NEPA documentation (including, but not limited to, studies, reports, public notices, and public meeting materials, determinations, administrative drafts, and final environmental documents) will submit that portion of the documentation to CALTRANS for CALTRANS' review, comment, and approval prior to public availability.
53. SFPUC will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. SFPUC will submit all notices to CALTRANS for CALTRANS' review, comment, and approval prior to publication and circulation.
- CALTRANS will work with the appropriate federal agency to publish notices in the Federal Register.
54. The NEPA Lead Agency will attend all NEPA-related public meetings.

55. SFPUC will submit all NEPA-related public meeting materials to CALTRANS for CALTRANS' review, comment, and approval at least ten (10) working days prior to the public meeting date.
56. If a PARTY who is not the NEPA Lead Agency holds a public meeting about the PROJECT, that PARTY must clearly state its role in the PROJECT and the identity of the NEPA Lead Agency on all meeting publications. All meeting publications must also inform the attendees that public comments collected at the meetings are not part of the NEPA public review process.

That PARTY will submit all meeting advertisements, agendas, exhibits, handouts, and materials to the NEPA Lead Agency for review, comment, and approval at least ten (10) working days prior to publication or use. If that PARTY makes any changes to the materials, it will allow the NEPA Lead Agency to review, comment on, and approve those changes at least three (3) working days prior to the public meeting date.

The NEPA Lead Agency has final approval authority with respect to text or graphics that could lead to public confusion over NEPA-related roles and responsibilities.

### **Schedule**

57. 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.
58. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with a final report of the WORK completed.

## **Additional Provisions**

### *Standards*

59. 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 User's Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual (PDPM)
- Workplan Standards Guide
- Standard Environmental Reference
- Highway Design Manual

### *Noncompliant Work*

60. CALTRANS retains the right to reject noncompliant WORK. SFPUC 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*

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

### *Consultant Selection*

62. SFPUC will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

### Encroachment Permits

63. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. SFPUC, 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 SFPUC, their contractors, consultants, and agents at no cost effective on the execution date of this AGREEMENT. CALTRANS will provide encroachment permits to utility owners at no cost effective on the execution date of this AGREEMENT. Any fees collected prior to the execution date of this AGREEMENT will not be refunded. If the encroachment permits and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
64. 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

65. 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

66. 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.
67. 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

68. 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 the PROJECT or not.
69. 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.

70. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
71. PARTIES agree to consider alternatives to PROJECT scope and/or alignment, to the extent practicable, in an effort to avoid any known hazardous materials within the proposed PROJECT limits.
72. 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.

73. SFPUC, 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. SFPUC will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

SFPUC, independent of the PROJECT, 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.

74. If hazardous materials are discovered within PROJECT limits, but outside of State Highway System right-of-way, it is the responsibility of SFPUC in concert with the SFPUC having land use jurisdiction over the property, and the property owner, to remedy before CALTRANS will acquire or accept title to such property.
75. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.

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

76. 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

77. 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.
78. 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.
79. 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

80. 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.

81. 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.

82. 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 SFPUC 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.

83. 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.

84. 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

85. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
86. 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

87. The cost of awards, judgements, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
88. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
89. 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

90. SFPUC 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. SFPUC will prepare the Project History File in accordance with the Project Development Procedures Manual, Chapter 7.

**GENERAL CONDITIONS**

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

**Venue**

92. 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**

93. 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**

94. Neither CALTRANS 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 SFPUC, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon SFPUC under this AGREEMENT. It is understood and agreed that SFPUC, 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 SFPUC, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
95. Neither SFPUC 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 SFPUC 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**

96. 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.
97. 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**

98. SFPUC will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. SFPUC 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.

99. 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**

100. 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**

101. 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 SFPUC 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.

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

## **Prevailing Wage**

103. 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.

## **Contact Information**

### **CALTRANS**

Marianne Peralta, Project Manager  
111 Grand Avenue  
Oakland, CA 94612  
Office Phone: (510) 496-9276  
Mobile Phone: (510) 496-9276 (optional)  
marianne.peralta@dot.ca.gov

### **[SFPUC FORMAL NAME]**

Suzanne Huang, Project Manager  
525 Golden Gate Ave  
San Francisco, CA 94705  
Office Phone: (415) 551-4612  
Mobile Phone: (xxx) xxx-xxxx (optional)  
shuang@sfwater.org

**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

SAN FRANCISCO PUBLIC UTILITIES  
COMMISSION

By: \_\_\_\_\_  
Helena (Lenka) Culik-Caro  
Deputy District Director, Project Delivery

By: \_\_\_\_\_  
Dennis Herrera  
General Manager

VERIFIED OF FUNDS & AUTHORITY:

By: \_\_\_\_\_  
Jeffrey Kuehnel  
District Budget Manager

Attest: \_\_\_\_\_  
Dennis Herrera  
General Manager

APPROVED AS TO FORM & PROCEDURE:

APPROVED AS TO FORM & PROCEDURE:

By: \_\_\_\_\_  
Attorney  
Department of Transportation

By: \_\_\_\_\_  
Sheryl Bregmann  
City Attorney

CERTIFIED AS TO FINANCIAL TERMS &  
POLICIES:

By: \_\_\_\_\_  
Nadine Karavan  
HQ Accounting Supervisor

**FUNDING SUMMARY NO. 01**

<b>FUNDING TABLE</b>			
Source	Party	Fund Type	PID
			Totals
Local	SFPUC	Local Funds	\$440,640.00
Totals			

<b>SPENDING TABLE</b>			
Fund Type	PID		Totals
	CALTRANS	SFPUC	
Local Funds	\$440,640.00	\$0	\$440,640.00
<b>Totals</b>			

**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.

3. Notwithstanding the terms of this AGREEMENT, PARTIES agree to abide by the funding guidelines for all contributed funds that are programmed and allocated by the CTC.

**ICRP Rate**

4. Per the State Budget Act of 2012, Chapter 603, amending item 2660-001-0042 of Section 2.00, the cost of any engineering support performed by CALTRANS towards any local government agency-sponsored PSR-PR project will only include direct costs. Indirect or overhead costs will not be applied during the development of the PSR-PR document.

**Invoicing and Payment**

5. 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, SFPUC will pay invoices within five (5) calendar days of receipt of invoice.
6. If SFPUC has received EFT certification from CALTRANS, then SFPUC will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.

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.

*Project Initiation Document (PID)*

8. CALTRANS will invoice SFPUC for an initial deposit of \$73,440 after execution of this AGREEMENT. This deposit represents the estimated cost of an average two (2) months of CALTRANS' WORK. After the first month of WORK, CALTRANS will invoice on a monthly basis, and SFPUC will pay.

CALTRANS will not begin WORK until CALTRANS receives the initial deposit.