

COOPERATIVE AGREEMENT

This AGREEMENT, executed on and effective from _____ (the “Effective Date”), is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

City of Napa, a charter 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, *improvements to the intersection of Silverado Trail (SR 121)/East Avenue/Third Street/Coombsville Road to reduce congestion and improve safety and operations for motorists, bicyclists and pedestrians* described as Alternative 5F in the Project Initiation Report to Request Programming in the 2020 SHOPP approved by CALTRANS on June 28, 2019 (“PID”) and consisting of a double roundabout, 4-leg northerly, 3-leg southerly will be referred to hereinafter as the “PROJECT.” The PID is incorporated herein by reference.
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENTS will be referred to hereinafter as WORK:
 - PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT (PA&ED)
 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)

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 attached hereto and incorporated herein by reference.

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:
 - CITY completed the CITY's PID, which CALTRANS approved on June 28, 2019.
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.

NOW, THEREFORE, the PARTIES, for the mutual consideration described herein, agree as follows:

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. CALTRANS and CITY will co-SPONSOR the WORK included in this AGREEMENT in the following percentages:

PROJECT COMPONENT	CALTRANS	CITY
PROJECT APPROVAL & ENVIRONMENTAL DOCUMENT	13%	87%
PLANS, SPECIFICATIONS, AND ESTIMATE	20%	80%

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.

- CITY is the Project Approval and Environmental Document (PA&ED) IMPLEMENTING AGENCY.

PA&ED includes the completion of the Final Environmental Document and the Project Report (documenting the project alternative selection).

- CITY 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.

11. CITY will provide a Quality Management Plan (QMP) for every PROJECT COMPONENT of the WORK for which City is the IMPLEMENTING AGENCY . 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 in writing and 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.

Each PARTY shall complete the WORK assigned to it hereunder at its sole cost and expense. No PARTY will be reimbursed for any costs incurred by it to perform the WORK assigned to it under this AGREEMENT.

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' 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 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 SHS, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
21. 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/-/media/dot-media/programs/environmental-analysis/documents/ser/nepa-recordretention-policy-final-ally.pdf>. This also includes the independent judgement analysis and determination under CEQA that the environmental documentation meets CEQA requirements.
22. CITY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' QMA work.
23. CITY, including any employee, agent, consultant or sub-consultant retained by the CITY, 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-a11y.pdf>. These records, along with an index of the records, shall be provided to CALTRANS within 60 days of CALTRANS' written request.

CEQA/NEPA Lead Agency

- 24. CITY is the CEQA Lead Agency (as defined in CEQA Guidelines Section 15367) for the PROJECT.
- 25. CALTRANS is a CEQA Responsible Agency (as defined in CEQA Guidelines Section 15381) for the PROJECT.
- 26. CALTRANS is the NEPA Lead Agency (as defined in 40 CFR § 1501.7) for the PROJECT.

Environmental Permits, Approvals and Agreements

- 27. 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.
- 28. 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.
- 29. It is expected that the PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS
National Pollutant Discharge Elimination System (NPDES), State Water Resources Control Board

Project Approval and Environmental Document (PA&ED)

- 30. As the PA&ED IMPLEMENTING AGENCY, CITY shall complete at its sole cost and expense all PA&ED WORK except those activities and responsibilities that are assigned to CALTRANS hereunder and those activities that are excluded under this AGREEMENT.

31. CALTRANS shall complete, at its sole cost and expense, the following PA&ED activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	
100.10.10.xx Quality Management	
165.15.15.xx Essential Fish Habitat Consultation	
165.15.15.xx Section 7 Consultation	
165.25.25 Approval to Circulate Resolution	
180.10.05.45 Section 7 Consultation	

32. 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.
33. CITY will provide written notice of the initiation of environmental studies to CALTRANS prior to completing any other PA&ED phase work.

California Environmental Quality Act (CEQA)

34. The CITY as the CEQA Lead Agency will determine the type of CEQA documentation and will cause that documentation to be prepared in accordance with CEQA requirements.
35. 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.
36. CALTRANS is a CEQA Responsible Agency for the PROJECT and is responsible for review, comment, and concurrence on 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.

37. 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.
38. If the CITY as the CEQA Lead Agency makes any changes to the CEQA documentation, the CITY will allow CALTRANS to review, comment, and concur on those changes prior to the CITY's approval at appropriate stages of development prior to public availability.
39. If the CITY makes any changes to CEQA-related public notices, then the CITY will allow CALTRANS to review, comment, and concur on those changes prior to publication and circulation.
40. The CITY will attend all CEQA-related public meetings.
41. 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)

42. Pursuant to Chapter 3 of Title 23, United States Code, Sections 326 and 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, is responsible for the review, comment, and approval of 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.

43. In the preparation of NEPA documentation, CALTRANS 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.
44. 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.
45. CITY will prepare, publicize, and circulate all NEPA-related public notices, except Federal Register notices. CITY 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.

46. CALTRANS as the NEPA Lead Agency will attend all NEPA-related public meetings.

- 47. CITY 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.
- 48. 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.

- 49. CITY will ensure that the PROJECT is included in the approved Federal Statewide Transportation Improvement Program (FSTIP) prior to the NEPA Lead Agency’s approval of the environmental document.

Plans, Specifications, and Estimate (PS&E)

- 50. As the PS&E IMPLEMENTING AGENCY, CITY is responsible for all PS&E WORK except those activities and responsibilities that are assigned to CALTRANS hereunder and those activities that are excluded under this AGREEMENT.
- 51. CALTRANS shall complete the following PS&E activities at its sole cost and expense:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	
100.15.10.xx Quality Management	
255.20 Final PS&E Package	
260 Contract Bid Documents Ready to List	
265 Awarded and Approved Construction Contract	

52. This AGREEMENT does not include the RIGHT-OF-WAY PROJECT COMPONENT. Completion of PS&E may depend upon completion of some RIGHT-OF-WAY activities. PARTIES acknowledge that the WORK may not result in a product that can be used to advertise and award a contract for the CONSTRUCTION PROJECT COMPONENT without completing some activities under a separate agreement or by later amending this AGREEMENT.
53. CITY 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.

CITY will provide CALTRANS a copy of Utility Conflict Maps for CALTRANS' concurrence prior to issuing the Notices to Owner and executing the utility agreement. All utility conflicts will be addressed in the PROJECT plans, specifications, and estimate.

54. CITY will determine the cost to positively identify and locate, accommodate, protect, relocate, or remove any utility facilities whether inside or outside the SHS 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.
55. PARTIES acknowledge that the activities Final District PS&E Package (255.20) and Contract Bid Documents "Ready to List" (260) will be performed by CALTRANS. Because CALTRANS is anticipated to perform the advertisement, award, and administration (AAA) of the construction contract, the PS&E package must be reviewed and approved by CALTRANS District and HQ Office Engineers prior to advertisement.

CITY will ensure that any consultant involved in the preparation of the PS&E package will remain available to address all comments generated during the performance of the Final District PS&E Package and Contract Bid Documents "Ready to List" activities.

Schedule

56. 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.
57. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with written monthly progress reports during the completion of the WORK.

Additional Provisions*Standards*

58. 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
- Stewardship Agreement

Noncompliant Work

59. CALTRANS retains the right to reject WORK that does not comply with the terms of this Agreement. CITY agrees to suspend WORK upon written 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

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

Consultant Selection

61. CITY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK; provided however, the CITY shall have the right, in its sole and absolute discretion, to ultimately select the consultant(s) to perform the WORK.

Encroachment Permits

62. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within 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 CITY, its contractors, consultants and agents and utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
63. CITY will issue any encroachment permits that are necessary for WORK within its jurisdiction and outside the SHS right-of-way. CITY will provide encroachment permits to CALTRANS, its contractors, consultants and agents, at no cost.
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 7921.505(c)(5) 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 the other PARTY within five (5) working days of receipt and make the other PARTY 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 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.

69. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
70. 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.

71. CITY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing SHS 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 SHS right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

72. The CONSTRUCTION IMPLEMENTING AGENCY CALTRANS 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 CITY is the IMPLEMENTING AGENCY except for final placement and burial of soil within the State SHS 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.

73. 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

74. 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.
75. 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.
76. 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

77. 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.

78. 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 expiration or termination of this AGREEMENT.

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

79. 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.

80. 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.
81. 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

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

83. 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

84. The cost of awards, judgements, fines, interest, penalties, attorney's fees, and/or settlements generated by the WORK are considered WORK costs.
85. The cost of legal challenges to the environmental process or documentation are considered WORK costs.
86. 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

87. CITY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on SHS within sixty (60) days following the completion of each PROJECT COMPONENT. CITY will assure that the Project History File is prepared and submitted in compliance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and in PDF format.

GENERAL CONDITIONS

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

Venue

89. 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

90. 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

91. 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.
92. 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

93. 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.
94. 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

95. 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.

96. 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

97. 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

98. 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 City Manager 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.

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

Prevailing Wage

100. 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.

Termination

101. This AGREEMENT may be terminated for any reason upon mutual written agreement of the PARTIES.

Contact Information

CALTRANS

Amani Meligy, Project Manager

111 Grand Avenue

Oakland, CA 94612

Office Phone: (510) 715-8393

Email: amani.meligy@dot.ca.gov

CITY OF NAPA

Jessica Lowe, Deputy Public Works Director

P.O. Box 660

Napa, CA 94559

Office Phone: (707) 257-9634

Email: jlowe@cityofnapa.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**

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

Verification of funds and authority:

Jeffrey Kuehnel
District Budget Manager

CITY OF NAPA

Julie B. Lucido
Public Works Director

Countersigned:

Joy Riesenberg
City Auditor

Approved as to form and procedure:

Michael Barrett
City Attorney

FUNDING SUMMARY NO. 01

<u>FUNDING TABLE</u> v. 11					
<u>IMPLEMENTING AGENCY</u> →			<u>CITY</u>	<u>CITY</u>	Totals
Source	Party	Fund Type	PA&ED	PS&E	
STATE	CALTRANS	SHOPP	420,000	510,000	930,000
LOCAL	CITY	Local	2,850,000	2,000,000	4,850,000
Totals			3,270, ,000	2,510,000	5,780,000

v 22					
<u>SPENDING SUMMARY</u>					
Fund Type	PA&ED		PS&E		Totals
	CALTRANS	CITY	CALTRANS	CITY	
SHOPP	420,000	0	510,000	0	930,000
Local	0	2,850,000	0	2,000,000	4,850,000
Totals	420,000	2,850,000	510,000	2,000,000	5,780,000

Funding

1. 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.

2. 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.
3. SHOPP funds can only be expended on SHOPP-eligible items and work.