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ODIA

Agreement 05-0383

Project No. 0520000169

EA 0N72U

05-SB-101-4.4/7.7

COOPERATIVE AGREEMENT COVER SHEET

Work Description

TO CONSTRUCT HOV LANES AND REHABILITATE ROADWAY ON ROUTE 101, FROM 0.9 MILES SOUTH OF SOUTH PADARO LANE UNDERCROSSING TO 0.6 MILES NORTH OF PADARO LANE OVERCROSSING IN SANTA BARBARA COUNTY.

Contact Information

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COOPERATIVE AGREEMENT

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

Santa Barbara County Association of Governments, a California joint powers authority, referred to hereinafter as SBCAG.

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, *to construct HOV lanes and rehabilitate roadway on Route 101, From 0.9 miles south of South Padaro Lane undercrossing to 0.6 miles north of Padaro Lane overcrossing in Santa Barbara County* will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g. Project Study Report, Permit Engineering Evaluation Report, or Project Report).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENT will be referred to hereinafter as WORK:

- CONSTRUCTION

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

4. SBCAG and CALTRANS are working as an Integrated Team to deliver this PROJECT. Attachment A, CHANGE MANAGEMENT AND CLAIMS PROCEDURES (CMCP), includes specific procedures between signatories to control changes and claims. These specific procedures will not conflict with CALTRANS Standards or Manuals requirements.
5. State Highway Operation and Protection Program (SHOPP)-eligible work is defined as that work associated with the Rehabilitation elements of the PROJECT. By law, these cannot be capacity increasing elements or components. These elements have been defined in the PROJECT and segregated in the estimate.

6. 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.

7. The following documents are attached to, and made an express part of this AGREEMENT:
 - Attachment A Change Management and Claims Procedures

8. The following work associated with this PROJECT has been completed or is in progress:
- CALTRANS completed the Project Initiation Document on February 26, 2007.
 - CALTRANS completed the Project Report on August 26, 2014.
 - CALTRANS completed the Project Reapproval on June 14, 2018.
 - CALTRANS approved the Final Environmental Impact Report on August 26, 2014.
 - CALTRANS completed the Final Revised Environment Impact Report on October 27, 2017.
 - CALTRANS approved the Finding of No Significant Impact on August 26, 2014.
 - CALTRANS is developing the R/W Certification on January 15, 2021 (Cooperative Agreement No. 05-0340).
 - CALTRANS is developing the Plans, Specifications, and Estimate on February 15, 2021 (Cooperative Agreement No. 05-0340).
 - CALTRANS selected and entered into a preconstruction services contract with CONSTRUCTION MANAGER on January 11, 2019.
9. CONSTRUCTION MANAGER/GENERAL CONTRACTOR is the project delivery method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The contract for construction services may be entered into at the same time as the contract for preconstruction services, or at a later time. The execution of the design and the construction of the project may be in sequential phases or concurrent phases.
10. The CONSTRUCTION MANAGER/GENERAL CONTRACTOR method provides for reduced overall project costs and/or expedited project completion in a manner that is not achievable through the design-bid-build method. For this reason, PARTIES have agreed to utilize the CONSTRUCTION MANAGER/GENERAL CONTRACTOR method to deliver PROJECT.
11. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
12. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

RESPONSIBILITIES

Sponsorship

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

14. CALTRANS and SBCAG will co-SPONSOR the non-SHOPP WORK included in this AGREEMENT.
15. CALTRANS will SPONSOR the SHOPP-eligible WORK included in the AGREEMENT.

Implementing Agency

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

- CALTRANS is the CONSTRUCTION IMPLEMENTING AGENCY.

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

17. 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

18. 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.

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

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

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

21. 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.

22. 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.

23. Should SBCAG establish that the revenues of SBCAG are insufficient or appear to be insufficient to support SBCAG's financial commitments towards non-SHOPP-eligible WORK, SBCAG shall reduce or reserve all or a portion of the expenditure appropriation for non-SHOPP eligible WORK until such time as SBCAG determines that the anticipated revenues for the remainder of that fiscal year supports the level of expenditure and anticipated for the remainder of the fiscal year, for non-SHOPP eligible WORK.

CALTRANS' Quality Management

24. 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.
25. CALTRANS' Quality Management Assessment (QMA) efforts are to ensure that SBCAG'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.

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

CEQA/NEPA Lead Agency

28. CALTRANS is the CEQA Lead Agency for the PROJECT.
29. CALTRANS is the NEPA Lead Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

30. PARTIES will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTIES responsibilities in this AGREEMENT.
31. 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.

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

ENVIRONMENTAL PERMITS/REQUIREMENTS
404, US Army Corps Of Engineers
401, Regional Water Quality Control Board
National Pollutant Discharge Elimination System (NPDES), State Water Resources Control Board
State Waste Discharge Requirements (Porter Cologne), Regional Water Quality Control Board
U.S. Fish and Wildlife Service (Section 7 BO)
Coastal Development Permit, California Coastal Commission
Local Agency Concurrence/Permit
1602 California Department of Fish and Wildlife

CONSTRUCTION

33. As the CONSTRUCTION IMPLEMENTING AGENCY, CALTRANS is responsible for all CONSTRUCTION WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT. CALTRANS and SBCAG are utilizing the integrated team concept as per Article 4 of this AGREEMENT. SBCAG will be provided an opportunity to participate in the concurrence of CCO’s and claims in accordance with the ATTACHMENT A. For this participation, SBCAG’s own staff costs or its use of consultants as necessary are to be funded from sources outside of this AGREEMENT.

34. SBCAG will be responsible for completing the following CONSTRUCTION CAPITAL activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
Demand Mgt-TDM/Carpools \$100,000	Yes
Demand Mgt-Transit \$400,000	Yes
Freeway Service Patrol \$120,000	Yes
Public Information \$350,000	Yes

35. Physical and legal possession of the right-of-way and the Right-of-Way Certification (level 1,2, or 3W) must be completed prior to award of each construction contract, unless PARTIES mutually agree to other arrangements in writing.
36. Right-of-way conveyances must be completed prior to obligation completion, unless PARTIES mutually agree to other arrangements in writing.
37. CALTRANS will negotiate the price, advertise if needed, open bids if needed, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code. By accepting responsibility to advertise and award the construction contract, CALTRANS also accepts responsibility to administer the construction contract.
38. If the negotiated price, or the lowest responsible construction contract bid if advertised, is greater than the funding commitment to CONSTRUCTION CAPITAL, PARTIES must agree in writing on a course of action within fifteen (15) working days. If no agreement is reached within fifteen (15) work days the IMPLEMENTING AGENCY will not award the construction contract.
39. CALTRANS may approve changes to the CONSTRUCTION contract through Contract Change Orders (CCO). All CCO's will be required to estimate SHOPP and non-SHOPP related costs and assign associated funding responsibilities. Attachment A further describes the process for review and concurrence on CCO's.

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

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

Schedule

41. 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.
42. The IMPLEMENTING AGENCY for each PROJECT COMPONENT will furnish PARTIES with written quarterly progress reports during the completion of the WORK.

Additional Provisions

Standards

43. 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
 - Construction Manual

Noncompliant Work

44. CALTRANS retains the right to reject noncompliant WORK. SBCAG 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

45. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.
46. 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

47. 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

48. 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.

49. 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

50. 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.

51. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
52. 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.

53. 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. SBCAG, 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.

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

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

55. 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

56. Any PARTY that is responsible for completing WORK may accept, reject, compromise, settle, or litigate claims arising from the WORK in accordance with the CMCP process outlined in Attachment A.
57. 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.

58. 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

59. 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.
60. 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.

61. 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 SBCAG 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.

62. 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.
63. 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

64. 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

65. The cost of awards, judgements, or settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
66. The cost of legal challenges to the environmental process or documentation may be paid from the funds obligated in this AGREEMENT.
67. 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.

Environmental Compliance

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

ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017 (SB 1)

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

70. Notwithstanding anything to the contrary in this AGREEMENT, PARTIES are not permitted to make changes to the scope, cost, schedule or benefits of the PROJECT, unless approved by CTC.
71. PARTIES will meet the requirements of The Road Repair and Accountability Act of 2017 (SB 1), Chapter 5, Statutes of 2017, California Transportation Commission (CTC) Resolution G-18-09: SB1 Accountability and Transparency Guidelines, and the CTC's State Highway Operation and Protection Program (SHOPP) guidelines.

PARTIES agree that contributed funds originating from the SHOPP have been segregated for SHOPP-eligible item(s) identified in the PROJECT. The contributed funds originating from the SHOPP shall only be expended on SHOPP-eligible item(s).

72. PARTIES will meet the requirements of The Road Repair and Accountability Act of 2017 (SB 1), Chapter 5, Statutes of 2017, California Transportation Commission (CTC) Resolution G-18-09: SB1 Accountability and Transparency Guidelines and the CTC's Solutions for Congestion Corridors Program (SCCP) Guidelines Resolution G-17-36.

PARTIES agree that contributed funds originating from the SCCP can be expended on any item identified in the PROJECT. Should the PROJECT encounter a cost over-run, SCCP will not fund the cost increase. Any costs increase for non-SHOPP eligible item(s) should be funded from other non-SHOPP fund sources.

GENERAL CONDITIONS

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

Venue

74. 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

75. 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

76. 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 SBCAG, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon SBCAG under this AGREEMENT. It is understood and agreed that SBCAG, 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 SBCAG, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
77. Neither SBCAG 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 SBCAG 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

78. 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.
79. 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

80. 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.

81. 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

82. 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

83. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Change Management and Claims Procedure (Attachment A). If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of SBCAG 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.

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

Prevailing Wage

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

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

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

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

SIGNATURES

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

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

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

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SANTA BARBARA COUNTY
ASSOCIATION OF GOVERNMENTS**

Timothy M. Gubbins
District Director

Greg Hart
Chair

Verification of funds and authority:

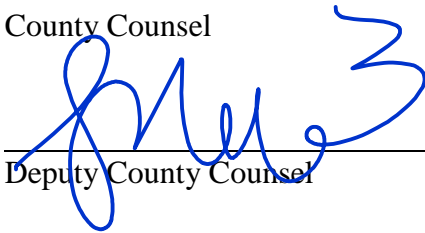
Attest:

Julia Bolger
Resource Manager

Marjie Kirn
Executive Director

Approved as to form:

Michael C. Ghizzoni
County Counsel



Deputy County Counsel

FUNDING SUMMARY NO. 01

<u>FUNDING TABLE</u> v. 2					
<u>IMPLEMENTING AGENCY</u> →			<u>CALTRANS</u>		Totals
Source	Party	Fund Type	CONST. SUPPORT	CONST. CAPITAL	
STATE	CALTRANS	SHOPP	14,360,000	69,750,000*	84,110,000
STATE	SBCAG	STIP/RIP	5,250,000*	0	5,250,000
STATE	CALTRANS	SCCP	12,250,000	49,560,000	61,810,000
LOCAL	SBCAG	Local	0	29,100,000*	29,100,000
Totals			31,860,000	148,410,000	180,270,000

The Funding Table shows the portion of funding that a PARTY will provide for the PROJECT COMPONENTS. Construction Support and Capital will not be spent in proportion to the amount contributed. SHOPP Funds can only be spent on SHOPP eligible items and will be spent in proportion with SHOPP eligible work.

*Includes funds to be used for Landscape Planting and Mitigation Monitoring Projects as detailed in Spending Table below.

EXPENDITURE TABLE v. 4				
<u>IMPLEMENTING AGENCY</u> →			<u>CALTRANS</u>	
Source	Party	Fund Type	CONST. CAPITAL	
			Eligible	Ineligible
STATE	CALTRANS	SHOPP	X	X
STATE	SBCAG	STIP/RIP	--	--
STATE	CALTRANS	SCCP	X	X
LOCAL	SBCAG	Local	X	X

Note: An "X" denotes the funding type is available for payment.

Expenditure table indicates which fund types are eligible for use in payment of Federally ineligible items contained in the project, i.e. Resident Engineers Office. This Table is required by the "Office of Federal Resources."

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<u>SPENDING SUMMARY</u>					
Fund Type	CONST. SUPPORT		CONST. CAPITAL		Totals
	<u>CALTRANS</u>	SBCAG	<u>CALTRANS</u>	SBCAG	
SHOPP	14,360,000	0	69,750,000 ¹	0	84,110,000
STIP/RIP	5,250,000 ²	0	0	0	5,250,000
SCCP	12,250,000	0	49,560,000	0	61,810,000
Local	0	0	28,130,000 ³	970,000	29,100,000
Totals	31,860,000	0	147,440,000	970,000	180,270,000

1-SHOPP Con Cap includes \$3,290,000 in funds to be used for Landscape Planting and Mitigation Monitoring Projects.
(EA's 05-1C8B1, and 05-1C8B2)

2- STIP/RIP Con Sup includes \$1,040,000 in funds to be used for Con Sup for Landscape Planting and Mitigation Monitoring Projects.
(EA's 05-0N7B1 , and 05-0N7B2)

3-Local funds include \$2,250,000 in funds to use for Con Cap for Landscape Planting Project. (EA-0N7B1)

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. The table in the Spending Summary shows the PARTY that will spend the funding. CALTRANS will invoice SBCAG for Measure A funds in accordance with the invoicing and payment sections 7 and 8 below.

ICRP Rate

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

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

5. In accordance with the CALTRANS Federal-Aid Project Funding Guidelines, PARTIES must obtain approval from the Federal Highway Administration prior to any PROJECT funding changes that that will change the federal share of funds.

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, SBCAG will pay invoices within five (5) calendar days of receipt of invoice.
7. If SBCAG has received EFT certification from CALTRANS, then SBCAG will use the EFT mechanism and follow all EFT procedures to pay all invoices issued from CALTRANS.
8. CALTRANS will draw from state and federal funds that are provided by SBCAG without invoicing SBCAG when CALTRANS administers those funds and CALTRANS has been allocated those funds by the CTC and whenever else possible.
9. When a PARTY is reimbursed for actual cost, invoices will be submitted each month for the prior month's expenditures. After all PROJECT COMPONENT WORK is complete, PARTIES will submit a final accounting of all PROJECT COMPONENT costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

CONSTRUCTION Support

10. No invoicing or reimbursement will occur for the CONSTRUCTION SUPPORT PROJECT COMPONENT.

CONSTRUCTION Capital

11. CALTRANS will invoice SBCAG for a \$625,000 initial deposit after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of CONSTRUCTION CAPITAL expenditures. This deposit represents one (1) months' estimated costs.

Thereafter, CALTRANS will invoice and SBCAG 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, Project History File, and all other required contract documents?

YES / NO

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

CLOSURE STATEMENT

PARTIES agree that they have completed all scope, cost, and schedule commitments included in Agreement 05-0383 and any amendments to the agreement. The final signature date on this document terminates agreement 05-0383 except survival articles. All survival articles in agreement 05-0383 will remain in effect until expired by law, terminated or modified in writing by the PARTIES' mutual agreement, whichever occurs earlier.

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

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

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

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

**SANTA BARBARA COUNTY
ASSOCIATION OF GOVERNMENTS**

District Director

Chair

Date: _____

Date: _____

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

Resource Manager

Date: _____

ATTACHMENT A-CHANGE MANAGEMENT AND CLAIMS PROCEDURES

HIGHWAY 101: CARPINTERA TO SANTA BARBARA SEGMENT 4B: PADARO

Change Management and Claims Procedure (CMCP)

Purpose

The purpose of the CMCP is to

1. Provide a process for CALTRANS to include SBCAG into its normal process for administering, approving and reporting on a CONSTRUCTION Change Order (CO) or Potential Claim Record (PCR) above and beyond processes define in the CALTRANS Construction Manual.
2. Provide a process for CALTRANS and SBCAG to address resolve disputes that arise on the PROJECT and are not able to be resolved by regular PROJECT processes between CALTRANS and SBCAG representatives.

Objective

The objective of the CMCP is to outline additional administrative steps for CALTRANS and SBCAG PROJECT team members to follow to provide transparency regarding cost, scope and schedule control as PROJECT CO-SPONSORS. The CMCP is not intended to replace standard procedures utilized by CALTRANS for administering a CONSTRUCTION PROJECT. The CMCP has been set up to include input by SBCAG when administering PROJECT COs and PCRs. In the case of disputes between CALTRANS and SBCAG, the CMCP strives to resolve these disputes quickly and at the lowest responsible level. A dispute is any disagreement related to cost, cost sharing, scope and schedule of non-SHOPP work that cannot be resolved by the CONSTRUCTION team representatives of CALTRANS and SBCAG, which includes at a minimum the CALTRANS RE and the SBCAG designated construction representative. The CMCP provides two levels of appeal for dispute resolution between CALTRANS and SBCAG.

CMCP Structure

The CMCP is comprised of two levels for dispute resolution.

Level 1 (L1) is the Construction Team (CT) and is comprised of the following members:

- SBCAG Appointed Construction Representative
- CALTRANS Project Manager
- CALTRANS Design Manager
- CALTRANS Construction Manager

Level 2 (L2) is the Executive Team (ET) and is comprised of the following members:

- CALTRANS District Director
- SBCAG Executive Director
- CALTRANS Corridor Manager
- SBCAG Deputy Corridor Manager
- CALTRANS Construction Office Chief

CONSTRUCTION Change Orders (CO's)

A CO is a modification, deletion, or addition of work to the PROJECT, which differs from the original project scope or prior changes. An approved CO may result in a change in costs, a change in schedule, a change in scope of work, or a revision of other contractual terms and conditions. The roles and responsibilities between CALTRANS, as the implementing agency, and the general contractor are defined in the Caltrans Construction manual.

CALTRANS will document, monitor, and control CO's as defined in CALTRANS Construction Manual and the contract documents. In addition, Caltrans will provide SBCAG and its representatives a copy of the CO documentation on a regular basis. All COs will be evaluated for SHOPP and non-SHOPP related costs by the RE, in coordination with the Design Manager (DM) and Project Manager (PM). COs assigned to the SHOPP program will be submitted to SBCAG for information purposes only.

The procedures below outline procedures based on the estimated cost of the CO for CO's which use non-SHOPP funds. CALTRANS will seek concurrence from SBCAG on the funding split between SHOPP and non-SHOPP sources.

For CCO's valued under \$50,000

All CO's valued under \$50,000 will follow the normal CALTRANS CO process defined in CALTRANS Construction Manual. If concurrence is not obtained on cost sharing, the CO will be considered in dispute and will be raised to the Level 1 team, and then up to Level 2 team, if necessary.

For change orders valued over \$50,000

All CO's valued greater than \$50,000 will follow the normal CALTRANS CO process defined in CALTRANS Construction Manual. The Level 1 Team will be responsible for concurrences.

For each change order where there is concurrence from the Level 1 team on resolution, there would be no need for review by the Level 2 team. If the Level 1 team is unable to reach agreement within 5 working days, it would elevate the CO to the Level 2 team. Final determination of COs will be in accordance with the Caltrans Construction Manual.

Additional Procedures for All CO's:

Change orders requiring the issue and approval process from Caltrans Headquarters shall be reviewed by the Level 1 team (see Exhibit A). Refer to Section 5-311A Division of Construction Approval in the Caltrans Construction Manual.

CONSTRUCTION Potential Claim Records (PCR's)

CALTRANS will follow the process for PCR's defined in CALTRANS Construction Manual and the contract documents. The CALTRANS Construction Resident Engineer (RE) and Construction Manager (CM) will document, monitor, and control the processing of any PCR's filed on the PROJECT. An PCR log will be maintained by CALTRANS and provided to SBCAG and its representatives on a regular basis or with each newly filed PCR.

The CALTRANS RE, upon receipt of an PCR from the General Contractor (GC), will confirm that the PCR has been properly documented and submitted. CALTRANS will perform an analysis of the PCR, estimate SHOPP and non-SHOPP related costs and assign associated funding responsibility for those determined to have merit through coordination between the RE, DM, and PM, and provide to the Level 1 team for review, with a recommendation. If the PCR results in a change order, the CO process above will be followed.

If the Level 1 Team agrees with the resolution proposed by the RE and CM and any resulting CO, there would be no need for review by the Level 2 team. If the Level 1 team is unable to reach agreement, would elevate the requested change to the Level 2 team.

The CALTRANS RE and/or CM, once the Proposed Final Estimate (PFE) has been returned by the GC, will provide the Level 1 Team with the list of any exceptions. The Level 1 Team will be convened to review any exceptions listed by the GC within 10 working days of receipt by CALTRANS. Final determination of claims will be in accordance with the Caltrans Construction Manual. SBCAG will abide by the outcome of the Caltrans claims process.

EXHIBIT A-CHANGE MANAGEMENT AND CLAIMS PROCEDURES

