

Last Update: June 5, 2024

Dist-Loc-Rte-PM
EA xxxxxx
Project ID xxxxxxxxxx
Agreement xx-xxxx

INSTRUCTION:

- This Stormwater Mitigation agreement is used when Caltrans contributes Stormwater SHOPP funds in form of Financial Contribution Only (FCO) for only capital construction costs of the project to a local agency to achieve compliance units for compliance with Statewide National Pollutant Discharge Elimination System (NPDES) permit.
- This agreement is not HQ pre-approved, please submit a draft agreement to ODIA for review.
- For the entire document, replace CITY with the local agency's referred name.

STORMWATER MITIGATION 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:

City of Oakland, a municipal agency, referred to hereinafter as CITY.

CALTRANS and CITY are individually referred to as PARTY and collectively referred to as PARTIES.

RECITALS

1. CALTRANS and CITY, are authorized to enter into a Cooperative Agreement for Stormwater Mitigation hereinafter referred to as AGREEMENT pursuant to California Streets and Highways Code Section 126.1.
2. The Federal Clean Water Act requires a National Pollutant Discharge Elimination System (NPDES) permit for pollutants discharged into waters of the United States. The United States Environmental Protection Agency (USEPA) delegates this authority to state water agencies. The California State Water Resources Control Board (CSWRCB) issued NPDES Permit No. CAS000003 to CALTRANS. Section 303(d) of the Federal Clean Water Act (CWA) requires the State of California to establish a priority ranking for impaired waters, referred to as the 303(d) list. The United States Environmental Protection Agency (USEPA) has oversight authority for the 303(d) list. The USEPA approves the State's 303(d) list.
3. CALTRANS must comply with the NPDES Permit (Order # 2022-0033-DWQ effective January 1, 2023), and associated Time Schedule Order (TSO) Number 2022-0089-DWQ.
4. As per the Attachment D and E of the CALTRANS NPDES Order 2022-0033-DWQ Section D5.1 and E3, CALTRANS and CITY may collaboratively implement the NPDES Permit requirements as they have been identified as stakeholders in the Total Maximum Daily Load

(TMDL) or contain Significant Trash Generating Areas (STGA) for a Stormwater Improvement Project (hereinafter referred to as ‘PROJECT’) located at 45th Avenue near San Leandro Street, 48th Avenue at the Union Pacific Railroad, and 85th Avenue and G Street in the County of Alameda.

INSTRUCTION: District 4 includes articles 5 and 6, otherwise remove.

5. CALTRANS District 4 must comply with the California Regional Water Quality Control Board San Francisco Bay Region (CRWQCBSFBR) per Cease and District Order (CDO) No. R2-2021-0030 and Order No. R2-2019-0007, collectively referred to hereinafter as CDO. CALTRANS and CITY may collaboratively implement the Trash Reduction requirements in areas that contain Significant Trash Generation Area (STGA).
6. In addition to 100.51 acres of STGA credit, CALTRANS District 4 may seek additional trash reduction credit from the CRWQCBSFBR per CDO Provision 5.1.
7. CITY intends to design and construct the PROJECT and will be responsible for all management, maintenance and operations, including costs of the constructed PROJECT.
8. PROJECT will receive flows from a total tributary area of 3,232.94 acres, which includes runoff from CALTRANS roadways and impervious surfaces. Out of 3,232.94 acres of PROJECT, 100.51 acres are from CALTRANS roadways and 100.51 acres are from CALTRANS impervious surfaces.
9. CALTRANS will contribute an amount, not to exceed, \$20,000,000.00 to CITY for PROJECT to satisfy in part of its NPDES requirements.
10. CALTRANS will receive 100.51 credits to the contribution amount towards the dry and wet weather TMDL pollutant loads reduced by this PROJECT, 100.51 acres treated for pollutants and 100.51 acres of STGA treated. The preliminary analyses prepared by the CITY and their consultants has documented these load reductions in a memorandum from Wood Rodgers, Inc., prepared for CITY, dated June 11, 2019 (See attachment A). The load reductions shown in the memorandum are preliminary and subject to change in the assumptions used in the Wood Rodgers Consultant analysis. Waste Load reductions claimed by CALTRANS may change due to PROJECT operation and maintenance outcomes. The GIS mapping provided by CITY has documented CITY’s 3,232.94 acres of STGA and CALTRANS’ 100.51 acres of STGA.
11. PARTIES intend to define herein the terms and conditions under which PROJECT will proceed.
12. CALTRANS share of PROJECT funding is as follows:

<u>FUND TITLE</u>	<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
SHOPP	STATE	\$20,000,000.00

SECTION I

CALTRANS AGREES:

13. To reimburse CITY within forty-five (45) calendar days of receipt of a signed invoice for actual PROJECT costs incurred and paid.
14. The total financial obligation provided by CALTRANS for PROJECT shall not exceed the amount of \$20,000,000.00.
15. To provide encroachment permits to CITY and its consultants and contractor for access to CALTRANS right-of-way, if necessary, to fulfil PROJECT requirements.
16. To review and provide comments to CITY for the 60% complete plan set and 95% complete plan set and specifications for PROJECT within fifteen (15) working days of receipt.
17. To provide quality management work for all portions of PROJECT that resides within CALTRANS right-of-way.

SECTION II

CITY AGREES:

18. To prepare, sign and submit monthly billing statements in arrears (invoices) to CALTRANS for actual PROJECT costs incurred and paid by CITY.
19. All work performed by CITY, or performed on behalf of CITY, shall be performed in accordance with state, federal and local laws, regulations, and standards.
20. To be fully responsible for completing the environmental clearance, design, right-of-way requirements, and construction of PROJECT.
21. To obtain all necessary property rights (easements, rights of entry, fee, etc.) required to complete and maintain PROJECT. Said rights of entry shall also include rights for CALTRANS and resource agency personnel to monitor PROJECT for a period of five (5) years.
22. To obtain all environmental approvals and resource agency agreements and permits, including California Environmental Quality Act (CEQA) documents and approvals and National Environmental Quality Act (NEPA) documents and approvals, California State

Water Resources Control Board permit for PROJECT prior to the commencement of construction.

23. To fully comply with all the terms and conditions expressed in the environmental approvals, agreements and permits.
24. To prepare, or cause to prepare, a complete set of design plans, specifications, and estimate, TMDL waste (or pollutant) reduction calculation and report, and any other necessary technical documents, sufficient to advertise and award a construction contract for PROJECT. All documents shall be signed and sealed by an engineer duly registered in the State of California.
25. To provide CALTRANS with the 60% complete plan set and 95% complete plan set and specifications for PROJECT so that CALTRANS can review and provide comments within twenty (20) working days of receipt.
26. To incorporate or resolve all comments submitted by CALTRANS on the 60% complete plan set and 95% complete plan set and specifications for PROJECT.
27. To provide CALTRANS with copies of the final plans, specifications, and estimate; applicable environmental approvals, agreements and permits; right-of-way clearances, hereinafter referred to as PS&E package, prior to advertising the contract for construction.
28. To prepare contract documents, advertise and award a construction contract in accordance with CITY acquisition processes.
29. To manage all aspects of PROJECT.
30. To be responsible for all management, maintenance and operations, including costs of the constructed PROJECT.
31. To provide annual documentation of PROJECT progress to CALTRANS for the Stormwater compliance files.
32. To prepare and submit a final accounting for all PROJECT costs. Based on the final accounting, CALTRANS will refund or invoice as necessary to satisfy the financial commitments of this AGREEMENT.
33. To conform with the provisions of Labor Code section 1720-1815, and all applicable provisions of the California Code of Regulations found in Title 8, Chapter 8, subchapter 3, articles 1-7 where Labor Code section 1720(a)(1) definition of “public works” includes construction, alteration, demolition, installation, repair or maintenance work under Labor Code section 1771.

34. To include prevailing wage requirements in its contracts for public work. Work performed by CITY's own forces is exempt from the Labor Code's prevailing wage requirements.
35. To require the contractors to include prevailing wage requirements in all subcontracts funded by this AGREEMENT when the work to be performed falls within Labor Code sections 1729(a)(1) definition of "public works" under Labor Code section 1771. Subcontractors shall include all prevailing wage requirements set forth in CITY's contracts.
36. If work performed under this AGREEMENT is paid for in whole or in part with federal funds and is the type of work subject to federal prevailing wage requirements, CITY must conform to the provisions of the Davis-Bacon and related acts, 40 U.S.C. 1341 et seq. in addition to Labor Code provisions.
37. To include federal prevailing wage requirements in its contracts for public work. Work performed by CITY's own forces is exempt from federal prevailing wage requirements.
38. To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, including support data for cost proposals, and to make such materials available to CALTRANS at all reasonable times for three (3) years after completion and acceptance of PROJECT. CALTRANS, the Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CITY that pertain to this AGREEMENT for audits, examinations, excerpts, transactions, and copies thereof shall be furnished when requested.
39. To maintain and operate the PROJECT.
40. To provide an annual inspection, and maintenance reports to CALTRANS.

SECTION III

IT IS MUTUALLY AGREED:

41. All portions of this AGREEMENT, including the Recitals section, are enforceable.
42. If any provision of this AGREEMENT is held invalid, the other provisions shall not be affected thereby.
43. All CALTRANS' obligations and commitments under the terms of this AGREEMENT are subject to the appropriation of resources by the Legislature, State Budget Act authority, and programming and allocation of funds by the California Transportation Commission (CTC).
44. 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.

45. All applicable laws, regulations, rules, and policies relating to the use of federal or state funds shall apply notwithstanding other provisions of this AGREEMENT.
46. If CITY fails to complete the PROJECT for any reason, CITY will refund the full amount of CALTRANS' contribution.
47. CITY will retain all PROJECT related records for three (3) years after the final voucher.
48. CITY will accept operation, maintenance and ownership or title to all materials or equipment installed as part of PROJECT.
49. CALTRANS has a total of fifteen (15) working days to perform review and return comments to CITY for each review cycle (60% plans complete and 95% plans and specifications complete).
50. CITY will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, environmental, tortuous, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of the operation and maintenance of PROJECT.
51. HM-1 is hazardous materials (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.
52. HM-2 is hazardous materials (including but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.
53. 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.
54. If HM-1 or HM-2 is found, the discovering PARTY will immediately notify the other PARTY.
55. 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 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.
56. CITY is responsible for HM-2 MANAGEMENT for PROJECT and shall be paid from funds obligated in this AGREEMENT.

57. 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.
58. CITY is responsible for any HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way. CITY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the CALTRANS PROJECT schedule.

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

59. Neither CALTRANS nor any officer or employee thereof is 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 or 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 its 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 or 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.
60. Neither CITY nor any officer or employee thereof is 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 or 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 its 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 or 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.
61. This AGREEMENT will terminate upon execution of a Cooperative Agreement Closure Statement (CLOSURE STATEMENT) by PARTIES. The CLOSURE STATEMENT is a document that verifies all commitments of this AGREEMENT have been met and PROJECT is fully complete.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, hazardous material, operation, maintenance, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

CONTACT INFORMATION

The information provided below indicates the primary contact information for each PARTY to this AGREEMENT. PARTIES will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this AGREEMENT.

CITY OF OAKLAND

Project Manager: Tiffany Pham

Phone Number: 510-238-3397

E-mail: TPham@Oaklandca.gov

Billing Address: _____

CALTRANS

Grant Manager: _____

Phone Number: _____

E-mail: _____

Billing Address: _____

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 covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

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

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF OAKLAND

By: _____
District Director

By: _____
Jestin D. Johnson, City Administrator

VERIFIED OF FUNDS & AUTHORITY:

By: _____
District Budget Manager

Attest: _____
Asha Reed, City Clerk

By: _____
Attorney
Department of Transportation

CERTIFIED AS TO FINANCIAL TERMS &
POLICIES:

APPROVED AS TO FORM AND
LEGALITY:

By: _____
HQ Accounting Supervisor

By: _____
Celso Ortiz, Deputy City Attorney