

COOPERATIVE AGREEMENT COVER SHEET

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Work Description

INSTALL ARTISTIC LIGHTING DESIGN (ARTWORK) ON THE SAN DIEGO-CORONADO BAY BRIDGE ON STATE ROUTE 75, IN SAN DIEGO COUNTY.

Contact Information

CALTRANS

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SAN DIEGO UNIFIED PORT DISTRICT

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COOPERATIVE AGREEMENT

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PROJECT STUDY REPORT/PROJECT DEVELOPMENT SUPPORT (PSR/PDS) & PROJECT REPORT (PR)

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

San Diego Unified Port District, a public entity, referred to hereinafter as PORT.

RECITALS

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System (SHS) per the California Streets and Highways Code sections 114 and 130 and Government Code 65086.5.
2. For the purpose of this AGREEMENT, the installation of artistic lighting design (artwork) on the San Diego-Coronado Bay Bridge on State Route 75 in San Diego County will be referred to hereinafter as PROJECT.
3. PORT desires to develop the Project Study Report/Project Development Support (PSR/PDS) and a separate Project Report (PR) hereby called DOCUMENTS and is willing to fund one hundred percent (100%) of the DOCUMENTS, including the costs to reimburse CALTRANS for review and approval.
4. AGREEMENT addresses design and environmental review for the PROJECT and does not commit the PORT to approving the Environmental Document for the PROJECT.
5. All obligations and responsibilities assigned in this AGREEMENT to complete the DOCUMENTS will be referred to hereinafter as WORK.

The DOCUMENTS are defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

6. The term AGREEMENT, as used herein, includes any attachments, exhibits, and amendments.
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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.

7. No PROJECT deliverables have been completed prior to this AGREEMENT.
8. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
9. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

RESPONSIBILITIES

Sponsorship

10. 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.

11. PORT is the SPONSOR for the WORK in this AGREEMENT.

Implementing Agency

12. 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.

PORT is the DOCUMENTS' IMPLEMENTING AGENCY. The DOCUMENTS identify but not limited to, the PROJECT need and purpose, stakeholder input, project alternatives, anticipated right-of-way requirements, preliminary environmental analysis, initial cost estimates, and potential funding sources, the completion of environmental documentation including: technical studies, the Draft Environmental Document, the Final Environmental Document and the DOCUMENTS (documenting the project alternative selection).

13. The IMPLEMENTING AGENCY for the DOCUMENTS will provide a Quality Management Plan (QMP) for the WORK.

The QMP:

- Describes the IMPLEMENTING AGENCY's quality policy and how it will be used.
 - Will include a process for resolving disputes between the PARTIES at the team level.
 - Is subject to CALTRANS review and approval.
14. 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

15. PORT is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the WORK in accordance with this AGREEMENT.
16. 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.

17. PARTIES will not be reimbursed for costs beyond the funds obligated in this AGREEMENT.
18. Unless otherwise documented in the Funding Summary, all fund types contributed to a PROJECT COMPONENT will be spent proportionately within that PROJECT COMPONENT.

19. 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. Page 5 of 23 B
20. 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

21. CALTRANS, as the owner/operator of the State Highway System, will perform quality management work including independent quality assurance (IQA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
22. CALTRANS' IQA efforts are to ensure that PORT's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's QMP. IQA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs IQA it does so for its own benefit. No one can assign liability to CALTRANS due to its IQA.

23. 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.
24. PORT will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.

Project Study Report/Project Development Support (PSR/PDS) and Project Report (PR) - two separate documents

25. As the DOCUMENTS IMPLEMENTING AGENCY, PORT is responsible for all DOCUMENTS WORK except those activities and responsibilities that are assigned to another PARTY in this AGREEMENT and those activities that may be specifically excluded.
26. Should PORT request CALTRANS to perform any portion of the DOCUMENTS preparation work, except as otherwise set forth in this in this AGREEMENT, PORT agrees to reimburse CALTRANS for such work and PARTIES will amend this AGREEMENT.

27. The **PORT** will be responsible for completing the following DOCUMENTS activities and CALTRANS will review and concur:

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CALTRANS Work Breakdown Structure Identifier (If Applicable)	AGREEMENT Funded Cost
100.05.10.xx Quality Management	Yes
150.05.05.xx Provision of Existing Reports, Data, Studies, and Mapping	Yes
150.25.20 PID Circulation, Review, and Approval	Yes
100.10.10.xx Quality Management	Yes
165.10 General Environmental Studies 165.15 Biological Studies	Yes
165.20 Cultural Resource Studies	Yes
165.25 Draft Environmental Document	Yes
165.25.25 Approval to Circulate Resolution	Yes
170.10 Permits 175.20 Project Preferred Alternative	Yes
180.05 Draft/Final Project Report	Yes
180.10 Final Environmental Document	Yes

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

-
- Utility/facility information
- Environmental constraints
- As-built centerline and existing right-of-way

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

29. When required, CALTRANS, on a reimbursed basis, will perform Pre-Consultation with appropriate resource agencies in order to reach consensus on need and purpose, avoidance alternatives, and feasible alternatives.

30. CALTRANS will actively participate in the Project Delivery Team meetings. Page 7 of 23 B
31. PORT will prepare the DOCUMENTS at its sole cost and expense and at no cost to CALTRANS. The DOCUMENTS will be signed on behalf of PORT by a Civil Engineer registered in the State of California.
32. The DOCUMENTS shall be prepared in accordance with all State and Federal laws, regulations, policies, procedures, and standards that CALTRANS would normally follow if CALTRANS was to prepare the DOCUMENTS.
33. CALTRANS will review and approve the DOCUMENTS prepared by PORT. Work elements are outlined in the *Workplan Standards Guide for the Delivery of Capital Projects* available at www.dot.ca.gov/hq/projmgmt/guidance.htm.

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

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

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

CEQA Lead Agency

34. PORT is the CEQA Lead Agency for the PROJECT.

CALTRANS is a CEQA Responsible Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

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35. 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.
36. Unless otherwise assigned in this AGREEMENT, PORT is responsible for all 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.
37. It is expected that the PROJECT requires the following environmental permits/approvals:

ENVIRONMENTAL PERMITS/REQUIREMENTS
Harbor Police
US Coast Guard Permit
National Pollutant Discharge Elimination System (NPDES), State Water Resources Control Board
Coastal Development Permit, California Coastal Commission
Local Coastal Development Permit (San Diego and Coronado)
1602 California Department of Fish and Wildlife
2080.1 California Department of Fish and Wildlife
Department of Fish and Wildlife (B)
State Historic Preservation Office (SHPO) Concurrence

38. 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.
39. The CEQA Lead Agency will determine the type of CEQA documentation with concurrence from CALTRANS and will cause that documentation to be prepared in accordance with CEQA requirements.
40. 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.

41. CALTRANS is a CEQA Responsible Agency for the PROJECT and will review, comment, and concur 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. Page 9 of 23 B
42. 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.
43. If the CEQA Lead Agency makes any changes to the CEQA documentation, the CEQA Lead Agency will allow CALTRANS, as the CEQA Responsible Agency, to review, comment, and concur on those changes prior to the CEQA Lead Agency's approval at appropriate stages of development prior to public availability.
44. If the CEQA Lead Agency makes any changes to CEQA-related public notices, then the CEQA Lead Agency will allow CALTRANS, as the CEQA Responsible Agency, to review, comment, and concur on those changes prior to publication and circulation.
45. The CEQA Lead Agency will attend all CEQA-related public meetings.
46. 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.

Schedule

47. PARTIES will manage the WORK schedule to ensure the timely use of obligated funds and to ensure compliance with any environmental permits, any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.

48. PORT will furnish CALTRANS with a final report of the WORK completed.

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Additional Provisions

49. PORT will perform all WORK in accordance with federal and California laws, regulations, and standards; FHWA standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:
- CALTRANS policies and directives
 - Project Development Procedures Manual (PDPM)
 - Workplan Standards Guide
 - Standard Environmental Reference
 - Highway Design Manual
50. CALTRANS retains the right to reject noncompliant WORK. PORT 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.
51. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.
52. PORT will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.
53. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right-of-way. Contractors and/or agents, and utility owners will not work within the State Highway System right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to PARTIES, their contractors, consultants and agents at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
54. PORT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

55. 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.
56. 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.

57. 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 documents. PARTIES will consult with each other prior to the release of any public documents related to the WORK.
58. If any hazardous materials, pursuant to Health and Safety Code 25260(d) 25401.1, are found within the PROJECT limits, the discovering PARTY will notify all other PARTIES within twenty-four (24) hours of discovery.
59. 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.

60. 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. Page 12 of 23.B

61. 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. PORT, 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.

62. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.
63. 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.
64. PARTIES agree to consider alternatives to PROJECT scope and/or alignment, to the extent practicable, in an effort to avoid any known hazardous materials within the proposed PROJECT limits.
65. If hazardous materials are discovered within PROJECT limits, but outside of SHS right-of-way, it is the responsibility of PORT in concert with the local agency having land use jurisdiction over the property, and the property owner, to remedy before CALTRANS will acquire or accept title to such property.
66. Any PARTY that is responsible for completing WORK will accept, reject, compromise, settle, or litigate claims arising from the WORK.
67. 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.

68. 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.
69. 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.
70. 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.

71. 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 PORT 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.

72. 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. Page 14 of 23 B
73. 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 Chapter 10 of the Local Assistance Procedures Manual.
74. If WORK stops for any reason, PORT will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
75. If WORK stops for any reason, each PARTY will continue to implement the obligations of this AGREEMENT, including the commitments and conditions 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.
76. The cost of awards, judgments, legal challenges to the environmental process or documentation and settlements generated by the WORK are to be paid from the funds obligated in this AGREEMENT.
77. Any PARTY who 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.
78. PORT will furnish CALTRANS with the Project History Files related to the PROJECT facilities on SHS within sixty (60) days following the completion of PSR/PR. PORT will prepare the Project History File in accordance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and on a CD ROM in PDF format.

GENERAL CONDITIONS

79. 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.
80. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.

81. 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 PORT, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon PORT under this AGREEMENT. It is understood and agreed that PORT, 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 PORT, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
82. Neither PORT 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 PORT 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.
83. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights in PARTIES 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.
84. PARTIES will not assign or attempt to assign obligations to PARTIES not signatory to this AGREEMENT without an amendment to this AGREEMENT.
85. PORT will not interpret any ambiguity contained in this AGREEMENT against CALTRANS. PORT waives the provisions of California Civil Code section 1654.

A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

86. 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.
87. 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.

88. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of PORT will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

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

89. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
90. 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 found in 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. § 276(a).

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. ^{Page 17 of 23 B}

91. This Agreement shall terminate upon completion of WORK or on December 31, 2020, whichever is earlier in time, unless PARTIES agree to an extension of time. 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

DEFINITIONS

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AGREEMENT – This agreement including any attachments, exhibits, and amendments.

IMPLEMENTING AGENCY – The PARTY responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

PARTY – Any individual signatory party to this AGREEMENT.

PARTIES – The term that collectively references all of the signatory agencies to this AGREEMENT.

WORK – All obligations and responsibilities to complete the project component identified in the AGREEMENT.

SIGNATURES

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PARTIES are empowered by California Streets and Highways Code 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.

Signatories may execute this AGREEMENT through individual signature pages provided that each signature is an original. This AGREEMENT is not fully executed until all original signatures are attached.

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

LAURIE BERMAN
District Director

Certified as to funds:

Carmen Golembiewski
District Budgets Manager

Approved as to form and procedure:

By: _____
Attorney
Department of Transportation

Certified as to financial terms and policies:

By: _____
Accounting Administrator

SAN DIEGO UNIFIED PORT DISTRICT

RANDA CONIGLIO
President/CEO

FUNDING SUMMARY NO. 01

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<u>FUNDING TABLE</u>				v. 1	
		Fed Share (%)	PSR/PDS	PR	TOTAL
		OR Non-fed Match (flex/yes)			
Party	Fund Type				
	Local Funds				
PORT	LOCAL		\$96,965	\$154,752	\$251,717
Totals			\$96,965	\$154,752	\$251,717

<u>SPENDING SUMMARY</u>				v. 2	
Fund Type	PID/PA&ED		Totals		
	CALTRANS	<u>PORT</u>			
Local Funds					
Local	\$251,717		\$251,717		
Totals	\$251,717		\$251,717		

Funding

1. 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.

2. 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.

Invoicing and Payment

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

DOCUMENTS

5. CALTRANS will invoice PORT for \$251,717 after execution of this AGREEMENT and forty-five (45) working days prior to the commencement of PSR/PDS and PR. After all WORK is complete, PARTIES will submit a final accounting of all WORK costs. Based on the final accounting, PARTIES will invoice or refund as necessary to satisfy the financial commitments of this AGREEMENT.

Signatures

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

Signatories may execute this Funding Summary through individual signature pages provided that each signature is an original. This Funding Summary is not fully executed until all original signatures are attached.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Lou Melendez
Project Manager

Date _____

Carmen Golembiewski
District Budgets Manager

CERTIFIED AS TO FINANCIAL
TERMS AND POLICIES:

By:

Accounting Administrator

SAN DIEGO UNIFIED PORT DISTRICT

Name
Title

Delete this

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