

STORMWATER MITIGATION COOPERATIVE AGREEMENT

This AGREEMENT, executed on and effective from December 19, 2023, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

Town of Colma, a municipal agency, referred to hereinafter as TOWN.

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

RECITALS

1. CALTRANS and TOWN 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. 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 Attachment D of the Statewide National Pollutant Discharge Elimination System (NPDES) Permit (Order # 2022-033-DWQ effective January 1, 2023), which requires CALTRANS to implement control measures to improve regional stormwater quality.
4. CALTRANS District 4 must comply with the California Regional Water Quality Control Board San Francisco Bay Region (CRWQCBSFBR) Cease and Desist Order No. R2-2021-0030 and Order No. R2-2019-0007, collectively referred hereinafter as CDO. CALTRANS and TOWN may collaboratively implement the Trash Reduction requirements in areas that contain Caltrans Significant Trash Generation Area (STGA).
5. As per the Attachment D and E of the CALTRANS NPDES Order 2022-0033-DWQ Section D5.1 and E3, CALTRANS and TOWN 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').
6. In addition to 161 acres of STGA credit, CALTRANS District 4 may seek additional trash reduction credit from the CRWQCBSFBR per CDO Provision 5.1.
7. TOWN intends to design and construct permanent Full Trash Capture (FTC) devices, hereinafter referred to as IMPROVEMENTS, to achieve statewide National Pollutant

Discharge Elimination System (NPDES) permit compliance units for trash capture, to which CALTRANS shall contribute to TOWN a Financial Contribution Only (FCO) of \$7,040,600.

8. TOWN will be responsible for all management, maintenance and operations, including costs of the constructed PROJECT.
9. PROJECT will receive flows from a total tributary area of 3,083 acres which includes runoff from CALTRANS roadways and impervious surfaces.
10. CALTRANS will contribute an amount not to exceed \$7,040,600 to TOWN for PROJECT to satisfy its NPDES requirements, in part.
11. CALTRANS will receive a total of 161 acres of trash load reduction credit.
12. CALTRANS will receive a total of 32 acres of TMDL pollutant reduction.
13. Caltrans may seek additional trash reduction credit from the California Regional Water Quality Control Board San Francisco Region per CDO Provision 5.1.
14. PARTIES intend to define herein the terms and conditions under which PROJECT will proceed.
15. CALTRANS share of PROJECT funding is as follows:

<u>FUND TITLE</u>	<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
SHA	State of California	\$7,040,600

SECTION I

CALTRANS AGREES:

1. To reimburse TOWN within forty-five (45) calendar days of receipt of a signed invoice for actual PROJECT costs incurred and paid.
2. The total financial obligation provided by CALTRANS for PROJECT shall not exceed the amount of \$7,040,600.
3. To provide encroachment permits to TOWN and its consultants and contractor for access to CALTRANS right of way, if necessary, to fulfil PROJECT requirements.
4. To review and provide comments to TOWN for the 60% complete plan set and 95% complete plan set and specifications for PROJECT within 5 working days of receipt.

SECTION II

TOWN AGREES:

1. To prepare, sign and submit monthly billing statements in arrears (invoices) to CALTRANS for actual PROJECT costs incurred and paid by TOWN.
2. All work performed by TOWN, or performed on behalf of TOWN, shall be performed in accordance with state, federal and local laws, regulations, and standards.
3. To be fully responsible for completing and/or obtaining the environmental clearance, right of way requirements, design, and construction of PROJECT.
4. 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 access sites at which IMPROVEMENTS are located to monitor PROJECT for a period of five (5) years.
5. 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.
6. To fully comply with all the terms and conditions expressed in the environmental approvals, agreements and permits.

7. 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.
8. 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 5 working days of receipt.
9. To incorporate or resolve all comments submitted by CALTRANS on the 60% complete plan set and 95% complete plan set and specifications for PROJECT.
10. To provide CALTRANS with copies of the final construction 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.
11. To prepare contract documents, advertise and award a construction contract in accordance with TOWN acquisition processes.
12. To manage all aspects of PROJECT.
13. TOWN will be responsible for all management, maintenance and operations, including costs of the constructed PROJECT.
14. Provide annual documentation of PROJECT progress to CALTRANS for the storm water compliance files.
15. 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.
16. 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 if the PROJECT is a “public works” as defined in the Labor Code section 1720(a)(1), which includes construction, alteration, demolition, installation, repair or maintenance work under Labor Code section 1771.
17. To include prevailing wage requirements in its contracts for public work consistent with the requirements of the Labor Code. Work performed by TOWN own forces is exempt from the Labor Code’s prevailing wage requirements.

18. To require the construction 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) if the PROJECT is a “public works” as defined in under Labor Code section 1720(a)(1), which includes construction, alteration, demolition, installation, repair or maintenance labor under Labor Code section 1771. Subcontractors shall include all prevailing wage requirements set forth in TOWN’s contracts into any sub-contractor contracts entered into by subcontractors.
19. 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, TOWN 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.
20. To include federal prevailing wage requirements in its contracts for public work. Work performed by TOWN’s own forces is exempt from federal prevailing wage requirements.
21. 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 TOWN that pertain to this AGREEMENT for audits, examinations, excerpts, transactions, and copies thereof shall be furnished when requested.
22. To maintain and operate PROJECT.
23. Upon request, provide Caltrans with annual maintenance records and/or report after the PROJECT is constructed.

SECTION III

IT IS MUTUALLY AGREED:

1. All portions of this AGREEMENT, including the Recitals Section, are enforceable.
2. If any provision of this AGREEMENT is held invalid, the other provisions shall not be affected thereby.
3. 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 (CTC).
4. 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.

5. All applicable laws, regulations, rules, and policies relating to the use of federal or state funds shall apply notwithstanding other provisions of this AGREEMENT.
6. If TOWN fails to complete the PROJECT for any reason, TOWN will refund the full amount of CALTRANS' contribution.
7. TOWN will retain all PROJECT related records for three (3) years after the final voucher.
8. TOWN will accept operation, maintenance and ownership or title to all materials or equipment installed as part of PROJECT.
9. CALTRANS has a total of 5 working days to perform review and return comments to TOWN for each review cycle (60% plans complete and 95% plans and specifications complete).
10. TOWN 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.
11. 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.
12. 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.
13. 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.
14. If HM-1 or HM-2 is found, the discovering PARTY will immediately notify the other PARTY.
15. 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 committed in this AGREEMENT.
16. TOWN is responsible for HM-2 MANAGEMENT for PROJECT and shall be paid from funds committed in this AGREEMENT, or in TOWN's sole discretion, from TOWN's general fund.

17. 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.
18. TOWN is responsible for any HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way. TOWN will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the CALTRANS PROJECT schedule.

TOWN 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.

19. 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 TOWN, its contractors, sub-contractors and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon TOWN or under this AGREEMENT. It is understood and agreed that TOWN, 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 TOWN, its contractors, sub-contractors and/or its agents under this AGREEMENT.
20. Neither TOWN 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 of Colma 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.
21. 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.

Town of Colma

Project Manager: Daniel Barros

Phone Number: 650-997-8300

E-mail: dbarros@colma.ca.gov

Billing Address: 1198 El Camino Real, Colma, CA 94014

CALTRANS

Project Manager: Rommel Pardo

Phone Number: (510)714-5474

E-mail: rommel.pardo@dot.ca.gov

Billing Address: 111 Grand Avenue, Oakland Ca 94612

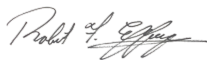
SIGNATURES


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


TOWN OF COLMA

By: 
Robert Effinger
Acting Deputy District Director, Design


By: 
Daniel Barros
City Manager

VERIFIED OF FUNDS & AUTHORITY:

By: 
Jeffrey Kuehnel
District Budget Manager

Attest: 
Christopher J. Diaz (Nov 30, 2023 11:23 PST)
Christopher Diaz
City Attorney

CERTIFIED AS TO FINANCIAL TERMS &
POLICIES:

By: 
Nadine Karavan
HQ Accounting Supervisor

Stormwater Mitigation Cooperative Agreement 04-2844 Execution Process

Final Audit Report


2023-12-19

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 Signer christopher.diaz@bbklaw.com entered name at signing as Christopher J. Diaz


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