

Clover Creek Hitch Habitat Restoration Project
Blue Lakes Safety Project &
Lake 20 Shoulder Widening Project
01-0H840 & 01-0G330
0118000117 & 0116000170
Cooperative Agreement No. 01-0427

COOPERATIVE AGREEMENT

This AGREEMENT, ENTERED INTO EFFECTIVE on _____, 2024, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as “CALTRANS,” and the LAKE COUNTY WATERSHED PROTECTION DISTRICT, referred to herein as “DISTRICT”.

RECITALS

1. CALTRANS and DISTRICT, herein referred to as “PARTIES,” pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into this Agreement.
2. CALTRANS is implementing the Blue Lakes Safety Project (EA: 01-0H840) on State Route 20 (SR 20) in Lake County and the Lake 20 Shoulder Widening Project (EA: 01-0G330) on SR 20 in Lake County, referred to herein as “PROJECTS.”
3. Pursuant to California Fish and Game Code section 1600 et. seq., the California Department of Fish and Wildlife (CDFW), issued CALTRANS Streambed Alteration Agreements (LAK-17734-R2, dated DECEMBER 13, 2021; and 1600-2020-0055-R2, dated JUNE 9, 2020) for PROJECTS, referred to herein as “1602.” Copies of the 1602 are attached hereto as **Exhibit A** and made a part of this agreement.
4. CALTRANS desires to enter into this Agreement with DISTRICT to satisfy Condition 3.1.1 of the LAK-17734-R2 1602 and Condition 3.4 of Amendment #1 of 1600-2020-0055-R2 1602, referred to herein collectively as “MITIGATION REQUIREMENTS.” To satisfy MITIGATION REQUIREMENTS, CALTRANS will partially fund DISTRICT’s construction of the Clover Creek Hitch Habitat Restoration Project, as described in the CDFW approved Habitat Mitigation and Monitoring Plan dated March 2023, attached hereto as **Exhibit B**, and made part of this Agreement.
5. DISTRICT desires to assist CALTRANS in satisfying MITIGATION REQUIREMENTS by implementing the Clover Creek Hitch Habitat Restoration Project, referred to herein as “MITIGATION PROJECT,” and more particularly described in **Exhibit B**. A map showing the location of MITIGATION PROJECT is provided in **Exhibit B**, as is a Scope of Work.
6. CALTRANS has received written concurrence from CDFW that the construction of MITIGATION PROJECT will fully satisfy MITIGATION REQUIREMENTS. A copy of this written concurrence is attached hereto as **Exhibit C** and made part of this Agreement.

7. CALTRANS has determined that the estimated cost of satisfying MITIGATION PROJECT is \$246,491.54 described in **Exhibit D**, attached hereto, and made a part of this Agreement.
8. PARTIES now define herein below the terms and conditions under which this Agreement will be implemented.

SECTION I

LAKE COUNTY WATERSHED PROTECTION DISTRICT AGREES:

1. All work performed by DISTRICT or performed on DISTRICT's behalf, shall be performed in accordance with all state and federal laws, regulations, policies, procedures, and standards.
2. To obtain all necessary property rights and/or rights of entry required prior to the implementation of MITIGATION PROJECT and for full compliance with any terms and conditions thereof. Said rights of entry shall also include rights for CALTRANS personnel. Copies of property easements are attached in **Exhibit E**.
3. To obtain all environmental approvals and/or resource agency agreements, permits, and/or approvals required prior to implementation of MITIGATION PROJECT and to fully comply with any terms and conditions thereof.
4. To the extent applicable to the Scope of Work, provided in **Exhibit B**, DISTRICT and its contractors will take all necessary precautions when implementing the MITIGATION PROJECT to avoid and minimize ground disturbing activities that may impact known archeological and cultural resources through the use of exclusion areas. DISTRICT further agrees to provide a tribal monitor, which will be selected by the Habematolel Pomo of Upper Lake, in accordance with the draft Habematolel Pomo of Upper Lake Standard Monitoring Agreement, and the Habematolel Pomo of Upper Lake Treatment Protocol. These two documents are incorporated into this Agreement and attached hereto as **Exhibit F**, and **Exhibit G**.

In addition, DISTRICT will ensure:

- a. Required cultural monitoring training, annually, for DISTRICT staff and contractor staff prior to any groundwork being completed (estimated between March – April)

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- b. Designated area on levee top for sediment sorting, prior to leaving the site, for all sediment moved or dug.
 - c. Agreed upon site for reburial, if needed, and not disclosed to the public.
 - d. All tribal partner staff time, and estimated hours for monitoring and a potential finding, during each phase of the project, are included in the project budget (**Exhibit D**).
 - e. That once fully executed, they will provide CALTRANS with a copy of the Habematolel Pomo of Upper Lake Standard Monitoring Agreement.
- 5. To submit draft monitoring reports to CALTRANS for five (5) years (with monitoring anticipated to begin in the year 2025 and end five (5) years later, currently anticipated to be year 2030) by January 31 of each year. Said reports shall contain all the information described in **Exhibit B**, attached hereto, and made a part of this Agreement.
 - 6. To address CALTRANS' comments on the draft monitoring report and thereafter submit a final draft monitoring report to CALTRANS by January 31 for five (5) years (with monitoring anticipated to begin in the year 2025 and end five (5) years later, currently anticipated to be year 2030) for CALTRANS' review and approval, if appropriate.
 - 7. If at any time during the five (5) year monitoring period (with monitoring anticipated to begin in the year 2025 and end five (5) years later, which is currently anticipated to be year 2030) it is determined by CALTRANS that progress towards the success criteria, as described in **Exhibit B** is not being achieved then DISTRICT shall implement any remedial or adaptive management measures necessary to meet the success criteria.
 - 8. To use one hundred percent (100%) of CALTRANS' funds provided pursuant to this Agreement, to satisfy DISTRICT's obligation and responsibilities set forth in this Agreement.
 - 9. To submit an initial invoice in the amount of \$60,953.80 to CALTRANS within thirty (30) days of execution of this Agreement and prior to commencement of any work performed by DISTRICT. Said initial billing represents estimated costs for project administration (task 1 in **Exhibit D**) and site planning and preparation (task 2 in **Exhibit D**), and this funding is not available otherwise.

Thereafter, to submit monthly invoices in arrears, to STATE, along with detailed supporting documents, representing current actual MITIGATION PROJECT work costs.

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In no case shall the total amount invoiced pursuant to this Agreement exceed the amount of \$246,491.54.

Invoices will meet format and content requirements specified by STATE. Each invoice must be submitted to STATE's Mitigation Stewardship Contract Manager, Hannah Clark, 703 B Street, Marysville, CA, 95901, for approval and forwarding to the appropriate Accounting Office for payment.

10. Upon completion of MITIGATION PROJECT and all work incidental thereto, to furnish CALTRANS with a detailed statement of MITIGATION PROJECT costs to be borne by CALTRANS. DISTRICT thereafter shall refund to CALTRANS, promptly after completion of DISTRICT's final accounting of MITIGATION PROJECT costs, any amount of CALTRANS' deposits remaining after actual costs to be borne by CALTRANS have been deducted, or to bill CALTRANS for any additional amount required to complete CALTRANS' financial obligations pursuant to this Agreement.
11. If the work performed under this Agreement is done under contract and falls within the Labor Code section 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771, DISTRICT must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7.
12. To include prevailing wage requirements in its contracts for public work. Work performed by DISTRICT's own forces is exempt from the Labor Code's Prevailing Wage requirements.

SECTION II

CALTRANS AGREES:

1. To pay DISTRICT within forty-five (45) days of receipt of signed invoice, the amount of \$60,953.80 which represents estimated costs for project administration (task 1 in **Exhibit D**) and site planning and preparation (task 2 in **Exhibit D**). CALTRANS' total obligation to DISTRICT for MITIGATION PROJECT costs shall not exceed the amount of \$246,491.54.

To pay DISTRICT not later than ten (10) days preceding the beginning of each month, the estimated expenditures for that month, and to continue making such advance deposits monthly until completion of MITIGATION PROJECT.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. All applicable laws, rules and policies relating to the use of federal or state funds shall apply notwithstanding other provisions of this Agreement.
3. The party that discovers hazardous material (HM) will immediately notify the other party(ies) to this Agreement. HM-1 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by MITIGATION PROJECT or not. HM-2 is defined as 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 MITIGATION PROJECT. Management activities associated with either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
4. CALTRANS, independent of MITIGATION PROJECT, is responsible for any HM-1 found within existing State Highway System (SHS) right of way. CALTRANS will undertake, or cause to be undertaken, HM-1 management activities with minimum impact to MITIGATION PROJECT schedule and will pay, or cause to be paid, all costs associated with HM-1 management activities.
5. CALTRANS has no responsibility for management activities or costs associated with HM-1 found outside the existing SHS right of way. If HM-1 is found outside existing SHS right of way, under state and federal law responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. If HM-1 is found outside the existing SHS right of way, PARTIES will reassess the feasibility of the MITIGATION PROJECT and mutually agree on a course of action prior to the commencement of any additional work.
6. DISTRICT is responsible for the management of any HM-2 found within MITIGATION PROJECT limits. DISTRICT may use up to 5% of the funds already obligated by CALTRANS under this agreement for the costs associated with HM-2 management activities. However, CALTRANS is not responsible to pay any additional money to DISTRICT for these costs.

7. CALTRANS' acquisition of or acceptance of title to any property on which any hazardous material is found will proceed in accordance with CALTRANS' policy on such acquisition.
8. Neither DISTRICT 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 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 DISTRICT 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 and/or its agents under this agreement.
9. 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 DISTRICT, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon DISTRICT under this agreement. It is understood and agreed that DISTRICT, 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 DISTRICT, its contractors, sub-contractors, and/or its agents under this agreement.
10. In the event of any breach of this Agreement by either party, the other party may enforce this Agreement by any means available at law or in equity. In the event of litigation, mediation or arbitration to resolve any breach of, or dispute related to this Agreement, each party agrees to pay for their own attorneys' cost and expenses, without regard to who prevails.
11. A failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver, or as a waiver of the right to compel enforcement of that provision.
12. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the parties, notwithstanding that all of the parties are not a signatory to the original or the same counterpart. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.

13. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
14. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
15. This Agreement shall terminate upon CALTRANS' written acceptance that DISTRICT has completed MITIGATION PROJECT, however all indemnification, document retention, audit, claims, environmental, legal challenge, hazardous material, operation, maintenance, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

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PARTIES are empowered by CA Streets and Highways Code Section 114 and 130 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.

STATE OF CALIFORNIA
Department of Transportation

LAKE COUNTY WATERSHED
PROTECTION DISTRICT

By: _____
District Director

By: _____
Director, Water Resources Department

Approved as to form and procedure:

Approved as to form:

Attorney
Department of Transportation



County Counsel

Certified as to budgeting of funds:

District/North Region Budget Manager

Certified as to financial terms and
policies:

Accounting Administrator