

CHAPTER 16 – Cooperative Agreements

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CHAPTER 16 – Cooperative Agreements

ARTICLE 1 Introduction and Definitions

Reference Information

Some of the references found in this chapter have hyperlinks that connect to Caltrans intranet pages which are not displayable to the general public. Until such time that the specific reference becomes available on the internet, the user will have to contact their district liaison, Caltrans project manager, or the appropriate Headquarters division to inquire about the availability of the reference.

Introduction

According to California law, Caltrans is the agency assigned to plan, design, construct, operate, and maintain the State Highway System. Whenever there is an exchange of effort, funding, or materials between Caltrans and a public entity regarding the planning, design, or construction of an improvement or facility on the State Highway System, a cooperative agreement is required.

A cooperative agreement is a legally-binding contract that states the rights, duties, decisions, and commitments made between Caltrans and one or more public entities to plan, design, and construct projects in accordance with the authorizing documentation.

Cooperative agreements ensure that partners complete all their obligations according to Caltrans' policies and procedures, applicable Federal Highway Administration (FHWA) policies and procedures, and State and federal laws.

Cooperative agreements must always be signed by all partners prior to the beginning of any exchange of effort, funding, or materials.

Caltrans has no legal authority to pay for costs incurred by another partner in the absence of a cooperative agreement. Likewise, Caltrans cannot seek reimbursement for performing work on a cooperative project prior to having an executed cooperative agreement.

Definitions

Initial draft cooperative agreement – is documented by the district after the district and partner negotiate and agree on a project’s terms and conditions. Once drafted, the partner will review it and provide comments to the district.

Standard cooperative agreement – is a two-partner agreement between Caltrans and a public entity involving one or more project development and construction components of a design-bid-build project type. The standard cooperative agreement is the most common type of cooperative agreement, about 80 percent of all cooperative agreements developed annually.

Formal Cooperative Agreements

Though the standard cooperative agreement is by far the most common agreement, cooperative agreements are also prepared for the following situations:

Project development agreement – documents the terms and conditions between Caltrans and one or more public entities to complete the project development and construction components of a design-bid-build project type.

Relinquishment agreement – is a type of cooperative agreement. It documents the terms and conditions under which Caltrans relinquishes 1) any portion of a State highway or facility, including outer highways, to either a city or county 2) a park-and-ride lot to either a county transportation commission or a regional transportation planning agency (RTPA).

Highway improvement agreement (HIA) – allows private entities to design and construct projects on the State Highway System that exceed \$1,000,000 in capital construction cost and are 100 percent funded by the private entities. Caltrans is reimbursed for all of its oversight costs. Refer to the [Cooperative Agreement Handbook](#) and the [Encroachment Permits Manual](#) for additional information.

Escrow agreement – is used in conjunction with certain highway improvement agreements to ensure funding is available when private entities perform work on State Highway System projects financed by private funds. An escrow agreement outlines the terms and conditions under which such funds will be deposited and held and/or disbursed. Refer to the [Cooperative Agreement Handbook](#) for additional information.

Mitigation agreement – documents the terms and conditions, and often long-term commitments, related to mitigating the impact caused by a project. Refer to the [Cooperative Agreement Handbook](#) for additional information.

Improvement agreement – is developed when a public entity wants to modify or add scope to a project that is sponsored and administered by Caltrans. The public entity will contribute funds that equal the change from the original scope.

Local contribution agreement – is developed when a public entity is willing to contribute funds toward a project that is sponsored and administered by Caltrans. These funds are provided to support the project as a whole, without the intent of modifying or adding to the scope of the project.

State Highway Operation and Protection Program (SHOPP) minor funds contribution agreement – gives Caltrans the ability to transfer SHOPP minor funds to a project on the State Highway System that is administered by a public entity using Caltrans’ encroachment permit process. The funds may only be spent on construction capital costs.

Authority to reimburse agreement – provides Headquarters Division of Accounting the necessary authority to pay out certain types of “local capital outlay” funds (including but not limited to State Transportation Improvement Program [STIP]/Regional Improvement Program [RIP], STIP/Transportation Enhancement [TE], and bond funds).

Project initiation document (PID) agreement – documents the terms and conditions between Caltrans and a public entity for the development of a project study report (PSR) when Caltrans prepares the PSR for a local agency or Caltrans reviews and approves the PSR developed by a local agency. This agreement can be used for either a PSR or project study report-project development support (PSR-PDS) but cannot be used for a project study report-project report (PSR-PR). Note that the PID component cannot be included as part of a project development agreement.

Design-build agreement – documents the terms and conditions between Caltrans and a public entity related to a design-build project type. Contact the Headquarters Division of Design, Office of Innovative Design and Delivery for additional information.

Intergovernmental agreement – is used for cooperative work with other states.

Federal Agency agreement – is used for cooperative work with federal agencies and is governed by State and federal laws. Federal agencies include, but are not limited to, U.S. Army Corps of Engineers, Immigration and Naturalization Services, Department of Justice, U.S. Water and Power Services, Department of Defense, and U.S. Forest Service. The type of agreement will vary by the federal agency, and Caltrans may agree to use the federal agency’s standard template.

Other Formal Agreements

The following agreements are routinely developed by Caltrans, but not through the Headquarters Division of Project Management, Office of Delivery Improvement and Agreements:

Interagency agreement – is formed between Caltrans and another State agency, State university, or the University of California. Contact the Headquarters Division of Procurement and Contracts for additional information.

Maintenance agreement – is formed between Caltrans and a city or county; it documents the shared maintenance or operation responsibilities of roadway facilities including highways, structures, toll bridges, and appurtenant facilities on the State Highway System. Contact the Headquarters Division of Maintenance for additional information.

Freeway agreement – is formed between Caltrans and a city or county. It documents the features of a freeway at its ultimate capacity and how the local streets are adjusted in relationship to the freeway. For additional information, see [Chapter 24](#) – Freeway Agreements.

Encroachment permit – is an agreement for projects on the State Highway System with a total project cost under \$1,000,000 that are funded by others. (On occasion, projects between \$1,000,000 and \$3,000,000 with a simple scope may be advanced through an encroachment permit.) Contact the Headquarters Division of Traffic Operations for additional information.

Utility agreement – is used whenever Caltrans is paying or receiving payment for all or a portion of the cost of relocating a utility facility, regardless of who performs the work. Form RW 13-5 “Utility Agreement” from the [Right of Way Manual](#), Chapter 13 “Utility Relocations” is used to prepare the utility agreement. Contact the Headquarters Division of Right of Way and Land Surveys for additional information.

Right-of-way agreement – is used to acquire and/or convey real property interests for transportation projects, including, but not limited to, right-of-way contracts, rental and lease agreements, transfers of jurisdiction, and excess land purchase agreements. Contact the Headquarters Division of Right of Way and Land Surveys for additional information.

Private-public partnerships (P3s) agreement – is formed between Caltrans, a public agency, and a private sector entity to allow for greater flexibility for delivering and financing projects on the State Highway System. Contact the Headquarters Division of Design, Office of Innovative Design and Delivery for additional information.

Other

Memorandum of understanding (MOU) – is used to outline each entity’s intentions regarding any type of arrangement. It typically has general terms and address’ items on a program or corridor level. It is not legally binding and cannot be used to commit resources or funding.

ARTICLE 2 Laws

The laws presented in this article represent the current version available on the internet at the time of publishing. It is the user’s responsibility to verify the correctness and applicability of specific laws.

California Laws

California Streets and Highways Code, Section 114

Section 114 indicates:

Caltrans may enter into a cooperative agreement with a city, county, or other public entity to perform the work or share the cost of the work for the construction, improvement, or maintenance of any portion of a State highway.

Caltrans’ practice is that project development and right-of-way acquisition are aspects that also may be included in the cooperative agreement.

California Streets and Highways Code, Section 130

Section 130 indicates:

Caltrans and any city, county, or joint highway district may enter into a contract regarding the proportion of the expense of the acquisition, construction, improvement, or maintenance of any State highway. Any such contract may provide for the advancement of funds, for the acquisition of rights-of-way and for the doing of the work.

ARTICLE 3 Policies

General

An executed cooperative agreement is required prior to the exchange of any effort, funding, or materials.

A cooperative agreement abides by State and applicable federal law and assures that all partners will perform the scope, cost, and schedule established in the authorizing documentation in accordance with Caltrans policies and procedures.

Deputy Directive DD-90 – Funding of Quality Management Work on State Highway Projects, requires that Caltrans perform independent quality assurance at its own cost for projects on the State Highway System when another government agency is the project sponsor.

Deputy Directive DD-102 – Cooperative Agreements, mandates that partners mutually agree on a completion date for a cooperative agreement. It also requires that certain important milestones (also referred to as flags) are tracked within a project work plan. The directive presents a formal resolution process and mandates the implementation of a performance measure to track the creation and review of a cooperative agreement so that once an initial draft cooperative agreement is developed by the district, it will be ready for execution by all partners within 60 calendar days.

Project Management Directive PMD-20 – Cooperative Agreement Funding Commitment Process; Capital Outlay, assigns the district project manager as the responsible agent to ensure that the funding details documented in the cooperative agreement funding summary are accurate and that the cooperative agreements are ultimately closed out once all obligations and commitments have been met.

Authorizing Documents

The need of a cooperative agreement is typically described in an authorizing document, such as a project initiation document or project report (PR).

Cooperative Agreement Reports

If the authorizing document is silent on the issue of a cooperative agreement and it is later determined that a cooperative agreement is necessary, a cooperative agreement report (CAR) will be used to document the justification for the need to enter into a cooperative agreement with another partner. A cooperative agreement report is not an authorizing document from which to build a project; it only provides justification for the need of a cooperative agreement for that project. Refer to the [Cooperative Agreement Handbook](#) for additional information.

ARTICLE 4 Essential Procedures

Conception of Cooperative Agreements

The cooperative agreement milestone (CAM) date is the date both Caltrans and the public entity agree the cooperative agreement must be executed in order to avoid a project impact such as a schedule delay or loss of funding. Each project that requires a cooperative agreement must have a flag in the project work plan identifying the cooperative agreement milestone date.

Once a cooperative agreement milestone date is established, the district will assign a unique cooperative agreement number to the proposed agreement and enter that information into the statewide cooperative agreement database. At the same time, the partners will begin negotiating the terms, conditions, and commitments of the cooperative agreement.

Development of Cooperative Agreements

When all the necessary decisions have been made, the district will document them in an initial draft cooperative agreement. This document will be created by using one of the Headquarters-approved cooperative agreement templates or by using the automated Project Agreement Construction Tool (PACT). Once completed, the

initial draft cooperative agreement will be simultaneously circulated to the district and partnering public entity.

When comments to the initial draft cooperative agreement are returned to the district from the partnering public entity, the proposed changes must first be reviewed and approved by the district content expert. Next, if the changes are policy related, the document must receive concurrence by the corresponding Headquarters policy owner. Proposed changes that are not approved by the district content expert or the Headquarters policy owner may enter an expedited conflict resolution process in hopes of quickly resolving any impasse. Once all the policy issues have been resolved, the cooperative agreement is submitted to Headquarters Division of Project Management, Office of Delivery Improvement and Agreements. The cooperative agreement is subsequently forwarded to Headquarters Division of Legal and Division of Accounting for review and approval.

Performance Measure

No more than 60 calendar days will pass from the time the district receives the marked-up initial draft cooperative agreement from the partnering public entity to the time all partners declare the cooperative agreement is complete and ready for execution.

Conflict Resolution

The conflict resolution process involves a series of escalating meetings, which are initiated and facilitated by the district project manager to resolve any impasse in a structured and timely manner.

Level One – Within two weeks of Caltrans' receipt of the initial draft cooperative agreement from the partners, the Caltrans project manager will arrange a meeting with key project level staff, necessary Headquarters policy owners, and partner representation to resolve the impasse.

Level Two – If there are still unresolved issues after the Level One meeting, the Caltrans project manager will arrange a second meeting within two weeks of the Level One meeting, with district management, key staff, necessary Headquarters management, and partner representatives.

Level Three – If there are still unresolved issues after the Level Two meeting, the Caltrans project manager will arrange a third meeting within two weeks of the Level

Two meeting with district executive management, key staff, necessary Headquarters executives, and corresponding partner executives. The outcome of the Level Three meeting is either an executable cooperative agreement or mutually agreed upon project changes that result in an executable cooperative agreement. When all possible solutions have been exhausted, effort on the current cooperative agreement may cease.

Risk Resolution

Occasionally, decisions or arrangements documented in an initial draft cooperative agreement may expose Caltrans to a higher level of risk than normal. To assure that district executive management is aware of any unusual risks, and to facilitate a timely and educated response, each district will assign a contact that can serve as the risk liaison for cooperative agreements. The district risk liaison should be at an executive level and have access to the District Director. The District Director has the ability to make the final determination regarding most risk related issues.

Execution of Cooperative Agreements

Automated Template (Project Agreement Construction Tool)

If districts use the tool to create a cooperative agreement and no changes are made to the pre-approved language during the initial draft review rounds, then the cooperative agreement is ready to be signed by the public entity, followed by the district budget manager, and then the District Director without a formal Headquarters review. If a separate funding summary is included as part of the cooperative agreement, it must be signed by the following people in this order: a Headquarters Accounting representative, the public entity, the district budget manager, and the District Director.

If districts use the tool, but choose to modify the standard language during the initial draft review rounds or any time after, the districts will first vet the changes according to the Sub-article “Development of Cooperative Agreements.” Next, they will submit the cooperative agreement to Headquarters Division of Project Management, Office of Delivery Improvement and Agreements for review and approval. Once completed, and no further changes occur, the cooperative agreement is ready to be signed by the following people in this order: the public entity, the district budget manager, and the District Director.

Manually Assembled Template

Whenever districts choose to develop cooperative agreements manually by using the Headquarters-provided templates, regardless of whether changes occurred during the initial draft cooperative agreement review rounds or not, the cooperative agreements will be submitted to Headquarters Division of Project Management, Office of Delivery Improvement and Agreements for review and approval. Once completed, and no further changes occur, these cooperative agreements are signed by the following people in this order: Headquarters Division of Legal representative, a Headquarters Division of Accounting representative, the public entity, the district budget manager, and the District Director.

Amendment to Agreements

A cooperative agreement can be amended only through the execution of a separate document called an “Amendment to Agreement.” This is a formal, legally binding contract. Amendments are used to add, modify, or remove terms, facts, or conditions in order to keep the cooperative agreement current and relevant.

Standard cooperative agreements developed with the Project Agreement Construction Tool have a provision that allows specific funding details to be recorded on a separate document called a “Funding Summary.” Instead of having a formal amendment for funding detail changes, a new funding summary provides the latest funding details. After all partners sign and date the funding summary, the new funding summary is included as part of the cooperative agreement.

Termination of Cooperative Agreements

Every cooperative agreement must terminate once all the terms and conditions of the agreement have been fully satisfied. Some types of cooperative agreements (including relinquishments, PIDs, local contributions, SHOPP minor funds contributions, authority to reimburse, and mitigation and escrow agreements) terminate after a pre-determined date has passed or a final action such as a fund transfer or a report delivery has occurred.

Most cooperative agreements are terminated by a separate document called a “Cooperative Agreement Closure Statement,” which is signed and dated by all partners after all the terms and conditions of the cooperative agreement have been met, including:

- All scope, cost, and schedule commitments in the cooperative agreement and any amendment to the agreement
- Caltrans acceptance and approval of all final deliverables, and receipt of all project history documentation
- District project manager verification that there are no outstanding obligations
- Headquarters Division of Accounting verification that all final accounting is completed

Responsibility of District Project Manager

The district project manager is responsible for:

- placing a flag in the project work plan establishing the cooperative agreement milestone date;
- initiating the cooperative agreement if project requires one;
- managing the terms and conditions of the cooperative agreement;
- initiating the conflict resolution process in resolving any impasse of the cooperative agreement;
- communicating regularly with Headquarters Division of Accounting and district project control staff to assure project/financial data is properly tracked and managed;
- ensuring the funds committed are programmed;
- ensuring the “Funding Summary” is updated to align with the cooperative agreement when applicable;
- ensuring that the cooperative agreement is executed;
- ensuring that an amendment is executed should the cooperative agreement require one;
- closing out the cooperative agreement once all obligations have been fully satisfied;
- ensuring that a wet-ink cooperative agreement (including any corresponding amendments and closeout statements) is filed in the district and available.

For Further Reference

For more information refer to the [Cooperative Agreement Handbook](#) or the Headquarters [Division of Project Management-Office of Delivery Improvement and Agreements](#) website.