

TRANSPORTATION ART AGREEMENT

Clean California Beautification Fund Contribution

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

[Use when the counter party is City]

CITY OF FRESNO, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as CITY.

[Use when the counter party is County]

(Insert County Name), a political subdivision of the State of California, referred to hereinafter as COUNTY.

[Use when the counter party is MPO/RTPA]

(Insert MPO/RTPA Name), a public corporation/entity», referred to hereinafter as AUTHORITY

RECITALS

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per the California Streets and Highways Code, Section 114.
2. CALTRANS is authorized per the California Streets and Highways Code, Section 91.42 to expend Clean California State Beautification Program of 2021 funds (FUNDS) towards beautifying and cleaning up state highways and eligible projects towards that goal.
3. Transportation Art includes graphic or sculptural artwork, either freestanding or placed upon a required engineered transportation feature located on CALTRANS' right-of-way (such as a noise barrier, retaining wall, bridge, bridge abutment, bridge rail, or slope paving) that expresses unique attributes of a community's history, resources, or character.
4. CALTRANS intends to provide funding to [CITY OF FRESNO], and [CITY OF FRESNO] agrees to procure artist(s), administer artist contracts, provide and install the Transportation Art _____ and, hereinafter referred to as PROJECT.
5. The term AGREEMENT, as used herein, includes any attachments, exhibits, and amendments.

6. [CITY OF FRESNO] shall obtain an encroachment permit from CALTRANS prior to the commencement of any PROJECT work within CALTRANS' right-of-way.
7. [CITY OF FRESNO] will follow the CALTRANS encroachment permit requirements for any and all PROJECT work within CALTRANS' right-of-way, including by not limited to, installation of artwork.
8. CALTRANS will pay [CITY OF FRESNO] an amount not to exceed \$***** from FUNDS required for PROJECT.
9. CALTRANS and [CITY OF FRESNO] hereby set forth the terms, covenants, and conditions for CALTRANS' contribution toward PROJECT.

SCOPE

10. [CITY OF FRESNO] is responsible for completing all work for PROJECT.
11. [CITY OF FRESNO] shall adhere to the CALTRANS' Transportation Art requirements as set forth in CALTRANS' Project Development Procedures Manual (PDPM), Chapter 29, Section 9, Transportation Art and CALTRANS' Transportation Art website at <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-j-transportation-art>. This includes, but is not limited to, submittal of a Transportation Art Proposal (TAP) to CALTRANS, execution of an Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork Agreement (Caltrans Copyright Assignment, CCA), and Project Specific Maintenance Agreement (PSMA).
12. [CITY OF FRESNO] agrees that before commencing any PROJECT work on CALTRANS right-of-way, CITY OF FRESNO and CALTRANS will enter into a PSMA for maintenance of the PROJECT. PARTIES agree that no encroachment permit(s) will be issued by CALTRANS for PROJECT until the PSMA is fully executed.

INVOICE & PAYMENT

13. [CITY OF FRESNO] will invoice, no more frequently than monthly, and CALTRANS will reimburse for actual costs incurred and paid towards PROJECT.
14. CALTRANS will pay [CITY OF FRESNO] within 45 (forty-five) calendar days of receipt of invoices.
15. CALTRANS and [CITY OF FRESNO] agree that the total amount of FUNDS paid out to [CITY OF FRESNO] will not exceed \$[REDACTED].

16. After CALTRANS and [CITY OF FRESNO] agree that all work for PROJECT is complete, [CITY OF FRESNO] will submit a final accounting for all costs. Based on the final accounting, [CITY OF FRESNO] will refund or invoice as necessary in order to satisfy the financial commitment of AGREEMENT.

GENERAL CONDITIONS

17. All portions of this AGREEMENT, including the Recitals section, are enforceable.
18. All obligations of CALTRANS under the terms of AGREEMENT are subject to the appropriation of resources by the Legislature and the State Budget Act authority.
19. If [CITY OF FRESNO] fails to complete the PROJECT for any reason, [CITY OF FRESNO] shall, at [CITY OF FRESNO]'s expense, return CALTRANS right-of-way to its original condition or to a safe and operable condition acceptable to CALTRANS. If [CITY OF FRESNO] fails to do so, CALTRANS reserves the right to finish the work or place the PROJECT in a safe and operable condition. CALTRANS will bill [CITY OF FRESNO] for all expenses incurred and [CITY OF FRESNO] agrees to pay said bill within forty-five (45) days of receipt.
20. HM-1 is 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 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.
21. If HM-1 or HM-2 is found during PROJECT work, [CITY OF FRESNO] will immediately notify CALTRANS.
22. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing CALTRANS right-of-way. CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to PROJECT schedule.

CALTRANS, independent of PROJECT will pay, or cause to be paid, the cost of HM-1 MANAGEMENT related to HM-1 found within the existing CALTRANS right-of-way.

23. [CITY OF FRESNO], independent of PROJECT, is responsible for any HM-1 found within PROJECT limits and outside the existing CALTRANS right-of-way. [CITY OF FRESNO] will undertake or cause to be undertaken HM-1 MANAGEMENT with minimum impact to PROJECT schedule.

[CITY OF FRESNO], independent of the PROJECT, will pay, or cause to be paid, the cost for HM-1 MANAGEMENT for HM-1 found within PROJECT limits and outside of the existing CALTRANS right-of-way.
24. [CITY OF FRESNO] is responsible for HM-2 MANAGEMENT within the PROJECT limits.
25. HM-2 MANAGEMENT costs are PROJECT costs.
26. CALTRANS and [CITY OF FRESNO] will enter into a PSMA before PROJECT work is performed within CALTRANS right-of-way. [CITY OF FRESNO] understands and acknowledges the terms of the PSMA will include, but are not limited to, [CITY OF FRESNO] shall be responsible for all regular and emergency maintenance, repair, and replacement of the PROJECT at the CITY OF FRESNO's expense for as long as the artwork remains in place. A sample template PSMA is attached as EXHIBIT ().
27. The PSMA will include indemnification provisions for anything done or omitted to be done by [CITY OF FRESNO] under or in connection with PROJECT.
28. Neither [CITY OF FRESNO] 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 under AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless [CITY OF FRESNO] and all of its officers and employees from all claims, suits, or actions, including reasonable attorneys' fees, 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 AGREEMENT.

29. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by [CITY OF FRESNO], its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon [CITY OF FRESNO] under AGREEMENT. It is understood and agreed that [CITY OF FRESNO], 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, including reasonable attorneys' fees, of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, claims based on (1) 17 U.S.C. §§ 101-810 (the Copyright Act of 1976, as modified), (2) 17 U.S.C. § 106A(a) (the Visual Artists Rights Act of 1990, "VARA"), (3) 17 U.S.C. § 113, (4) California Civil Code § 987 (the California Art Preservation Act), California Civil Code §989, or (5) any other rights arising under U.S. federal or state laws or under the laws of any other country that conveys rights and protections of the same nature as those conveyed under 17 U.S.C. §106A(a) and California Civil Code §987, intellectual property claims arising from or related to breach of contract, inverse condemnation, conversion, and/or taking of property, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by [CITY OF FRESNO], its contractors, sub-contractors, and/or its agents under AGREEMENT.
30. If the work performed on PROJECT 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 [CITY OF FRESNO] 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. [CITY OF FRESNO] agrees to include prevailing wage requirements in its contracts for public work. Work performed by [CITY OF FRESNO] 's own forces is exempt from the Labor Code's Prevailing Wage requirements.

[CITY OF FRESNO] shall require its contractors to include prevailing wage requirements in all subcontracts funded by AGREEMENT when the work to be performed by the subcontractor is "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in [CITY OF FRESNO] contracts.
31. AGREEMENT is intended to be CALTRANS' and [CITY OF FRESNO]'s final expression and supersedes all prior oral understandings pertaining to PROJECT, with the exception of the required agreements to complete CALTRANS' Transportation Art process as discussed herein. The required agreements include, but are not limited to, the TAP, CCA, and PSMA.
32. AGREEMENT will terminate upon CALTRANS' acceptance of PROJECT. However, all indemnification and maintenance articles of AGREEMENT will remain in effect until terminated or modified in writing by mutual agreement.

CONTACT INFORMATION

CALTRANS and [CITY OF FRESNO] will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to AGREEMENT.

CALTRANS

Project Manager-Shavonne Conley
1352 W Olive Ave
Fresno, CA 93728
Office Phone: (xxx) xxxx-xxxx
Mobile Phone: (559) 383-5609 (optional)
shavonne.conley@dot.ca.gov

[CITY OF FRESNO formal name]

[Formal Name], Title
[Address]
[City], CA [xxxxx]
Office Phone: (xxx) xxxx-xxxx
Mobile Phone: (xxx) xxx-xxxx (optional)
[Email Address]

SIGNATURES

CALTRANS and [CITY OF FRESNO] are empowered by the law 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.

CALTRANS and [CITY OF FRESNO] acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

[CITY OF FRESNO formal name]

District Director

[Title]

Verification of funds and authority:

Attest:

District Budget Manager

[Title]

Approved as to form and procedure:

Approved as to form and procedure:

Attorney

Certified as to financial terms and policies:

Attorney [or Counsel]

HQ Accounting Supervisor