

PUBLIC MASS TRANSPORTATION
SERVICE AGREEMENT
Dougherty Valley Public Transportation Services

This PUBLIC MASS TRANSPORTATION SERVICE AGREEMENT (Agreement) is entered into effective this ____ day of _____, 2011, between the CENTRAL CONTRA COSTA TRANSIT AUTHORITY ("CCCTA"), a joint exercise of powers entity created, existing and in good standing under California Government Code Sections 6500, *et seq.*, and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California ("County").

RECITALS

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings and intentions:

A. The County desires to address the need for public mass transportation in the Dougherty Valley by financially supporting public transit in the Dougherty Valley, consistent with the adopted policies of the *Dougherty Valley Specific Plan*, and its certified *Supplemental Environmental Impact Report* and subsequent *Addendums*, *the Agreement to Settle Litigation Relating to the Dougherty Valley General Plan Amendment, Specific Plan and Environmental Impact Report*, and the findings of the *Dougherty Valley Transit Feasibility Study*.

B. The County has established a funding source for public transit in Dougherty Valley through a one-time transit fee, ranging from \$431 to \$500, assessed on each new dwelling unit constructed in the subdivisions known as "Gale Ranch Phase 3", "Windemere Phases 3 – 5" and "Gale Ranch Phase 4" in Dougherty Valley. Said transit fees are collected from developers and retained in a special transit reserve trust fund.

C. The County may allocate fee revenue from the special transit reserve trust fund to a transit provider for public mass transportation in Dougherty Valley if the transit provider provides a plan for public mass transportation service.

D. In 2006, CCCTA and the County entered into a Public Mass Transportation Service Agreement for the *Dougherty Valley Transit Demonstration Project* ("the 2006 Agreement"), to provide for public mass transportation services in Dougherty Valley. The term of the 2006 Agreement will end on December 19, 2011.

E. The *Dougherty Valley Demonstration Project* is nearing completion and, pursuant to the Performance Standard in the 2006 Agreement, CCCTA determined that it will include the Project Demonstration Route ("Route 35") as a part of its system of fixed mass transit routes.

F. County is willing to make a financial contribution towards the improvement of public transportation services in Dougherty Valley and CCCTA is willing to provide such service, consistent with the public interest and the scope of CCCTA's powers to provide public transportation services.

G. The County desires to give CCCTA full operational and managerial discretion consistent with the terms of this Agreement and applicable law over the means of providing the public transportation services contemplated by this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

1. Term. The term of this Agreement shall begin December 20, 2011 and remain in effect until terminated by either party as provided for in Section 13, or until County notifies CCCTA that County has received payment of the one-time transit fee for the final unit of the "Gale Ranch Phase 3", "Windemere Phases 3 – 5" and "Gale Ranch Phase 4" developments in Dougherty Valley, whichever occurs sooner. Upon termination of this Agreement, County will no longer have payment obligations under this Agreement.

2. Route 35 Dougherty Valley Service. CCCTA agrees to operate public transit fixed route service, designated as CCCTA "Route 35", between the San Ramon Transit Center and the Dublin/Pleasanton BART Station generally along Bollinger Canyon Road and Dougherty Road. Route 35 is more particularly depicted on the route map attached as Exhibit A. CCCTA has sole control and discretion to determine the specific route alignment, schedule, number of stops, and bus stop locations for Route 35, in accordance with its service standards and policies for fixed route service. During the term of this Agreement, the service level for the Route 35 shall consist of the following:

a. *Minimum Level of Service.* CCCTA shall provide a Minimum Level of Service of 5,000 service hours per year at its sole cost and expense, subject to the availability of funding and CCCTA's planning and budget process for regularly scheduled fixed route service.

b. *Additional Service Hours.* CCCTA will provide, and County will pay for, Additional Service Hours at a level to be determined annually based upon the funding that the County will provide from transit fees. By September 1 of each year, County will advise CCCTA of the projected funding available for Additional Service Hours for the following calendar year. County's projection of funding for the following calendar year under this Section 2.b shall not be considered a guarantee of funding, and shall be used for planning purposes only. CCCTA will determine the number of Additional Service Hours to be provided. The hourly rate for calculating the additional hours of service, based upon CCCTA's marginal costs, is set at \$85.00 per hour for 2012. The hourly rate for Additional Service Hours will be adjusted annually on January 1, based upon the previous year's change in the Consumer Price Index – All Urban Consumers for San Francisco-Oakland-San Jose. CCCTA shall provide transit service for the Additional Service Hours, as adjusted pursuant to paragraph 2.c below, based on County's funding projection of transit fee revenues and any adjustments thereto.

c. *Service Adjustments.* County will notify CCCTA of changes in its projected transit fee revenues on a quarterly basis, i.e., by December 1, March 1, June 1, and September 1, in order to allow CCCTA to make adjustments, if necessary, to the level of service.

3. Holidays. Service will not operate on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day.

4. Buses.

a. *Maintenance.* CCCTA shall provide, or cause to be provided, at its sole discretion, buses in good condition and repair for the performance of the services contemplated by this Agreement. CCCTA shall service and perform preventative maintenance on the buses pursuant to its standard operating policies. Buses shall be neat and clean.

b. *Accessibility.* All vehicles provided for service under this Agreement shall be fully accessible to person with disabilities as required under the Americans With Disabilities Act (ADA) of 1990.

5. Drivers. CCCTA shall provide the drivers necessary to perform the services required under this Agreement. CCCTA shall require that the drivers have training consistent with, and experience similar to, drivers of similar CCCTA routes. Drivers shall hold valid California Class B motor vehicle licenses.

6. Compensation and Manner of Payment. The County agrees to compensate CCCTA for all Additional Service Hours provided, not to exceed the total transit fees collected on an annual basis. CCCTA shall invoice County on a quarterly basis for amounts due for Additional Service Hours furnished during the prior quarter. County shall pay the amounts due within 30 days of receipt of CCCTA's invoice. If there is a shortage in transit fees collected for the quarter, any unpaid amounts will be carried over and included in the next quarterly invoice. As provided for in Section 2, CCCTA may realign the Additional Service Hours in subsequent quarters to match County's projected funding.

7. Fare Structure. CCCTA shall establish fares for Route 35 based upon its standard fixed-route fare structure. All fare revenues shall be retained by CCCTA to support Route 35. CCCTA reserves the right to revise fares as necessary in its complete discretion.

8. Monitoring Performance. CCCTA will monitor the performance of Route 35 quarterly in accordance with its customary practice for reviewing fixed route service, and meet with the County as needed to review and consider possible modifications, which would be subject to CCCTA Board approval, to the operation of Route 35, if appropriate.

9. Compliance with Laws. CCCTA shall comply with all laws, regulations and orders of any federal, state, county, regional or municipal authority applicable to the service.

10. Independent Contractor. In performing under this Agreement, CCCTA shall act at all times as an independent contractor. Nothing contained herein shall be construed or applied so as to create the relationship of principal and agent, or of employer and employee, between the County and CCCTA or its agents or employees.

11. Notices. All required or permitted payments, reports, demands and notices may be sent by ordinary mail. Notices that are mailed shall be deemed delivered two (2) business days after deposited in the mail. Notices may be personally delivered and shall be deemed delivered at the time delivered to the appropriate address set forth below. Until notified otherwise in writing, CCCTA shall send or deliver all such communications relating to this Agreement to the following address:

Contra Costa County Department of Conservation and Development
651 Pine Street, 4th Floor, North Wing
Martinez, CA94553-0095
Attention:

And, the County shall send all such communications to the following address:

Central Contra Costa Transit Authority
2477 Arnold Industrial Way
Concord, CA94520
Attention: Anne Muzzini, Director of Planning and Technical Services

12. Records and Audit.

a. *Financial Records:* CCCTA shall maintain true and complete records in connection with the service and all transactions related thereto, and shall retain all such records for at least thirty-six (36) months after the end of the calendar year in which the service is performed. The County may from time to time and at any time during the foregoing period of record retention make an audit of all records of CCCTA relating to the service; but only for the purpose of assessing the accuracy of reports or information received from CCCTA.

b. *Reports:* CCCTA shall provide to the County ridership and performance reports as needed for the County to comply with the terms and conditions of its funding sources. CCCTA and the County shall mutually agree upon a format and the content of such reports, and the frequency with which the reports shall be provided to the County.

13. Termination of Agreement. Either party may terminate this Agreement by giving written notice of termination to the other, which shall specify the effective date of termination. The notice of termination shall be given at least 180 days before its effective date. Upon termination, CCCTA shall submit a written closing statement to the County for all amounts due from the County for Additional Service Hours provided up to the effective date of termination. County shall pay said account within 30 days after receipt of the closing statement, whereupon County will no longer have any payment obligations under this Agreement.

As of the effective date of termination, CCCTA shall be released from any obligations under this Agreement to provide the Minimum Level of Service, or any other level of public transit service, for Dougherty Valley Route 35.

14. Entire Agreement. This Agreement is the entire agreement of this matter between the parties and supersedes all prior negotiations and understandings with respect thereto, including the 2006 Agreement. CCCTA and the County each acknowledges that it has not relied upon any promise, representation or warranty not expressly set forth in this Agreement in executing this Agreement. If any provision of this Agreement is void or otherwise unenforceable, the remainder of the Agreement shall continue in full force and effect.

Changes affecting the obligations of the parties set forth in this Agreement shall be by written amendment signed by both parties.

15. Severability. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

16. Headings. The descriptive headings used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

17. Time of Essence. Time is of the essence in this Agreement.

18. Waiver. No waiver by either party of any default or breach of any covenant by the other hereunder shall be implied from any omission to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. No waiver of any provision under this Agreement shall be effective unless in writing and signed by the waiving party.

19. Attorneys' Fees. In the event either of the parties brings an action or legal proceeding due to an alleged breach of this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as determined by a court of competent jurisdiction.

20. Controlling Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

21. Authority. All parties executing this Agreement represent and warrant that they are authorized to do so.

IN WITNESS WHEREOF, the parties have hereunto set their hands the date and year first above written.

CENTRAL CONTRA COSTA TRANSIT AUTHORITY

By: Rick Ramacier, General Manager

Date: _____

APPROVED AS TO FORM:

By: Madeline Chun, Legal Counsel
Central Contra Costa Transit Authority

CONTRA COSTA COUNTY DEPT OF CONSERVATION AND DEVELOPMENT

By:

Date:_____

APPROVED AS TO FORM:


