

CCTA AGREEMENT ##.##.##
MEMORANDUM OF UNDERSTANDING
Between
THE CONTRA COSTA TRANSPORTATION AUTHORITY
AND
THE COUNTY OF CONTRA COSTA

FOR THE
STATE ROUTE 239 PROJECT
(State Transportation Improvement Program ID: CC070019)
AND
ASSOCIATED FEDERAL FUNDING VIA
SAFETEA-LU Projects #1930 and #464

This MEMORANDUM OF UNDERSTANDING (referred to herein as this "MOU"), is effective as of January 28, 2012, is between the Contra Costa Transportation Authority, a local transportation authority, (hereinafter referred to as "CCTA"), and the County of Contra Costa, a political subdivision of the State of California (hereinafter referred to as "COUNTY").

RECITALS

- A. In 1985, the California Department of Transportation ("CALTRANS") finalized the concept for the development of State Route 239 in Eastern Contra Costa County.
- B. COUNTY secured funding under the *2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users*, in the *High Priority Program* (\$4 Million Project #1930) and *Transportation Improvements Program* (\$10 Million Project #464) (collectively, "FEDERAL FUNDING") to study, plan and design, and construct State Route 239 (the "PROJECT").
- C. COUNTY and Parsons Transportation Group Inc. ("CONSULTANT") entered into that certain Consulting Services Agreement dated May 10, 2011 (the "AGREEMENT") to conduct the planning phase ("PHASE 1") of the PROJECT to determine the ultimate concept for the PROJECT.
- D. COUNTY has requested that CCTA assume responsibility for PHASE 1 of the PROJECT and all future activities related to the study and construction of the PROJECT.
- E. CCTA has agreed to assume responsibility for PHASE 1 of the PROJECT and all future activities related to the study and construction of the PROJECT.
- F. CCTA and COUNTY are entering into, or have entered into that certain Cooperative Funding Agreement (SR239 Project – Phase 1 (Planning)) (the "COOP AGREEMENT"), among County, San Joaquin County, the City of Brentwood, the City of Tracy, and Mountain House Community Services District, as partner jurisdictions, and CCTA, pursuant to which CCTA will manage the partner jurisdictions work on PHASE 1 of the PROJECT.

- G. COUNTY is taking action to assign all of its rights and obligations under the AGREEMENT to CCTA, and CCTA is taking action to assume all of COUNTY's rights and obligations under the AGREEMENT by way of an assignment and assumption agreement (the "ASSIGNMENT").

UNDERSTANDING

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, COUNTY and CCTA hereby agree as follows:

1. Purpose and Scope. COUNTY and CCTA desire to complete PHASE 1 and subsequent PROJECT development phases as informed by PHASE 1 and as dictated by requirements related to FEDERAL FUNDING secured by COUNTY. The purpose of this MOU is to establish the apportionment of the respective duties between COUNTY and CCTA as they relate to current and future development of the PROJECT.
2. Responsibilities of COUNTY and CCTA.
 - A. COUNTY agrees:
 - i. To execute the ASSIGNMENT conveying its right, title and interest in the AGREEMENT from COUNTY to CCTA;
 - ii. To cooperate fully in the transfer of PHASE 1 responsibilities to CCTA and facilitate CCTA access to FEDERAL FUNDING by way of transfer of all associated digital and paper files and through any communication and administrative action deemed necessary by either party, including those administrative actions necessary to de-obligate remaining FEDERAL FUNDING from COUNTY and re-obligate the same to CCTA;
 - iii. To provide local match funding required under rules associated with FEDERAL FUNDING for both the existing AGREEMENT and for staff time expenses incurred by CCTA in performing PHASE 1 work on the PROJECT; provided, that such local match will not exceed \$1.45 million (such funds, the "AGREEMENT LOCAL MATCH FUNDS");
 - iv. To cooperate fully and facilitate any actions or communication with CALTRANS and the Metropolitan Transportation Commission necessary to transfer PROJECT responsibilities to CCTA;
 - v. To participate fully in the conduct of PHASE 1 and subsequent PROJECT phases as a stakeholder pursuant to the COOP AGREEMENT and otherwise;
 - vi. To cooperate fully in facilitating CCTA access to any additional

FEDERAL FUNDING needed for PHASE 1 and/or to fund future PROJECT development phases;

- vii. To cooperate fully in any required accounting activities for current and future expenditure of FEDERAL FUNDING;
- viii. To assist CCTA with any reporting and documentation necessary to advance the PROJECT;
- ix. To cooperate fully with implementation of the recommendations of PHASE 1 and any future PROJECT development phases; and
- x. To cooperate fully with CCTA in identifying local match funding for future PROJECT phases.

B. CCTA agrees:

- i. To execute the ASSIGNMENT accepting right, title, interest, and obligations in and under the AGREEMENT;
- ii. To cooperate fully and undertake any administrative actions necessary to ensure availability and continuity of FEDERAL FUNDING for the PROJECT, including without limitation, submission of all reports and data COUNTY requires to comply with FEDERAL FUNDING requirements, preparation of letters to the Metropolitan Transportation Commission, CALTRANS, and the Federal Highway Administration;
- iii. To invoice COUNTY for local matching funds required under rules associated with FEDERAL FUNDING for the AGREEMENT;
- iv. To administer the COOP AGREEMENT and perform its obligations thereunder;
- v. To cooperate fully in any required accounting activities for current and future expenditure of FEDERAL FUNDING;
- vi. To cooperate fully and facilitate any actions or communication with CALTRANS or the Metropolitan Transportation Commission necessary to accept PROJECT responsibilities from COUNTY;
- vii. To implement the recommendations of the PHASE 1 report and study as produced by CONSULTANT;
- viii. To recognize COUNTY as a PROJECT stakeholder;
- ix. To assume responsibility for the conduct and funding of all PHASE 1 activities and all future PROJECT development activities from the date of this MOU forward;
- x. To include in all consultant, planning, design construction,

construction management and related contracts for the PROJECT, provisions requiring the consultants, contractors, construction managers and any other contract party to provide insurance and indemnification naming COUNTY, its, officers, employees, agents and representatives to the same extent as provided to CCTA; and

- xi. To cooperate fully with COUNTY in identifying local match funding for future PROJECT phases.

3. Mutual Indemnification.

Neither COUNTY 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 CCTA and/or its agents, under or in connection with any work, authority, or jurisdiction conferred upon CCTA under this MOU. CCTA hereby agrees to indemnify, defend, assume all liability for and hold harmless COUNTY and its officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons (collectively, "CLAIMS"), arising out of or in any way connected to the negligence or willful misconduct of CCTA, its officers, agents or employees in connection with or arising from any of its activities pursuant to this MOU. The foregoing obligation of CCTA to indemnify, defend, assume all liability for and hold harmless COUNTY and its officers, employees, agents and representatives does not apply to any CLAIMS caused by the sole negligence or willful misconduct of COUNTY.

Neither CCTA 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 COUNTY and/or its agents, under or in connection with any work, authority, or jurisdiction conferred upon COUNTY under this MOU. COUNTY hereby agrees to indemnify, defend, assume all liability for and hold harmless CCTA and its member agencies, officers, employees, agents and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons, arising out of or in any way connected to the negligence or willful misconduct of COUNTY, its officers, agents or employees in connection with or arising from any of its activities pursuant to this MOU. The foregoing obligation of COUNTY to indemnify, defend, assume all liability for and hold harmless CCTA and its member agencies, officers, employees, agents and representatives does not apply to any CLAIMS caused by the sole negligence or willful misconduct of CCTA.

4. MOU Modification. This MOU may be modified only by the written approval of the legislative bodies of both parties.

5. MOU Termination; Default. A. Term. Unless terminated earlier, this MOU will terminate immediately after both parties complete their respective responsibilities as listed above, except for any provisions relating to indemnification and insurance, which shall survive termination of this MOU; provided, that this MOU will terminate once all FEDERAL FUNDING has been expended.

B. Default. If either party fails to perform as specified in this MOU, either party may terminate this MOU for cause. Termination shall not occur unless the party alleging a failure of performance serves a written notice of default on the Deputy Director (in the case of an alleged default by COUNTY), or the Executive Director (in the case of an alleged default by CCTA), setting forth the manner in which the other party is allegedly in default. If the defaulting party does not cure the breach within sixty (60) days after receiving the written notice of default or, if the alleged default is not capable of cure within 60 days, such longer period as may be required to cure the breach, the non-defaulting party may terminate this MOU for cause. If either party terminates this MOU, CCTA will be entitled to payment from COUNTY of remaining AGREEMENT LOCAL MATCH FUNDS that have not been previously expended, and which are due to CCTA as reimbursement for its payments made to CONSULTANT pursuant to the AGREEMENT for PHASE 1 work and for CCTA staff time and expenses incurred in performing PHASE 1 work on the PROJECT; provided, that COUNTY is not obligated to pay more than \$1.45 million in AGREEMENT LOCAL MATCH FUNDS in the aggregate as provided in Section 2(A)(iii), whether such payments are to CONSULTANT, CCTA or otherwise. Notwithstanding the foregoing, CCTA may terminate this MOU or stop work on this MOU at any time, if in its sole discretion it determines, that there is inadequate funding to complete and/or close out either PHASE 1 and/or subsequent PROJECT development phases.
6. Counterparts. The parties hereto recognize and agree that separate counterpart signature pages may be used to execute this MOU, but that all such pages constitute one and the same MOU.
7. Construction. The section headings and captions of this MOU are, and the arrangement of this instrument is, for the sole convenience of the parties to this MOU. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this MOU. This MOU will not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this MOU and their respective counsel have read and reviewed this MOU and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this MOU. The recitals of this MOU are, and will be enforceable as, a part of this MOU.
8. No Third Party Beneficiaries. This MOU is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this MOU or as a result of any action or inaction of any party pursuant to this MOU.
9. Governing Law and Venue. This MOU will be governed and construed in accordance with California law. The venue of any litigation pertaining to this MOU will be in Contra Costa County, California.

10. Entire MOU. This MOU contains the entire understanding of the parties relating to the subject of this MOU. Any representation or promise of the parties relating to PHASE 1 and/or subsequent PROJECT development activities shall not be enforceable unless it is contained in this MOU or in a subsequent written modification of this MOU executed by all the legislative bodies of both parties.

Signatures appear on following pages.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

COUNTY OF CONTRA COSTA

CONTRA COSTA TRANSPORTATION
AUTHORITY

By: _____
Mary N. Piepho
Chair

By: _____
David E. Durant
Chair

Attest:

Attest:

By: _____
David Twa
Secretary

By: _____
Randell H. Iwasaki
Executive Director

Approved as to form:
Sharon L. Anderson, County Counsel

Approved as to form:
Best Best & Krieger LLP

By: _____
Eric S. Gelston
Deputy County Counsel

By: _____
Malathy Subramanian
Authority Counsel