

CCTA AGREEMENT 05E.06
AMENDED AND RESTATED 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 AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (referred to herein as this "MOU"), effective as of _____, 2019 ("Effective Date"), is by and 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"). COUNTY and CCTA are sometimes referred to together as the "PARTIES," and each as a "PARTY."

RECITALS

- A. In 1985, the California Department of Transportation ("CAL TRANS") 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 assigned all of its rights and obligations under the AGREEMENT to CCTA, and CCTA has assumed all of COUNTY's rights and obligations under the AGREEMENT by way of an assignment and assumption agreement (the "ASSIGNMENT"). Under the initial PROJECT Memorandum of Understanding between CCTA and COUNTY, dated January 28, 2012, ("Initial MOU"), CCTA and COUNTY allocated PROJECT-related responsibilities between them.
- H. CCTA and the California Department of Transportation ("CALTRANS") entered into a Cooperative Agreement, dated March 20, 2019, ("PAED COOP") for the preparation of the Project Approval and Environmental Document ("PAED") for the PROJECT.
- I. The PARTIES now desire to amend the Initial MOU to add responsibilities related to preparation of the PAED for the PROJECT (the "PAED preparation phase"), to restate the Initial MOU, and to make clarifying changes. This MOU supersedes the Initial MOU as of the Effective Date.

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, including the PAED preparation phase, 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. The PARTIES agree that nothing in this MOU commits a PARTY to take a future discretionary action on the PROJECT or the PAED, or to approve the PROJECT or the PAED. Any such future discretionary actions by a PARTY shall be within that PARTY's sole discretion.
- 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 and PAED 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 fully reimburse CCTA for its project management cost and 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 work on the PROJECT; provided, that COUNTY's reimbursement and local match under this Section 2(A)(iii) shall not exceed \$ 3.635 million (such funds, the "AGREEMENT LOCAL MATCH FUNDS");
- iv. To review CCTA's project management cost and the AGREEMENT LOCAL MATCH FUNDS amount with CCTA at least once every twelve months and to negotiate with CCTA in good faith on potential changes to the AGREEMENT LOCAL MATCHING FUNDS amount to cover CCTA project management costs beyond December 31, 2021.
- v. To cooperate fully and facilitate any actions or communication with CALTRANS and the Metropolitan Transportation Commission necessary to transfer PROJECT responsibilities to CCTA;
- vi. To participate fully in the conduct of PHASE 1 and subsequent PROJECT phases, including the PAED preparation phase, as a stakeholder;
- vii. To cooperate fully in facilitating CCTA access to any additional FEDERAL FUNDING needed for PHASE 1 and/or to fund future PROJECT development phases, including the PAED preparation phase;
- viii. To cooperate fully in any required accounting activities for current and future expenditure of FEDERAL FUNDING;
- ix. To assist CCTA with any reporting and documentation necessary to advance the PROJECT;
- x. Subject to future discretionary actions by COUNTY's governing body, which shall be within its sole discretion to consider and make, to cooperate fully with implementation of the recommendations of PHASE 1 and any future PROJECT development phases, including the PAED preparation phase; and
- xi. 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, CAL TRANS, 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 invoice COUNTY for project management costs;
- v. To administer the COOP AGREEMENT and the PAED COOP, and perform its obligations thereunder;
- vi. To cooperate fully in any required accounting activities for current and future expenditure of FEDERAL FUNDING;
- vii. To cooperate fully and facilitate any actions or communication with CAL TRANS or the Metropolitan Transportation Commission necessary to accept PROJECT responsibilities from COUNTY;
- viii. Subject to future discretionary actions by CCTA's governing body, which shall be within its sole discretion to consider and make, to implement the recommendations of the PHASE 1 report and study as produced by CONSULTANT and any future PROJECT development phases, including the PAED phase;
- ix. To recognize COUNTY as a PROJECT stakeholder;
- x. To assume responsibility for the conduct and funding of all PHASE 1 activities and all future PROJECT development activities, including the PAED preparation phase, beginning on the Effective Date of the Initial MOU;
- xi. 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
- xii. To cooperate fully with COUNTY in identifying local match funding for future PROJECT phases.

- xiii. To review CCTA's project management cost and the AGREEMENT LOCAL MATCH FUNDS amount with the COUNTY at least once every twelve months and to negotiate with the COUNTY in good faith on potential changes to the AGREEMENT LOCAL MATCHING FUNDS amount to cover CCTA project management costs beyond December 31, 2021

3. Mutual Indemnification.

- A. 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 sole willful misconduct of COUNTY or its officers, employees, agents, or representatives.
 - B. 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 CLAIMS 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 sole willful misconduct of CCTA or its officers, employees, agents, or representatives.
 - C. Survival. The PARTIES' obligations in Section 3 of this MOU shall survive the termination of this MOU.
4. MOU Modification. This MOU may be modified only by the written approval of the legislative bodies of both PARTIES.

5. MOU Termination; Default; Survival.

- A. Automatic Termination. Unless terminated earlier under Section 5.B., this MOU will terminate immediately upon the occurrence of either of the following:
- i. After both PARTIES complete their respective responsibilities as listed in Section 2, above; or
 - ii. One hundred and eighty (180) days after all FEDERAL FUNDING has been expended, or Federal reimbursement has been received in full, whichever is the later.
- B. Termination for Default. If a PARTY fails to perform as specified in this MOU (“defaulting PARTY”), the other PARTY (“non-defaulting PARTY”) may terminate this MOU for cause. Termination shall not occur unless the non-defaulting PARTY alleging a failure of performance serves a written notice of default on the defaulting PARTY’s designated representative (Deputy Director of Public Works 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 defaulting 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, the defaulting PARTY does not cure the breach within such longer period as may be required to cure the breach, the non-defaulting PARTY may terminate this MOU for cause. 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, including the PAED phase. If either PARTY terminates this MOU in any manner authorized under this Section 5(B), 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 \$3.635 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.
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, including the PAED phase, shall not be enforceable unless it is contained in this MOU or in a subsequent written modification of this MOU executed by the legislative bodies of both PARTIES.

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: _____
John Gioia, Chair

By: _____
Robert Taylor, Chair

ATTEST:

ATTEST:

By: _____
David Twa, County Administrator

By: _____
Tarienne Grover, Clerk of the Board

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

Approved as to form:
Best Best & Krieger LLP

By: _____
Deputy County Counsel

By: _____
Malathy Subramanian, Authority Counsel

NW:sr
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