

MEMORANDUM OF UNDERSTANDING
REGARDING EXPANDED FERRY SERVICE IN CONTRA COSTA COUNTY

This Memorandum of Understanding (“MOU”) entered into as of _____ 2022, (“Effective Date”) by and among the Cities of Antioch (“Antioch”), Hercules (“Hercules”), Martinez (“Martinez”), and Pittsburg (“Pittsburg”), Contra Costa County (“County”), Eastern Contra Costa Transit Authority (“ECCTA”), and the Contra Costa Transportation Authority (“CCTA”). Antioch, Hercules, Martinez, and Pittsburg are sometimes collectively referred to herein as the “Cities,” and each individually as a “City.” Each City, the County, ECCTA, and CCTA are sometimes collectively referred to herein as the “Parties,” and each individually as a “Party.”

Recitals

- A. The Parties have determined that increasing transit options in Contra Costa County will promote economic development, create jobs, provide additional emergency response alternatives, and support congestion relief by converting vehicle trips to transit trips. Providing ferry operations to service within Antioch, Martinez, Pittsburg, Hercules and the unincorporated areas of east County will provide a viable transit alternative to these communities for both commute and recreational trips. To that end, the Parties desire to evaluate and assess whether expanded ferry service in the County (referred to as “Expanded Ferry Service”) could be established as a viable service. Expanded Ferry Service would provide connections between the Cities and other employment centers, services, and recreational facilities in the East Bay and other parts of the Bay Area.

- B. The Parties have conceptual ideas of the goals of an Expanded Ferry Service. Completion of additional studies will be required for the development of conceptual initial operating parameters of the service, including but not limited to projections for ferry demand, service frequency, fare structure, operating costs, and purchase/lease agreement(s) for vessels (if needed), and other matters connected with an initial demonstration period and ongoing ferry service. The Parties anticipate that these studies will build upon and refine the results of the “Financial Feasibility of Contra Costa Ferry Service, 2015-2024” study that was completed in 2015.

- C. Ferry service planning, and development of an implementation strategy, will require coordination with key stakeholders, policymakers, and permitting agencies that may

provide input and/or have project approval authority over some or all of the Expanded Ferry Service. The Parties anticipate that a full financial model and management plan will need to be developed to understand whether the service would be viable. This will require identifying capital and operating costs, a potential fare structure, a conceptual management structure, and matters connected with establishing a viable ferry service. Advancement of these planning efforts beyond these initial studies will require additional agreements, prioritization of funding by the Parties and/or within the Sub-Region and procurement of services, and completion of all environmental review before any of the Parties can commit to pursuing or partnering to pursue Expanded Ferry Service.

- D. The Parties desire to enter into this MOU to plan and complete studies and reports to better understand how or whether Expanded Ferry Service can be established. The Parties anticipate future amendments and restatements of this MOU will be required as project milestones are completed, and when there is greater definition around next steps in the planning process.

Agreement

- 1. Term; Termination; Withdrawal.** The term of this MOU begins on the Effective Date, and it terminates when all Parties then-party to the MOU mutually agree in writing to terminate this MOU. Any Party may withdraw from this MOU by providing written notice to all other Parties at least 60 days prior to the date of withdrawal. Notwithstanding anything to the contrary, a Party shall be responsible for paying its share of costs incurred under this MOU through and including the termination date or the withdrawal date.
- 2. Feasibility Study Scope of Work and Solicitation.** CCTA shall consult with the other Parties to prepare a consultant scope of work ("Scope of Work") that CCTA will use to define the scope of the services a consultant will perform in connection with completing a Feasibility Study for Expanded Ferry Service ("Feasibility Study"). CCTA shall ensure that the Scope of Work and the Feasibility Study adequately address all of the following: estimate ridership; evaluate fare structure; assesses operational and maintenance costs; assess existing infrastructure; define regulatory and permitting requirements; assess connected mobility options for first and last mile to marinas; identify and evaluate service plan options and operating parameters; evaluate possible management structures of the service; identify options for finding the service; and developing initial operating assumptions and financial constraints. CCTA shall further ensure that the Feasibility Study evaluates the use of small vessels (up to 100 passenger capacity) and investigates

opportunities to deploy zero emissions vessels. CCTA shall further ensure that the Feasibility Study evaluates procurement options, and that the Consultant develops recommendations for the ongoing management of the ferry service.

Following agreement on the Scope of Work by the Parties' representatives, CCTA shall solicit proposals from persons and firms interested in preparing the Feasibility Study. CCTA shall ensure that all other Parties have an opportunity to review and comment on CCTA's selection criteria and solicitation. CCTA shall obtain the concurrence of the Cities' and the County's designated representatives prior to engaging the successful consultant that will prepare the Feasibility Study (the "Consultant").

3. **Parties' Obligations.** To ensure that the Feasibility Study is timely completed under this MOU, in addition to other obligations included in this MOU, the Parties shall have the following obligations.

A. CCTA Obligations. CCTA shall:

- a. Develop the draft procurement documents needed to retain the Consultant to complete the Feasibility Study within two (2) months of the Effective Date of this MOU.
- b. Coordinate review of the procurement documents with designated representatives of the Cities, the County, and ECCTA; and incorporate comments provided by the Cities, the County, and ECCTA, provided such comments are timely provided to CCTA by the parties.
- c. Select, manage, oversee, and direct the Consultant work, including development of a schedule to ensure the timely completion of the Feasibility Study.
- d. Coordinate meetings among designated representatives of the Parties and the Consultant, as needed, or as reasonably requested by any Party.
- e. Provide a draft Feasibility Study to the Parties for review prior to finalization, and allow the Parties a reasonable opportunity to comment on the draft Feasibility Study.
- f. Perform other tasks, as may be required, to coordinate the timely completion of the Feasibility Study.
- g. Obtain the written consent of each City and the County prior to incurring more than \$200,000 in Consultant charges to complete the Feasibility Study, which consents may need to be given following approval of the cost increase by the Cities' and the County's governing bodies.

B. City and County Obligations. Each City and the County shall be responsible for that Party's equal share of the cost of the Consultant's charges for completing the Feasibility Study, in accordance with Section 4 ("Invoicing and Payments") of this MOU. For purposes of the avoidance of doubt, ECCTA is not responsible for any share of the Consultant's charges for completing the Feasibility Study.

C. All Parties' Obligations. Each Party shall designate its representative for purposes of this MOU. The designated representative will be responsible for actively representing that Party in meetings, planning activities, consultant selection, and Feasibility Study review.

4. **Invoicing and Payment.** CCTA shall be solely responsible for ensuring the Consultant is timely paid for work the Consultant performs completing the Feasibility Study under its contract with CCTA. The cities of Martinez, Hercules and Antioch have each elected to allow CCTA to withhold \$40,000 in Measure J funds for Local Streets Maintenance & Improvements – Program 11 (Return to Source Funds) in fiscal year 2022-2023 to reimburse CCTA for its share of the Consultant's charges for work connected with the Feasibility Study. If any city is found to be non-compliant with the Measure J Growth Management Program in fiscal year 2022-2023, the city shall remit to CCTA \$40,000 to reimburse CCTA for its share of the Consultant's work. Each of the City of Pittsburg and the County shall remit to CCTA \$40,000 by July 1, 2023 for each of its share of the cost of the Feasibility Study. CCTA shall provide each City and the County a copy of the Consultant's charges documented on a quarterly invoice.

If the Feasibility Study experiences cost increases beyond \$200,000, the cities and County agree to secure additional funds to cover the shortfall. If additional funding is determined by CCTA to be unavailable, the Feasibility Study may be re-scoped or terminated.

5. **Audit and Access to Records.** Each City and the County shall have the right of access to any books, documents, papers, or other records of CCTA that are pertinent to the Cities' and the County's reimbursement of CCTA for Consultant charges under this MOU. During the term of this MOU and for a period of three (3) years after the termination of this MOU, CCTA shall keep and maintain accurate financial accounts, in accordance with generally acceptable accounting principles, of all payments made by the Cities and the County to reimburse CCTA for Consultant charges. CCTA shall provide the Cities and the County copies of those records within 15 days of a written request, and shall make those records available for inspection during CCTA's normal business hours, at CCTA's offices, or the offices of its financial consultant.

6. **No Project.** The activities described in the MOU do not constitute a project for purposes of the California Environmental Quality Act (“CEQA”). Nothing in this MOU commits, nor shall it be construed to commit, any Parties to approve any project without first complying with the CEQA.
7. **Notices.** All notices, invoices, payments, demands, and other correspondence required to be given under this MOU shall be in writing, and shall be delivered in person, by overnight delivery with delivery charges prepaid, or by U.S. Mail with postage prepaid, to the following:

Antioch

Rosanna Bayon-Moore
Forest Ebbs
Designated Representatives
420 W 3rd St.
Antioch, CA 94509

Hercules

Michael Roberts
Designated Representative
111 Civic Dr.
Hercules, CA 94547

Martinez

Michael Chandler
Designated Representative
525 Henrietta St.
Martinez, CA 94553

Pittsburg

Sara Bellafronte
Designated Representative
65 Civic Ave.
Pittsburg, CA 94565

County

John Cunningham
Federal Glover
Designated Representatives
555 Escobar St.
Martinez, CA 94553

ECCTA

Rashidi Barnes
Designated Representative
801 Wilbur Ave.
Antioch, CA 94509

CCTA

Ying Smith
Designated Representative
2999 Oak Road, Suite 100
Walnut Creek, CA 94597

or to such other addresses as the Parties may respectively designate by written notice to the other Parties. Notice shall be deemed given on the same day if it is personally delivered, on the next day if it is delivered by overnight delivery, or on the fifth (5th) day after the postmark date if it is given by U.S. Mail.

8. **Entire Agreement; No Third-Party Beneficiaries.** This MOU contains the entire agreement among the Parties relating to the subject matter of this MOU. No alteration or variation of this MOU is valid or binding unless made in writing and signed by all Parties then-party to the MOU. Nothing in this MOU shall, nor is it intended to, confer on any person or entity other than the Parties any rights or remedies under this MOU.
9. **Construction.** The section headings and captions of this MOU are, and the arrangement of this MOU is, for the sole convenience of the Parties to this MOU. The section headings, captions, and arrangement of this MOU do not in any way affect, limit, amplify, or modify the terms and provisions of this MOU. This MOU shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties have prepared it. The Parties to this MOU and their attorneys 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 shall not apply to the interpretation of this MOU.
10. **Amendment.** Except as specified in this section, this MOU may not be modified, amended, or amended and restated except in a writing signed by all Parties then-party to the MOU. A public agency may become a Party to this MOU only by a written amendment to this MOU executed by all Parties then-party to the MOU. This MOU shall be deemed amended to remove a Party when that Party's withdrawal from this MOU is effective.
11. **Severability.** If a court determines that any term, covenant, or provision of this MOU is invalid, illegal, or unenforceable, the validity of the remainder of this MOU shall not be affected thereby.
12. **Governing Law.** This MOU shall be governed and construed in accordance with California law.
13. **Counterparts and Authority to Execute.** This MOU may be executed in one or more counterparts, each of which shall be deemed an original. The Parties executing this MOU represent and warrant they are authorized to execute this MOU.
14. **Binding Effect.** This MOU shall bind and benefit the Parties hereto and their heirs, successors, and permitted assigns.

[Remainder of page left blank. Signatures on next page(s).]

City of Pittsburg

Garrett Evans
City Manager

City of Antioch

Cornelius Johnson
City Manager

City of Martinez

Michael Chandler
City Manager

City of Hercules

Dante Hall
City Manager

Contra Costa County

Monica Nino
County Administrator

Contra Costa Transportation Authority

Timothy Haile
Executive Director

Eastern Contra Costa Transit Authority

Rashidi Barnes
Chief Executive Officer

SMS

H:\Client Matters\Cons & Dev\Contra Costa Ferry Expansion MOU (Revised Draft) - 072522.docx