

**COOPERATIVE FUNDING AGREEMENT
STATE ROUTE 239 PROJECT -- PHASE 1 (PLANNING)**

This COOPERATIVE FUNDING AGREEMENT (this “AGREEMENT”) is effective this 1st day of April 2013 (the “EFFECTIVE DATE”), among CONTRA COSTA TRANSPORTATION AUTHORITY, a local transportation authority (“CCTA”), CONTRA COSTA COUNTY, a political subdivision of the State of California (“CONTRA COSTA”), SAN JOAQUIN COUNTY, a political subdivision of the State of California (“SAN JOAQUIN”), the CITY OF BRENTWOOD, a municipal corporation of the State of California (“BRENTWOOD”), the CITY OF TRACY, a municipal corporation of the State of California (“TRACY”), and MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT, a California special district (“MOUNTAIN HOUSE” and together with CCTA, CONTRA COSTA, SAN JOAQUIN, BRENTWOOD and TRACY, the “PARTIES” and each separately, a “PARTY”).

RECITALS

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

A. CONTRA COSTA, SAN JOAQUIN, BRENTWOOD, TRACY, and MOUNTAIN HOUSE (each, a “PARTNER JURISDICTION” and collectively, the “PARTNER JURISDICTIONS”), and CCTA desire to work together in a collaborative planning process to develop specific technical studies and reports regarding the design and construction of future State Route 239 (the “PROJECT”), a highway that will connect State Route 4 in the Brentwood area with Interstate 205 or Interstate 580 in the Tracy area (herein, “STATE ROUTE 239”).

B. CONTRA COSTA has received authorization to expend \$14 million in federal funding for studies and construction of STATE ROUTE 239 (the “FEDERAL GRANT FUNDS”). The FEDERAL GRANT FUNDS were authorized by the United States Congress in the Federal Transportation Act of 2005 (Public Law No. 109-59) known as the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU).

C. CONTRA COSTA has been authorized by the California Department of Transportation (“CALTRANS”), the public agency administering the FEDERAL GRANT FUNDS, to begin expending \$2.9 Million of the FEDERAL GRANT FUNDS for PHASE 1 (as defined in Recital D below) of the PROJECT.

D. The PROJECT is divided into three phases: 1) Planning; 2) Project Approval/Environmental document; and 3) Project Development. The planning phase, includes stakeholder identification and outreach, developing an interagency structure for the process, extensive background research, technical analysis, production of a feasibility study that will examine a broad range of alternatives and result in consensus on a preferred alignment for STATE ROUTE 239, and the development of a project study report based on the preferred alignment identified in the feasibility study (the foregoing items and related planning tasks being referred to herein, as “PHASE 1”).

E. CONTRA COSTA has taken a separate action to transfer its obligation to oversee the PROJECT to CCTA, including assigning its rights and obligations under a contract (the “CONTRACT”) with Parsons Transportation Group Inc. (the “CONSULTANT”), pursuant to which the CONSULTANT will conduct a study to determine the ultimate concept and alignment for State Route 239.

F. CCTA has taken separate actions to assume rights and obligations for current PROJECT development activities including entering into a Memorandum of Understanding, and assuming the CONTRACT.

G. CCTA and CONTRA COSTA have entered into a Memorandum of Understanding for the PROJECT (the “SR239 MOU”), pursuant to which, among other things, CONTRA COSTA will provide CCTA access to FEDERAL GRANT FUNDS for current and future PROJECT activities, including without limitation, payment for amounts due under the CONSULTANT CONTRACT, and reimbursement to PARTNER JURISDICTIONS for performance of tasks pursuant to this AGREEMENT.

H. CCTA and each of the PARTNER JURISDICTIONS are located within the study area where STATE ROUTE 239 may be constructed and have expressed interest in participating in the collaborative study of STATE ROUTE 239.

I. CCTA has determined that each PARTNER JURISDICTION may be reimbursed from the FEDERAL GRANT FUNDS for eighty percent (80%) of eligible participating

expenditures for its staff time spent working on the PROJECT. This determination was made through consultation with CALTRANS.

J. CCTA desires to provide a portion of the FEDERAL GRANT FUNDS to the PARTNER JURISDICTIONS to ensure that the PARTNER JURISDICTIONS' staff are available to work on PHASE 1 of the PROJECT and are reimbursed for their staff time, in accordance with all applicable state and federal regulations.

NOW, THEREFORE, in consideration of the mutual agreements set forth above and the rights and obligations set forth in this AGREEMENT and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, CCTA and each PARTNER JURISDICTION hereby agree to the following:

1. Term. The term of this AGREEMENT shall commence on April 1, 2013 and shall terminate when the CONSULTANT has delivered its final report regarding PHASE 1 of the PROJECT to CCTA. PHASE 1 is anticipated to take approximately two years from start to finish, with an anticipated completion date of June 30, 2015.

2. Reimbursable Expenses. To support PHASE 1 of the PROJECT, each PARTNER JURISDICTION'S staff will work cooperatively with the other PARTIES to perform planning related tasks, including, but not necessarily limited to, the following work: 1) provide data on adopted or pending development plans and policy documents including general plans, specific plans, transportation improvement plans, other infrastructure plans and projects, major development plans, property ownership, and other background data that pertain to the respective PARTNER JURISDICTION; 2) provide technical input and review on potential traffic forecasting models and related analysis for use in the PROJECT, including both land use data and roadway data that are input into the forecasting models; 3) provide technical input and review of potential route alignments (specific paths) that STATE ROUTE 239 could take; 4) assist in developing the method of analysis of the routes; 5) provide input on potential innovative strategies to fund the construction of STATE ROUTE 239, including review of a traffic and revenue study that will estimate the viability of public-private partnerships; 6) assist in the development of a public opinion poll and other methods of public outreach that will be used in the PROJECT; 7) identify potential stakeholders within their jurisdiction for inclusion in the public outreach element of the PROJECT; 8) assist in the technical and policy development of potential institutional structures such as the creation of a Joint Exercise of Powers Agency; 9)

advise PARTNER JURISDICTION'S elected officials on the foregoing items and related matters; 10) meeting attendance; and 11) advise the other PARTIES on other technical aspects of the PROJECT as needed (the foregoing items and other related tasks being referred to herein, as "PROJECT SUPPORT").

3. Compensation.

a) Exhibit A attached hereto and incorporated herein by reference sets forth the position description and hourly pay range for each PARTNER JURISDICTION staff person that may be charged for such staff person's time to perform PROJECT SUPPORT for work on the PROJECT. In compliance with federal funding regulations and pursuant to the requirements of this Section 3, CCTA will reimburse each PARTNER JURISDICTION for eighty percent (80%) of its staff time worked on the PROJECT. Federal regulations require that local jurisdictions match the FEDERAL GRANT FUNDS on a twenty percent (20%) basis and CCTA and each of the PARTNER JURISDICTIONS agree that twenty percent (20%) of its respective staff time spent on the PROJECT will not be reimbursed from FEDERAL GRANT FUNDS and that such staff time is the responsibility of the respective PARTNER JURISDICTION.

b) CCTA'S reimbursement of a PARTNER JURISDICTION'S staff time will cover eighty percent (80%) of direct salary costs only, per state and federal regulation. Overhead costs are not reimbursable.

c) Each PARTNER JURISDICTION will provide quarterly invoices to CCTA's project manager, which will include: (i) a summary of work performed; (ii) the identity of personnel who performed the work; (iii) the specific tasks for which the work was performed; (iv) the number of staff hours involved in performing the work for each specified task and the date on which such hours were worked; (v) the hourly rate of pay for each staff person; (vi) the total amount for which reimbursement is being requested; (vii) a Budget Status Summary Report; and (viii); certification that invoices include a request for reimbursement for no more than eighty percent (80%) of direct salary costs and no overhead costs have been requested for reimbursement. Exhibit B attached hereto and incorporated herein by reference sets forth the procedure for invoice submittal.

d) The CCTA project manager will review the invoices and approve them for payment and make payment therefor, or, if additional documentation or information is required or there are questions regarding an invoice, the project manager will contact such PARTNER

JURISDICTION regarding such additional documentation, information or questions.

e) Once CCTA's project manager has approved and paid an invoice, CCTA will then seek reimbursement from CALTRANS for such payments to the PARTNER JURISDICTIONS.

f) CCTA's reimbursements to each PARTNER JURISDICTION shall not exceed \$50,000 per PARTNER JURISDICTION and reimbursement will not exceed a cumulative total of \$250,000 to all PARTNER JURISDICTIONS, in the aggregate, as indicated on Exhibit A attached hereto.

4. Changes to Compensation.

a) If CALTRANS reduces the compensation rate at which it will reimburse CCTA, or changes the requirements CCTA must meet in order to receive reimbursement from CALTRANS, CCTA reserves the right to revise this AGREEMENT in accordance with any such changes and CCTA and the other PARTNER JURISDICTIONS agree to amend this AGREEMENT to reflect any such changed requirements. Any revisions will be made in consultation with CCTA and the other PARTNER JURISDICTIONS and pursuant to Section 9 of this AGREEMENT.

b) No earlier than 30 days prior to each anniversary of the EFFECTIVE DATE, a PARTNER JURISDICTION may propose an amendment to any of the information in Exhibit A except for the maximum total reimbursement for the PROJECT, to reflect changes in the staff persons working on PROJECT, including position description, title and hourly pay range. If CCTA agrees to amend the Exhibit A information of a PARTNER JURISDICTION, such amendment will become effective once the PARTNER JURISDICTION has received written approval from CCTA.

5. Compliance with Laws. CCTA and each of the PARTNER JURISDICTIONS shall comply with all federal and state laws and regulations regarding the work performed and the reimbursements requested, including all federal and state laws and regulations regarding the receipt and use of FEDERAL GRANT FUNDS.

6. Notices. All required or permitted payments, reports, demands and notices may be sent by regular mail or electronic mail. Notices that are mailed by regular mail 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. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day of the recipient. Unless and until notified otherwise in writing, a PARTY shall send or deliver all such communications relating to this AGREEMENT to the following address:

Martin Engelmann
Deputy Executive Director, Planning
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597
mre@ccta.net

And CCTA shall send all such communications to the following addresses:

Stephen Kowalewski
Deputy Director
Contra Costa County Public Works Department
255 Glacier Drive
Martinez, CA 94553
(925) 313-2225 phone
(925) 313-2333 fax
skowa@pw.cccounty.us

Bailey Grewal
Director of Public Works
City of Brentwood
708 Third Street
Brentwood, CA 94513
e-mail address: bgrewal@ci.brentwood.ca.us

Firoz Vohra
Senior Engineer
San Joaquin County Public Works Dept.
1810 East Hazelton Avenue
Stockton, CA 95205
e-mail address: fvohra@sjgov.org

Andrew Malik
Director of Development and Engineering Services
City of Tracy
333 Civic Center Plaza

Tracy, CA 95376
e-mail address: Andrew.malik@ci.tracy.ca.us

Nader Shareghi
Public Works Director
Mountain House Community Services District
230 S. Sterling Drive, Suite 100
Mountain House, CA 95391
e-mail address: nshareghi@sjgov.org

7. Records and Audit.

a) *Financial Records.* Each PARTNER JURISDICTION shall maintain true and complete records in connection with the PROJECT, and shall retain all such records pursuant to Federal Highway Administration requirements for at least thirty-six (36) months following expenditure of all federal funds, execution of a final voucher by Caltrans headquarters in Sacramento, and final federal project acceptance.

b) *Reports.* Each PARTNER JURISDICTION shall provide CONTRA COSTA and CCTA with any invoices and reports as needed by CONTRA COSTA and CCTA to comply with the terms and conditions of CALTRANS with respect to the FEDERAL GRANT FUNDS. The PARTNER JURISDICTIONS, CONTRA COSTA, and CCTA shall mutually agree upon the format and the content of such reports and the frequency with which the reports shall be provided to CONTRA COSTA and CCTA, as needed.

8. Termination of Agreement. A PARTY may terminate this AGREEMENT at any time by giving written notice of termination to each of the other PARTIES which shall specify the effective date thereof; provided that any notice of termination shall be given at least thirty (30) days before its effective date.

9. Entire Agreement. This AGREEMENT is the entire agreement among CCTA and the PARTNER JURISDICTIONS relating to the subject matter of this AGREEMENT. All PARTIES acknowledge they have 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. Any changes to the terms and provisions of this AGREEMENT or affecting the obligations of the PARTIES set forth in this AGREEMENT shall be by written

amendment signed by all PARTIES, except for amendments to Exhibit A, which can be made separately in writing between CCTA and a PARTNER JURISDICTION pursuant to Section 4(b).

10. Severability. Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of a 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.

11. Waiver. No waiver by a PARTY of any default or breach of any covenant by the other PARTIES 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 such waiver and then such waiver shall be operative only for the time and to the extent stated in such waiver. 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.

12. JURY TRIAL WAIVER; SPECIFIC PERFORMANCE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR DISPUTE ARISING OUT OF THIS AGREEMENT. The parties hereto agree that specific performance is the only remedy available for a breach of this AGREEMENT.

13. Controlling Law and Venue. This AGREEMENT and all matters relating to it shall be governed by the laws of the State of California. Venue shall be in Contra Costa County.

14. Authority. All PARTIES executing this AGREEMENT represent and warrant that they are authorized to do so.

15. Indemnification.

a) CCTA hereby agrees to indemnify, defend, assume all liability for and hold harmless each PARTNER JURISDICTION, 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 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 AGREEMENT. This indemnity shall not apply to any CLAIMS arising out of the sole negligence or willful misconduct of a PARTNER JURISDICTION.

b) Each PARTNER JURISDICTION 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 the negligence or willful misconduct of such PARTNER JURISDICTION, its officers, agents or employees in connection with or arising from any of such PARTNER JURISDICTION'S activities pursuant to this AGREEMENT. This indemnity shall not apply to any CLAIMS arising out of the sole negligence or willful misconduct of CCTA.

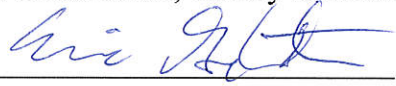
16. The parties hereto recognize and agree that separate counterpart signature pages may be used to execute this AGREEMENT, but that all such pages constitute one and the same AGREEMENT.

Signatures appear on following pages.

CONTRA COSTA TRANSPORTATION AUTHORITY

By: _____ Janet Abelson Chair	Attest: By: _____ Randell H. Iwasaki Executive Director
Approved as to form: Best Best & Krieger LLP By: _____ Malathy Subramanian Authority Counsel	

CONTRA COSTA COUNTY

By: _____ Name: _____ Title: _____ Date: _____, 2013	APPROVED AS TO FORM: Sharon L. Anderson, County Counsel By:  Deputy County Counsel Eric Gelston Date: <u>April 9</u> , 2013
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CITY OF BRENTWOOD

By: _____ Name: _____ Title: _____ Date _____, 2013	APPROVED AS TO FORM: By: _____ , City Attorney Date _____, 2013
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SAN JOAQUIN COUNTY

By: _____ Name: _____ Title: _____ Date _____, 2013	APPROVED AS TO FORM: By: _____ , City Attorney Date _____, 2013
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CITY OF TRACY	
By: _____ Name: _____ Title: _____ Date _____, 2013	APPROVED AS TO FORM: By: _____ _____, City Attorney Date _____, 2013
MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT	
By: _____ Name: _____ Title: _____ Date _____, 2013	APPROVED AS TO FORM: By: _____ _____, District Attorney Date _____, 2013

Exhibit A: Payment rates for reimbursement to PARTNER JURISDICTIONS

Position Description	Hourly pay range (direct salary only, no overhead or other costs)	80% of hourly pay range *	Maximum total reimbursement for PROJECT
County of Contra Costa staff persons:			
1.			
2.			
3.			
Contra Costa County Total			\$50,000.00
City of Brentwood staff persons:			
1.			
2.			
3.			
Brentwood Total			\$50,000.00
City of Tracy staff persons:			
1.			
2.			
3.			
Tracy Total			\$50,000.00
San Joaquin County staff persons:			
1.			
2.			
3.			
San Joaquin County Total			\$50,000.00
Mountain House Community Services District staff persons:			
1.			
2.			
3.			
Mountain House Total			\$50,000.00
		Combined Total	\$250,000.00

* -- CCTA will reimburse PARTNER JURISDICTIONS for eighty percent (80%) of their respective employee's hourly rates, which is the rate at which CCTA will be reimbursed with FEDERAL GRANT FUNDS, as set forth in more detail in this AGREEMENT.

EXHIBIT B

PROCEDURE FOR INVOICES PREPARED BY PARTNER JURISDICTIONS FOR SUBMITTAL TO CCTA

1. PARTNER JURISDICTION shall prepare and submit invoices to CCTA on a quarterly basis (January-March, April-June, etc.) within 60 calendar days after the close of each quarter;
2. Each invoice shall include a cover letter signed by the PARTNER JURISDICTION'S authorized representative that includes the following:
 - reference to this AGREEMENT, including Cooperative Agreement number;
 - a sequential billing number (1, 2, 3, ...etc.)
 - the quarterly period for which the invoice applies;
 - a summary of work performed
 - certification that invoices include a reimbursement for no more than eighty percent (80%) of direct salary costs and no overhead costs have been requested for reimbursement.
3. Attached to the cover letter shall be a table indicating the identity of personnel who performed the work, the direct hourly rate of pay for each staff person (excluding all overhead), the number of hours worked, and the total cost of staff time, and the 80% of cost for which reimbursement is being requested
4. The invoice shall include an Expenditure Summary Report, including the following:
 - 4.1 Total Budget
 - 4.3 Previous Expenditures
 - 4.4 Expenditures This Period
 - 4.5 Reimbursement Requested
 - 4.6 Expenditures to Date (including this Invoice)
 - 4.7 Budget Remaining