

REAL PROPERTY SERVICES AGREEMENT

1. **Effective Date and Parties.** Effective on _____, the COUNTY OF CONTRA COSTA, a political subdivision of the State of California ("County"), and the CONTRA COSTA TRANSPORTATION AUTHORITY, a public agency, ("CCTA"), hereby mutually promise and agree as follows:
2. **Purpose.** CCTA has no right of way staff and desires to contract with the County for various real estate services to acquire property for CCTA's I-680 North Express Lanes Project ("Project").
3. **Services by County.** County will provide CCTA the following services, as directed by CCTA, to acquire property interests required for the Project: appraisal and appraisal review; negotiations, land rights document preparation; right of way acquisition; right of way project management; title and escrow support; right of way certification and/or supervision of independent contractors providing such services, all as more particularly described in the "I-680 Express Lands Project Scope of Services" attached hereto and incorporated herein by reference (all of which constitute "Services").

The County warrants that it will perform these Services in accordance with accepted professional standards and procedures.

4. **Payment for Services.** CCTA shall reimburse the County, at the hourly charge out rates in Appendix "A", attached hereto, for all time that County real property agents perform Services for CCTA under this Agreement. CCTA shall reimburse County for the reasonable costs of experts and contractors retained by County in the performance of the Services. CCTA shall reimburse County for all other expenses County incurs in the performance of the Services, including but not limited to all acquisition settlements and any other costs of acquisition such as title fees, recording fees, and escrow costs that the County actually incurs to perform the Services, or payment directly into escrow, the agreed upon purchase price and other related costs such as title policies and outside counsel legal fees. Payments by CCTA shall be made within 60 calendar days of billing by County. CCTA's total payments to County under this Agreement shall not exceed the Total Project Budget listed in Appendix "A" attached hereto.
5. **Indemnification.** The County shall defend, indemnify, and hold harmless CCTA, its officers, and its employees for any claims, liabilities, damage, injury, or death of or to any person, or the property of any person, including attorney's and expert fees, (collectively, "Liabilities") that arise out of the willful misconduct or the negligent acts, errors, or omissions of the County, its officers, employees, agents, and volunteers, in performing any of its or their obligations under this Agreement. Notwithstanding anything to the contrary, County shall not be obligated to indemnify CCTA, its officers, and employees for any portion of Liabilities that arise out of CCTA's, or its officers' or employees' willful misconduct or negligent acts, errors, or omissions.

CCTA shall defend, indemnify, and hold harmless County its officers, and its employees for any Liabilities that arise out of the willful misconduct or the negligent acts, errors, or omissions of CCTA, its officers, employees, agents and volunteers, in performing any of its

or their obligations under this Agreement. Notwithstanding anything to the contrary, CCTA shall not be obligated to indemnify County, its officers, and its employees for any portion of Liabilities that arise out of County's, or its officers' or employees' willful misconduct or negligent acts, errors, or omissions.

6. **Independent Status.** Nothing herein shall be construed to imply that any County employee providing services hereunder is a CCTA employee.
7. **Term.** The term of this Agreement shall commence on the effective date hereof and shall end upon termination by either party upon 30 calendar days' written notice. The rights and obligations of Paragraph 5 "Indemnification" shall survive any such termination. Within 30 calendar days after the termination of this Agreement, CCTA shall pay the County for all unpaid charges and costs for Services the County provided, and for all expenses that it incurred during the performance of those Services, under this Agreement through the termination of the Agreement.
8. **Notices.** Any notice required to be given to County and CCTA hereunder will be sufficient if delivered in writing as designated below, or to such other addresses as County and CCTA may respectively designate by written notice to the other:

To County: Contra Costa County Public Works Department
 c/o Real Estate Division
 255 Glacier Drive
 Martinez, CA 94553
 925-313-2220

To CCTA: Contra Costa Transportation Authority
 c/o Susan Miller
 2999 Oak Road, Suite 100
 Walnut Creek, CA 94597
 925-256-4736


Notice given by personal delivery shall be deemed complete upon delivery. Notice given by Overnight Carrier shall be deemed complete on the day after it is postmarked. Notice given by U.S. Mail shall be deemed complete on the third day after it is postmarked.

9. **Entire Agreement.** This Agreement contains the entire agreement between the County and CCTA and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the County and CCTA. The County and CCTA acknowledge that no representations, inducements, promises, or statements, oral or otherwise, have been made by either of them or by anyone acting on behalf of them that are not embodied or incorporated by reference herein, and further agree that no other covenant, representation, inducement, promise, or statement not set forth in this Agreement shall be valid or binding.
10. **Amendments and Modifications.** This Agreement may not be modified or amended except in a writing that is approved by the County and CCTA.
11. **Governing Law.** This Agreement shall be governed by and construed in accordance with California law. Venue shall be in a court of competent jurisdiction situated in Contra Costa County.

- 12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.
- 13. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
- 14. **No Third-Party Beneficiaries.** Nothing in this Agreement creates, nor shall it be interpreted to create, any third-party beneficiaries.

COUNTY OF CONTRA COSTA

**CONTRA COSTA
TRANSPORTATION AUTHORITY**

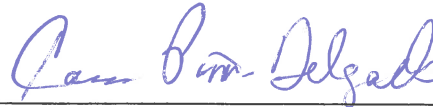
By 
Chair, Board of Supervisors

By _____
David E. Hudson
Chair

ATTEST: November 15, 2016
David Twa, Clerk of the Board of
Supervisors and County Administrator

Recommended to the County
Board of Supervisors for Approval:

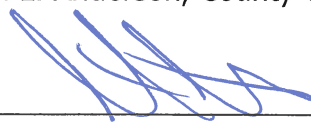
By _____
Randell H. Iwasaki
Executive Director

By 
for Karen A. Laws
Principal Real Property Agent

By _____
Julia R. Bueren
Public Works Director

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

Approved as to Form:
Legal Counsel for CCTA

By 
Stephen M. Siptroth
Deputy County Counsel

By _____
Malathy Subramanian
Legal Counsel

I-680 EXPRESS LANES PROJECT SCOPE OF SERVICES

1. **Administration (RAD)** – The County will perform duties that cover general Project management for right of way acquisition. These services include but are not necessarily limited to:
 - a) Developing and monitoring right of way project schedule;
 - b) Obtaining and reviewing title reports;
 - c) Working with design team to develop property rights needs;
 - d) Attending regularly scheduled trend/staff meetings;
 - e) Attending and making presentations at public meetings, if necessary;
 - f) Soliciting COUNTYs for appraisal and relocation services;
 - g) Selecting COUNTYs, administer contracts and process payments.
 - h) Setting up individual acquisition files for each parcel;
 - i) Investigating ownerships, easements and title concerns;
 - j) Preparing & coordinating with Caltrans to secure approved R/W Certifications;
and
 - k) Assist in reviewing documents for determining utility rights.

2. **Valuation (RVL)** – The County will prepare and review appraisals. The appraisals will be in conformance with state standards. The County's Real Estate Division shall have sole discretion to determine whether County's Real Estate Division staff or outside MAI designated appraisers will complete each appraisal. Valuation services provided by the County will include, but may not be limited to:
 - a) Preparing and mailing Letters of Invitation to appraise;
 - b) Providing technical information to appraisers;
 - c) Acting as liaison between outside appraisers and design/engineering team; and
 - d) Reviewing and approving appraisals.

3. **Negotiations (RNG)** – The County will provide negotiation services required to acquire property for the Project. County's Principal Real Property Agent will assign County's Real Estate agents to parcels according to the agent's ability and the complexity of the appraisal and any acquisition issues. Negotiation services provided by the County will include, but may not be limited to:
 - a) Review of title reports, appraisals, legal descriptions, maps and other documents in sufficient detail in preparation for negotiations;
 - b) Maintaining a complete acquisition file on each property assigned; Preparing deeds, easements and right of way contracts;
 - c) Initiating contact with property owner(s) or their representative to present written offer. Conducting negotiations and following up with property owners as necessary to arrive at a mutually agreeable settlement;
 - d) Acting as a liaison with appraisers, COUNTYs staff, and CCTA staff;
 - e) Utilizing legal counsel where necessary in development of final agreements; and
 - f) Advising Principal as to necessity of eminent domain action.

4. **Condemnation (RED)** – In cases where an eminent domain action is necessary in order to secure the right of way for project construction, County's Real Estate Division will lead the process to obtain orders of possession. Real Estate staff will work closely with County Counsel to expedite this process and proceed with a Resolution of Necessity and obtain Orders of Possession so that certification and construction schedules can be met. Services outlined here do not include costs and work required after the Order of Possession where County Counsel will prosecute each eminent domain action to a final judgment in condemnation. Services will include:
- a) Identifying and locating all parties to the action;
 - b) Adoption of Resolution of Necessity by County Board of Supervisors;
 - c) Preparing condemnation packages and exhibits for County Counsel; and
 - d) Service of Order for Immediate Possession to all parties

APPENDIX "A"
Pay Rate Schedule

CCTA shall reimburse the COUNTY for labor costs as detailed below:

1. COUNTY direct labor rates shall include the base salary wages paid to personnel plus fringe benefits. Total labor rate shall include direct labor rate multiplied by County's overhead rate. The total labor rate shall not exceed the range of labor rates by classification, included as Attachment 1.
2. COUNTY's overhead rate shall be a summation of division and department overhead rates. Appropriate overhead rates for COUNTY shall be developed based on procedure previously approved as described below:

In general, the division overhead rates are determined by identifying each division's total expenditures after adjustments less any non-labor generated revenue. The division expenditures are then divided by the productive hours for the division establishing the overhead rate needed to cover the remaining net cost of division expenditures. The department overhead rates are determined similar to the division rate by dividing the total department expenditures by the total billable hours. Each year overhead rates will be evaluated and adjusted to reflect the actual costs from the previous fiscal year.

3. COUNTY may adjust both labor rates and overhead rates periodically due to contracted salary increases and overhead rate changes. COUNTY shall submit any changes to rates to CCTA prior to invoicing.

ATTACHMENT 1

Contra Costa Transportation Authority: I-680 North Express Lanes Project

One Permanent Easement, Two Temporary Construction Easements (TCE)

ADMINISTRATION	\$ 13,000.00
APPRAISAL	\$ 6,000.00
NEGOTIATIONS/ACQUISITION	\$ 5,000.00
RIGHT OF WAY CERTIFICATION	\$ 5,000.00
CONDEMNATION	\$ 5,000.00
LEGAL COUNSEL-CONTRACT REVIEW	\$ 1,500.00
ENVIRONMENTAL/CEQA	<u>\$ 2,500.00</u>

TOTAL ESTIMATED PROJECT BUDGET: \$38,000.00

REAL PROPERTY AGENT

HOURLY CHARGE OUT RATE

Hourly Rate

Principal Real Property Agent	\$208/hr to \$220/hr
Supervising Real Property Agent	\$163/hr to \$182/hr
Senior Real Property Agent	\$153/hr to \$166/hr
Assistant Real Property Agent	\$110/hr to \$130/hr
Senior Real Property Technical Assistant	\$103/hr to \$117/hr
Real Property Technical Assistant	\$ 77/hr to \$109/hr

**COOPERATIVE AGREEMENT BETWEEN
CONTRA COSTA COUNTY AND
THE CONTRA COSTA TRANSPORTATION AUTHORITY
FOR THE EXERCISE OF THE POWER OF EMINENT DOMAIN
FOR THE I-680 NORTH EXPRESS LANES PROJECT**

This Cooperative Agreement ("AGREEMENT") is entered into effective this day of _____, 2016, by and between the CONTRA COSTA COUNTY, a political subdivision of the State of California (referred to herein as "COUNTY") and the CONTRA COSTA TRANSPORTATION AUTHORITY, a public entity (referred to herein as "CCTA"), pursuant to the provisions of Streets and Highways Code sections 114 and 130 and Code of Civil Procedure section 1240.140. COUNTY and AUTHORITY are sometimes referred to together as the "PARTIES," and each as a "PARTY."

RECITALS

- A. On September 17, 2014 CCTA approved the I-680 North Express Lanes Project ("PROJECT") and issued an Initial Study with Mitigated Negative Declaration pursuant to the California Environmental Quality Act.
- B. On _____, 2016, CCTA issued a Categorical Exemption/Categorical Exclusion for Conversion of the HOV Lanes to Tolloed Express Lanes pursuant to the California Environmental Quality Act and National Environmental Policy Act.
- C. To construct the PROJECT as planned, certain Pacific Gas and Electric Company ("PG&E") facilities will need to be relocated. Property rights will need to be acquired to complete that relocation.
- C. On April 1, 2016, COUNTY and CCTA entered into a Real Property Services Agreement under which COUNTY will provide, and CCTA will pay for, PROJECT-related right-of-way services, including appraisal, appraisal review, negotiation, land rights documentation preparation, right-of-way acquisition, and/or supervision of independent contractors providing those services. The original Real Property Services Agreement is maintained on file by COUNTY and by CCTA.
- D. The purpose of this AGREEMENT is to document COUNTY's authority to exercise the power of eminent domain for the acquisition of property for PROJECT on behalf of CCTA pursuant to Code of Civil Procedure section 1240.140. This AGREEMENT is, and at all times remains, relevant to the PROJECT, and it will continue to constitute the authorization for an exercise of the power of eminent domain as the work is processed by the COUNTY with respect to the acquisition of any real property or interest therein required (i) for the PROJECT; (ii) to protect and preserve the safety and usefulness of the PROJECT, or mitigate the effect of the PROJECT; or (iii) to be acquired as a condition of any permit for the PROJECT.

AGREEMENT

1. **Term:** The term of this AGREEMENT shall remain in effect until the COUNTY'S authorization to perform eminent domain and other services relating to PROJECT-related property acquisition is completed, unless it is earlier terminated by either party upon 30 days' written notice.
2. **Lead Agency:** COUNTY and CCTA hereby agree that, pursuant to the terms of this AGREEMENT, and notwithstanding anything to the contrary in the AGREEMENT, COUNTY is designated as the Agency to administer the portion of the AGREEMENT relating to the acquisition of real property for the PROJECT, through eminent domain or otherwise, by and through its Board of Supervisors, COUNTY officials and departments, and COUNTY attorneys.
3. **Powers:** COUNTY and CCTA hereby agree, at all relevant times, COUNTY has, and shall continue to have, the authority relating to the PROJECT, to:
 - A. Conduct all public hearings necessary to adopt a Resolution of Necessity;
 - B. Take whatever steps are necessary to initiate, conduct, and resolve or conclude such eminent domain proceedings as are necessary to obtain title to any and all real property interests that are required for the construction of PROJECT, or otherwise necessary to protect or preserve the safety and usefulness of the PROJECT, or to mitigate the effects of the PROJECT, or otherwise required to be acquired as a condition of any permit for the PROJECT; and
 - C. In connection therewith, to enter into any and all contracts to obtain performance of all legal, engineering, appraisal, right-of-way acquisition, relocation assistance and related services.
4. **Costs:** CCTA will reimburse the COUNTY for reasonable costs to acquire property interests required for the PROJECT as set forth in the Real Property Services Agreement. In addition to those costs, CCTA shall reimburse the COUNTY for all reasonable legal expenses by County Counsel and outside counsel, court costs, engineering costs, appraisal costs, and other costs that the COUNTY incurs to condemn property interests required for the PROJECT. CCTA shall also be responsible for issuing payment to property owners of just compensation for any and all property rights acquired by negotiation, settlement, condemnation award, or otherwise as required for the PROJECT. When reasonably requested by COUNTY, CCTA shall issue checks to make deposits required to obtain possession of property rights before judgment in eminent

domain actions for the purposes set forth in this Agreement. Notwithstanding anything to the contrary, in this Agreement, CCTA's total payments to COUNTY under this Agreement shall not exceed the Total Project Budget listed in Appendix "A" attached to the Real Property Services Agreement between CCTA and COUNTY, effective April 1, 2016, pertaining to the PROJECT, as may be amended in the future.


5. **Indemnification:** The COUNTY shall defend, indemnify, and hold harmless CCTA, its officers, and its employees for any claims, liabilities, damage, injury, or death of or to any person, or the property of any person, including attorney's and expert fees, (collectively, "Liabilities") that arise out of the willful misconduct or the negligent acts, errors, or omissions of the COUNTY, its officers, employees, agents, and volunteers, in performing any of its or their obligations under this Agreement. Notwithstanding anything to the contrary, COUNTY shall not be obligated to indemnify CCTA, its officers, and employees for any portion of Liabilities that arise out of CCTA's, or its officers' or employees' willful misconduct or negligent acts, errors, or omissions.

CCTA shall defend, indemnify, and hold harmless COUNTY its officers, and its employees for any Liabilities that arise out of the willful misconduct or the negligent acts, errors, or omissions of CCTA, its officers, employees, agents and volunteers, in performing any of its or their obligations under this Agreement. Notwithstanding anything to the contrary, CCTA shall not be obligated to indemnify COUNTY, its officers, and its employees for any portion of Liabilities that arise out of COUNTY's, or its officers' or employees' willful misconduct or negligent acts, errors, or omissions.

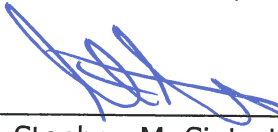
6. **Subject Property; Title:** COUNTY and CCTA hereby agree that COUNTY has the right to exercise the powers granted by eminent domain law to acquire any real property, any interest therein, and any appurtenance thereto, required for the PROJECT, or otherwise necessary to protect or preserve the safety and usefulness of the PROJECT, or otherwise required to be acquired as a condition of any permit for the PROJECT; and COUNTY shall transfer title to said properties to PG&E, unless otherwise directed by CCTA.
7. **Counterparts:** This AGREEMENT may be signed in counterparts and shall become effective upon its execution by the COUNTY and CCTA, each copy having the same force and effect as an original.

[SIGNATURES ON NEXT PAGE]

CONTRA COSTA COUNTY

By: 
Name: Candace Andersen
Chair, Board of Supervisors

Approved as to Legal Form:
Sharon L. Anderson, County Counsel

By: 
Stephen M. Siptroth
Deputy County Counsel

**CONTRA COSTA TRANSPORTATION
AUTHORITY**

By: _____
David E. Hudson
Chair

Approved as to Legal Form:
Legal Counsel for CCTA

By: _____
Malathy Subramanian
Legal Counsel

Attest:

By: _____
Randall H. Iwasaki
Executive Director