

**COOPERATIVE AGREEMENT
BETWEEN THE SAN MATEO COUNTY TRANSPORTATION
AUTHORITY AND THE COUNTY OF SAN MATEO
FOR RIGHT OF WAY SERVICES**

This Cooperative Agreement ("Agreement") is entered into this ____ day of _____, 2012 by and between the San Mateo Transportation Authority, a public agency, ("Agency") and the County of San Mateo, a political subdivision of the State of California ("County").

RECITALS

WHEREAS, as part of the Burlingame Interchange Project to be located in the City of Burlingame, California, and for other transportation improvements projects as agreed to by the parties hereto and which are constructed using funds from San Mateo County Measure A, (hereinafter referred to as "Projects"), Agency may need to acquire certain parcels of real property as may be required to effectuate construction of the Projects, all together, hereinafter referred to as "Property"; and

WHEREAS, the Agency does not have the legal authority to condemn property; and

WHEREAS, the County has the ability to condemn property for transportation improvement projects; and

WHEREAS, the parties wish to enter into an agreement whereby the County will be responsible for condemning all property that may need to be acquired by eminent domain.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the parties agree as follows:

1. Negotiated Acquisition

Agency shall be the lead agency responsible for acquisition of the Property by negotiated agreement. Agency's responsibilities shall include negotiation of the terms and conditions of sale, and preparation of all necessary purchase and closing documentation.

The parties agree that the Burlingame Interchange Project is a Project for which the County will provide the Eminent Domain services described in paragraph 2, below. County's obligation to provide such services in connection with any other project is subject to the agreement and consent of the County, which agreement and consent is within the sole discretion of the County.

2. Eminent Domain

Any and all of the Property that may need to be acquired by eminent domain shall be condemned by the County according to the following procedure.

- a) County shall be responsible for condemning any Property to the extent required by law. Subject to the foregoing, Agency shall undertake all acts necessary for the County Board to consider and approve Resolutions of Necessity and related actions for any Property to be condemned, including but not limited to, appraisal preparation and title investigation, approval of funding sources, and preparation of purchase offers, County Board packages, resolutions of necessity, etc. County shall use its best efforts to consider these actions at the earliest opportunity consistent with County Board standard information and calendaring requirements.
- b) Agency shall deposit the estimated purchase price for any Property with the State of California Condemnation Deposit Fund as a condition to County's commencement of any condemnation action.
- c) Subject to the first sentence of Section 2(a), Agency shall be primarily responsible in the strategic planning for, and prosecution and management of, all eminent domain proceedings. Agency shall be responsible for contracting for and managing all consultants necessary for prosecution of the eminent domain actions.
- d) Agency shall pay all judgments rendered in the eminent domain proceedings.
- e) County shall take title to any Property acquired by eminent domain, and shall transfer title, in the exact same form of title acquired by the County, to said Property to Agency within approximately ninety (90) days after Agency pays the final judgment or judgments for said acquired Property.
- f) Agency shall pay one hundred percent (100%) of the "Acquisition Costs," as defined below, related to any eminent domain action undertaken by County pursuant to this Agreement. "Acquisition Costs" shall fall into three categories: "Property Costs," "Consultant Costs," and "Staff Costs".
 - i. "Property Costs" shall mean the total of out-of-pocket costs incurred that directly relate to the purchase of the Property, or any portion of it, by eminent domain proceedings, including but not limited to title insurance or litigation guarantee fees, escrow fees and purchase price for inventories, machinery and equipment.
 - ii. "Consultant Costs" shall refer to any out of pocket costs associated with hiring consultant contractors to help administering the Eminent Domain actions including, but not limited, to appraisal fees, attorneys' fees, and expert witness fees.

- iii. “Staff Costs” shall refer to any cost associated with County or Agency staff administering the eminent domain action.
- g) Payment for Acquisitions costs shall be paid by Agency to County as prescribed in Section 7 below.
- e). Interest on funds deposited into the Condemnation Deposit Fund, if paid to County, shall be paid to Agency within 15 days of County’s receipt of said funds from the State, as shall all deposits repaid by the Condemnation Deposit Fund to County. County shall also forward copies of all accounting information sent with the interest payment.

3. Intentionally omitted.

4. Owner and Tenant Relocations and Property Management

Agency shall be responsible for undertaking, at Agency’s sole cost and expense, any and all relocations of tenants and/or owners of the Property in compliance with Federal and California law. Agency may engage reasonably qualified contractors to undertake such relocations. Agency shall, at its own cost and expense, collect rent and manage any occupied property purchased for the Projects. Agency shall be entitled to all rents collected.

5. Free and Clear Title

County shall transfer title to all Property acquired by County by eminent domain in the exact same form of title as acquired by County. Prior to initiating the action, County will consult with the Agency and agree upon the form of said title and upon which liens and encumbrances are to remain on title at the completion of the eminent domain action. County will transfer title, free and clear of all liens, claims and encumbrances, other than those expressly permitted by Agency.

6. Contract Services.

County may request Agency, and Agency shall not reasonably withhold approval, to engage specific contract services at Agency’s reasonable expense, where and when County deems such services are necessary to fulfill County’s obligations and whenever County concludes that such services cannot be reasonably provided by County staff.

7. Payment

Agency agrees to pay County for the Services in accordance with Appendix "A" attached hereto and incorporated herein by reference. Except for increases provided for in Appendix A, County labor rates set forth in Appendix A may be amended from time to time to reflect County's then current labor and contractor/consultant costs by mutual consent of the parties. County shall invoice Agency for costs actually incurred or contracted for in accordance with this Agreement. County shall invoice Agency no more frequently than each thirty (30) days. County shall accumulate all project costs in a separate account and furnish Agency a detailed statement of

costs with each invoice. These costs shall include all County's independent contractor costs and staff time. As provided for in Section 2 of this Agreement, Agency and County shall establish by written consent an estimated budget for each Project for which Services will be provided. County shall provide Services to Agency over any such limit only with the prior written consent of Agency. In the event that the not to exceed limit is reached, County shall have no obligation to perform any additional services unless, and until, the Limit is increased. Agency agrees to pay County within 30 days following the receipt of invoice for Services performed by County and County's Consultants.

8. Term

This agreement shall commence on the date that it is fully executed and shall extend ten (10) years, unless terminated by either of the parties upon 30 days' notice to the other.

9. Audit of Records

Each party reserves the right to audit the Acquisition Costs incurred by the other party in the performance of this Agreement. Each party shall retain all records and invoices for three (3) years from the issuance of a payment from Agency, or until completion of each Project whichever shall come first. Agency will assist as reasonably required by County and pay any and all out of pocket costs incurred by County resulting from an external audit by Caltrans and/or any other oversight agency.

10. Counterparts

The parties hereto recognize and agree that separate counterparts signature pages may be used, but that all such pages shall constitute one and the same Agreement.

11. Indemnification

Pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify, defend with counsel reasonably acceptable to the other party and hold the other party, its member agencies, officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such party under this Agreement. Neither party, nor any officer, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other party under this Agreement. As used in this Section 9, "agent(s)" does not include a party to this Agreement to the extent acting in its capacity, as an agent of the other party.

12. Dispute Resolution

Any controversy, claim or dispute arising out of or related to the interpretation, construction, performance or breach of this Agreement, which cannot be resolved by the parties shall be submitted to mediation in the County of San Mateo, California, administered by the American Arbitration Association under its Commercial Mediation Rules. Mediation shall proceed and continue until such time as the matter is either resolved or the mediator finds or the parties agree that mediation should not continue. If the parties cannot resolve the controversy, claim or dispute through the mediation process described above, if both parties so agree, the matter shall then be settled by arbitration in the County of Santa Clara, California, administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All direct costs and expenses of each party other than those for payment of the mediator or arbitrator(s) and/or mediation or arbitration facilities shall be borne and paid for by the party that incurs such expenses.

13. Independent Contractor

County shall perform all work under this Agreement as an independent contractor and shall not in any way be considered an employee of Agency and shall not acquire any of the rights, privileges, powers, or advantages of Agency' employees. Agency shall not withhold federal income taxes from any payment to County.

14. Work is Confidential

All work performed by County pursuant to this Agreement shall be confidential to the extent allowed by law and shall not be disclosed to any person or entity without proper written consent of Agency.

15. Assistance by Agency

Agency shall provide County with engineering support, and any other assistance reasonably needed and requested by County in connection with the services to be performed by it under this Agreement

16. Assignment

Neither party shall assign this Agreement to any other person or entity, in whole or in part, without the express written consent of the other party, which shall not be unreasonably withheld...

17. Waiver

The failure of either party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.

18. Notice

Any notice required to be given by either party, or which either party may wish to give, shall be in writing and shall be served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To County: County of San Mateo
Address: 455 County Center, 4th Floor
Redwood City, CA 94063
Attention: Alycia Moulton

Or to such place as County shall designate by written notice.

To Agency: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
Attention: Brian W. Fitzpatrick,
Manager, Real Estate and Property
Development

Or to such place as Agency shall designate by written notice.

Any notice given as provided herein shall be deemed received on the date of delivery if personally served, or three business days after it is placed in the U.S. Mail as provided above.

19. Entire Agreement

This Agreement, along with any exhibits and attachments, constitutes the entire agreement by and between the parties relative to the work to be performed. Any prior or contemporaneous oral or written agreements by and between the parties or their agents or representatives relative to such work are hereby revoked and extinguished by the cooperative agreement.

IN WITNESS WHEREOF, the parties have executed this cooperative agreement as follows:

County

Agency

County Manager, or Designee

Michael Scanlon
Executive Director

RECOMMENDED FOR APPROVAL:

RECOMMENDED FOR APPROVAL

APPROVED AS TO FORM:

Legal Counsel

Real Estate Department Manager

APPROVED AS TO FORM:

Legal Counsel