



**NAPA VALLEY TRANSPORTATION AUTHORITY AGREEMENT NO. 22-C25**

**CITY OF NAPA AGREEMENT NO. \_\_\_\_\_**

**FUNDING AGREEMENT**

**THIS AGREEMENT** ("Agreement") is made and entered into as of this \_\_\_\_\_, 2022 ("Effective Date"), by and between the NAPA VALLEY TRANSPORTATION AUTHORITY, a joint powers entity organized under Government Code section 6500 et seq. ("NVRTA"), and the City of Napa, a California charter city (hereinafter referred to as "CITY", and collectively referred to herein as the "Parties" and individually as "Party").

**RECITALS**

A. The California Department of Transportation ("Caltrans"), in cooperation with NVRTA, proposes to reconfigure the existing intersection of SR 29 and SR 221/Soscol Ferry Rd in Napa County from a signalized intersection to a diamond interchange, with two roundabouts one on either side of SR 29 (the "Project").

B. Caltrans and NVRTA entered into that certain Cooperative Agreement dated October 11, 2021 ("Cooperative Agreement") for the Project, pursuant to which Caltrans is responsible for the construction of the Project and NVRTA is responsible for funding construction support services ("Construction Support Services") for the Project in the amount of up to \$3,714,000.

C. In connection with City's approval of entitlements for various development projects located in the vicinity of SR 221/Soscol Ferry Rd, the City has imposed a condition of approval requiring the developer of each such development project to pay a proportionate fair share fee for the construction of the Project to mitigate the traffic impacts created by the proposed development project ("Fair Share Fee").

D. As of the Effective Date, the City has collected \$848,800.60 in Fair Share Fees, which City desires to provide to NVRTA to pay for a portion of the Construction Support Services.

E. NVRTA entered into a contract with GHD Inc., ("Consultant") dated April 16, 2020 ("Consultant Contract"), for design and construction support services for the Project.

F. This Agreement sets forth the terms and conditions upon which the City will provide Fair Share Fees to NVRTA for Construction Support Services for the Project.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual agreement of the Parties and other valuable consideration the sufficiency of which is hereby acknowledged, the Parties hereby agree to as follows:

**1. Purpose of Agreement.** CITY will provide Fair Share Fee funding for the completion of the Construction Support Services for the Project in accordance with the terms set forth herein.

**2. Payment of Funds.** The City shall provide Fair Share Fees to NVTA for the Project as follows:

- (a) CITY shall make one (1) lump sum payment to NVTA in the amount of EIGHT-HUNDRED FOURTY-EIGHT THOUSAND EIGHT-HUNDRED DOLLARS AND SIXTY CENTS (\$848,800.60) ("City Payment") within 90 days following the Effective Date of this Agreement.
- (b) NVTA shall use the City Payment solely for the purpose of financing Construction Support Services performed by Consultant or Caltrans for the Project in accordance with the terms of the Cooperative Agreement and the Consultant Contract.
- (c) NVTA shall comply with the terms of the Cooperative Agreement and Consultant Contract. NVTA shall cause Consultant to perform the Construction Support Services in accordance with the terms of the Consultant Contract.
- (d) Future Fair Share Fees Received by City. CITY understands that the costs to complete Construction Support Services for the Project are preliminary estimates and recognize that completion of Construction Support Services for the Project by NVTA may require additional funding. In the event that there are funding shortfalls, and City obtains additional Fair Share Fees from developers following City's completion of the City Payment in accordance with subsection (a) above, CITY agrees to provide such additional Fair Share Fees to reimburse NVTA for any reasonable funding shortfalls for Construction Support Services for the Project; provided however, nothing in this Agreement shall obligate City to provide any funding to NVTA for the Project from any funding source other than Fair Share Fees received by the City.
- (e) NVTA shall return any unused Fair Share Fees to the CITY within thirty (30) days following completion of the Project.

**3. No Waiver.** Waiver by either Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

**4. Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

CITY  
Julie B. Lucido  
Public Works Director, City of Napa  
PO Box 660  
Napa, CA 94559

NVTA  
Kate Miller  
Executive Director, NVTA  
625 Burnell Street  
Napa, CA 94559

**5. Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in a writing signed by both Parties.

**6. Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either Party to this Agreement for the purpose of interpreting or enforcing any provisions of this Agreement lying within the jurisdiction of the federal courts shall be Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either Party to submit to mediation or arbitration any dispute arising under this Agreement.

**7. Hold Harmless and Indemnification.** To the full extent permitted by law, NVTA shall defend, indemnify and hold harmless the City and its elected and appointed officials, officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising out of or connected with any acts or omissions of NVTA, Caltrans, or their respective officers, agents, employees, volunteers, or other contractors or their subcontractors, including Consultant, related to the design, construction or operation of the Project. Each party shall notify the other party immediately in writing of any claim or damage related to activities under this Agreement, providing that nothing shall require

either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

**8. Insurance.** Without limiting NVTA's indemnification obligations in Section 7, NVTA will procure and maintain throughout the period of this Agreement the following policies of insurance and endorsements from insurers (if other than the State Compensation Fund) with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of NVTA, its agents, employees or subcontractors:

(a) General Liability Policy. Commercial General Liability Insurance (CGL) at least as broad as CG 00 01, covering premises and operations and including but not limited to, owners and contractors protective, product and completed operations, personal and advertising injury and contractual liability coverage with a minimum per occurrence limit of \$1,000,000 covering bodily injury and property damage; General Aggregate limit of \$2,000,000; Products and Completed Operations Aggregate limit of \$2,000,000 and Personal & Advertising Injury limit of \$2,000,000, written on an occurrence form. If the services involve explosive, underground or collapse risks, XCU will be included. If a general aggregate limit is used, either the general aggregate limit will apply separately to this Agreement or the general aggregate will be twice the required occurrence limit.

(b) Automobile Liability Policy. Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), covering use of all owned, non-owned, and hired automobiles and all vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident, combined single limit for bodily injury and property damage liability.

(c) Workers' Compensation. Workers' Compensation insurance meeting statutory limits of the Labor Code, and; Employer's Liability insurance on an "occurrence" basis with a limit of not less than \$1,000,000. The workers' compensation policy will contain or be endorsed to contain a waiver of subrogation against the City, its officials, officers, agents, and employees.

(d) Endorsements. The CGL and automobile liability policies will contain or be endorsed with the following provisions:

(i) The City, its officers, elected or appointed officials, employees, volunteers, and agents, are covered as additional insureds for liability arising out of the operations performed by or on behalf of NVTA. The coverage will contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, volunteers, and agents.

(ii) The NVTA's insurance is primary and non-contributory with respect to all obligations assumed by NVTA pursuant to this Agreement or any other services provided. Any insurance carried by City shall not contribute to, or be excess of insurance

maintained by NVTA, nor in any way provide benefit to NVTA, its affiliates, officers, directors, employees, subsidiaries, parent company, if any, or agents.

(iii) The inclusion of more than one insured will not operate to impair or limit the rights of one insured against another, and the coverage will apply as though separate policies have been issued to each insured.

(e) All Policies.

(i) For all insurance policies required under this Agreement, prior to City's execution of this Agreement, NVTA will furnish the City with certificates and original endorsements effecting the required coverage. Each certificate of insurance will state that the coverage afforded by the policy or policies will not be reduced, cancelled, or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case at least 10 days written notice is required. Notice required under this subsection will be sent by certified mail. Each required policy will include an endorsement providing that the insurer agrees to waive any right of subrogation it may have against the City. The endorsements will be on forms provided by City or as approved by City's Risk Manager.

(ii) Any deductible or self-insured retention of \$100,000 or more will be disclosed to the City prior to City's execution of this Agreement and is subject to approval by the City.

(iii) If NVTA does not keep all required insurance policies in full force and effect, the City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

The coverage types and limits required pursuant to this Agreement shall in no way limit the liability of NVTA.

**9. Authority to Contract.** NVTA and CITY each hereby warrant that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

**10. Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

**11. Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

**12. Entirety of Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous

## ATTACHMENT 2

*Napa Valley Transportation Authority  
INTERSECTION SR29\_SR221/SOSCOL FERRY RD PROJECT*

agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

**13. Counterparts.** This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

**[SIGNATURES FOLLOW ON NEXT PAGE]**

**ATTACHMENT 2**

**14. Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of NVTA and the City.

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties to this Agreement have executed it as of the date first above written.

CITY

NVTA

CITY OF NAPA, a California charter city

NAPA VALLEY TRANSPORTATION  
AUTHORITY, a joint powers authority

By:

By:


\_\_\_\_\_  
Julie B. Lucido, Public Works Director

  
\_\_\_\_\_  
KATE MILLER, Executive Director

ATTEST:

ATTEST:

\_\_\_\_\_  
Tiffany Carranza, City Clerk

  
\_\_\_\_\_  
LAURA SANDERLIN  
NVTA Board Secretary

Date: \_\_\_\_\_  
("Effective Date")

COUNTERSIGNED:

APPROVED AS TO FORM:

\_\_\_\_\_  
Joy Riesenbergs, City Auditor

  
\_\_\_\_\_  
NVTA General Counsel

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Barrett, City Attorney

Budget Code: 22530200-53410