

COOPERATIVE FUNDING AGREEMENT NO. SCTA23XXX

BETWEEN THE SONOMA COUNTY TRANSPORTATION AUTHORITY AND THE CITY OF SANTA ROSA

This Agreement is made and entered into as of December 13, 2022 ("Effective Date") by and between the CITY OF SANTA ROSA hereinafter referred to as "**CITY**" and the **SONOMA COUNTY TRANSPORTATION AUTHORITY** hereinafter referred to as "**AUTHORITY**."

WHEREAS, **CITY** is in the final design phase for a proposed project for improvements of the US 101/Hearn Avenue Interchange, as more particularly described in Exhibit A to this Agreement (hereinafter referred to as the "Project"); and

WHEREAS, **CITY** has a financial plan and broad schedule for completion of the Project which is attached hereto as Exhibit B (hereinafter referred to as the "Project Plan"); and

WHEREAS, **CITY** has previously appropriated TWO MILLION, FOUR HUNDRED, SEVENTY-ONE THOUSAND, SIX HUNDRED, FORTY-FIVE DOLLARS (\$2,471,645) to assist with construction of the Project, subject to certain terms and conditions; and

WHEREAS, **CITY** is willing to appropriate THREE MILLION, SEVEN HUNDRED, FOURTEEN THOUSAND, TWO HUNDRED, SEVENTY-NINE DOLLARS (\$3,714,279) in its Fiscal Year 23/24 budget to assist with construction of the Project, subject to certain terms and conditions; and

WHEREAS, **CITY** and **AUTHORITY** desire to submit a grant application to the California Transportation Commission (CTC) for funding under the Road Recovery and Accountability Act, Local Partnership Competitive Program (LPP(c)) for an estimated EIGHT MILLION SIX HUNDRED THOUSAND DOLLARS (\$8,600,000) to complete the funding plan for the project; and

WHEREAS, **CITY** and **AUTHORITY** also desire to submit grant applications to other State and Federal programs in the same amount as the LPP(c) program to complete the funding plan for the project; and

WHEREAS, in the event the LPP(c) or other grant applications are not awarded, **CITY** is willing to make available to the **AUTHORITY** additional **CITY** funding up to EIGHT MILLION SIX HUNDRED THOUSAND DOLLARS (\$8,600,000) to complete the funding plan for the project; and

WHEREAS, **AUTHORITY** by Resolution No. 2019-012 committed to make Measure M, Local Street Projects Program (LSP) funding totaling THIRTEEN MILLION, FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$13,450,000) available for the project as matching funds if a LPP(c) application is successfully awarded funds; and

WHEREAS, **AUTHORITY** is willing to maintain its commitment of Measure M funds to assist with construction of the Project if, in the event the LPP(c) or other grant applications are not awarded, **CITY** provides additional **CITY** funding to make up the shortfall and complete the funding plan for the project; and

WHEREAS, **AUTHORITY** is willing and able to undertake project management of the Project; and

NOW, THEREFORE, in consideration of the foregoing, **AUTHORITY** and **CITY** do hereby agree as follows:

SECTION I

AUTHORITY AGREES:

1. Project Management. **AUTHORITY** agrees to undertake management of the Project from the date of execution of this Agreement through to completion of the Project in accordance with the plans and specifications provided by **CITY**, the deadlines set forth in the Project Plan (Exhibit B), and all provisions of federal, state and local laws and regulations. **AUTHORITY**'s project management responsibilities shall include, but are not limited to:

- a. Preparation and issuance of Bid materials
- b. Advertisement and award of Project for construction
- c. Comprehensive construction management and oversight, including but not limited to:
 - i. Ensuring compliance with all City approved plans and specifications
 - ii. Ensuring timely completion of the Project
 - iii. Ensuring compliance with all Federal, State and local laws and regulations in the construction of the Project
 - iv. Reviewing and administering all requested change orders, provided that any change order that would require any change to approved plans and specifications or any work beyond the scope of the Project shall be submitted to the City for its approval prior to execution
- d. Periodic reporting to the **CITY** in accordance with Subsection I.6 below
- e. Project close out, including full final accounting

2. Subcontracting Acknowledged.

- a. **CITY** acknowledges that **AUTHORITY** intends to enter into a separate cooperative agreement with Caltrans for advertising, award and administration of the Project.
- b. Nothing in this Agreement shall be deemed to preclude **AUTHORITY** from entering into other cooperative agreements or contracts with such other public or private entities as **AUTHORITY** deems necessary or appropriate to ensure timely and proper completion of the Project in accordance with this Agreement.
- c. Neither the cooperative agreement with Caltrans or any other cooperative agreement or other contract with any other party shall relieve **AUTHORITY** of any of its responsibilities and obligations to **CITY** under this Agreement.

3. Compliance with Laws. With regard to administering and completing the Project, **AUTHORITY** shall at all times comply with all applicable laws of the United States, the State of California, and the County, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement, including but not limited to all environmental review and analysis required under the California Environmental Quality Act and compliance with all applicable prevailing

wage requirements under the California Labor Code.

4. Invoicing. Before invoicing **CITY, AUTHORITY** shall first utilize all available Measure M and Federal and State grant funds for management and completion of the Project. **AUTHORITY** shall invoice **CITY** for reimbursement from **CITY** funds only if Measure M and Federal and State grant funds are exhausted or otherwise unavailable. Invoices shall be submitted to **CITY** no more than once per month, shall itemize the work and services performed to date, and shall include supporting documentation in accordance with federal accounting rules. The cumulative total of invoice amounts shall at no time exceed the amount of the transfers and appropriations made and retained by **CITY** pursuant to Subsection II.2.

5. Records. **AUTHORITY** shall maintain adequate documentation to substantiate all expenditures related to the Project. **AUTHORITY** shall at all times allow **CITY** to audit all expenditures relating to the Project, whether those expenditures are funded through this Agreement or through Federal or State grants or otherwise. For the duration of the Project, and for five (5) years following completion of the Project, or earlier discharge of the Agreement, **AUTHORITY** shall promptly make available to **CITY**, upon **CITY's** request, all records relating to expenditures relating to the Project, including but not limited to expenses incurred in performance of this Agreement.

6. Periodic Reports. **AUTHORITY** shall provide **CITY** with regular Project progress reports, not less than monthly. Project progress reports shall include, at a minimum, a statement of bidding status, a statement of construction progress, a listing of all requested change orders, all requested or approved revisions or adjustments to the **CITY**-approved plans and specifications, identification of any unanticipated site conditions, identification of any experienced or anticipated Project delays, and a cost accounting to date. The format of the reporting may be based on reports provided to **AUTHORITY** by Caltrans, but shall include all elements required by this Agreement.

7. Close-Out. Upon completion of the Project, **AUTHORITY** shall submit all receipts to **CITY** for final review. All unused funds shall promptly be returned to **CITY** and any funds used for other than the Project shall be subject to immediate reimbursement by **AUTHORITY** to **CITY**.

SECTION II

CITY AGREES:

1. Project Design / Acquisition of Right of Way. **CITY** shall timely complete Project Design and acquisition of all required Right of Way in accordance with existing Caltrans Cooperative Agreement 04-2600 A-2.

2. Transfer and Appropriation of Funds.

- a. **CITY** has previously appropriated TWO MILLION, FOUR HUNDRED, SEVENTY-ONE THOUSAND, SIX HUNDRED, FORTY-FIVE DOLLARS (\$2,371,645) to assist with construction of the Project, subject to certain terms and conditions. That funding shall be maintained in a designated **CITY** account to be used solely for purposes of completing the Project.
- b. **CITY** agrees to appropriate THREE MILLION, SEVEN HUNDRED, FOURTEEN THOUSAND, TWO HUNDRED, SEVENTY-NINE DOLLARS (\$3,714,279) in its Fiscal Year 23/24 budget, to assist with construction of the Project, subject to certain terms and conditions.
- c. Upon execution of this Agreement, **CITY** shall appropriate additional funds in the

amount of EIGHT MILLION SIX HUNDRED THOUSAND DOLLARS (\$8,600,000), to assist with construction of the Project, subject to certain terms and conditions. .

- d. In the event that the LLP(c) grant or a comparable grant is awarded for the Project, an amount equivalent to the grant award may thereupon be released from the designated Project account and **CITY** shall thereafter be free to use the released funds for any purpose it deems appropriate.

3. Payment of **AUTHORITY** Invoices. Provided that invoices are consistent with the terms of this Agreement, **CITY** shall pay such invoices within thirty (30) days of receipt.

4. Design Services During Construction. **CITY** has engaged AECOM to prepare Project plans, specifications and estimates, and AECOM has completed those plans, specifications and estimates. **CITY** agrees to retain the services of AECOM or other qualified engineering consultant to provide design services during construction, and assist **AUTHORITY** with preparing the as-built plans. The costs of all such engineering and design services shall be paid from the designated Project accounts established pursuant to Subsection II.2.

5. Notice of Audit. **CITY** shall provide timely notice to **AUTHORITY** if an audit is to be conducted.

SECTION III

IT IS MUTUALLY AGREED:

1. Funding Availability and Needs. The funding available to the Project for expenditure is limited to the amount of funds identified in Exhibit B and to approved appropriations by the Santa Rosa City Council. If funds beyond those identified in Exhibit B are necessary to complete the Project, **CITY** will cooperate with **AUTHORITY** to identify and secure new or increased fund commitments, although no such additional funds are guaranteed.

2. Grant Applications. **CITY** and **AUTHORITY** will jointly prepare and submit grant applications to fully fund the Project. Initial applications will be to the CTC for the 2020 Local Partnership Formulaic Program (LPP(f)) and the 2022 Local Partnership Competitive Program (LPP(c)).

3. Term. This Agreement shall become effective on the date that it is made, as set forth on the first page of the Agreement and shall remain in effect until discharged as provided in Paragraph 4 or 13 of this Section III.

4. Termination. This Agreement shall be subject to termination as follows:

- a. This Agreement may be canceled by a party for breach of any obligation, covenant or condition hereof by the other party, upon notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching party shall have thirty (30) days from the date of the notice to initiate steps to cure. If the breaching party diligently pursues cure, such party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. On cancellation, the non-breaching party retains the same rights as a party exercising its right to terminate under the provisions of paragraph 4(b), except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance. If the Agreement is cancelled because **AUTHORITY** has failed to wholly or partially complete the Project, **CITY** may, at its option, demand

repayment of all unexpended funds and funds determined by audit not to have been expended as provided for in this Agreement, with interest accrued thereon as would have accrued had such funds been invested in the Sonoma County Treasury Pool; and, further, to offset such balances due to the **CITY** from any other funds due from the **AUTHORITY**.

- b. By mutual consent of both parties, this Agreement may be terminated at any time. Upon termination by mutual consent, **AUTHORITY** shall repay to **CITY** any unexpended funds provided to **AUTHORITY** under this Agreement, and any interest that has accrued thereon.
- c. This Agreement may be terminated by either party without cause, upon ninety-day written notice. In the event of termination without cause, **AUTHORITY** shall be entitled to reimbursement of all Project costs properly incurred in accordance with this Agreement to the date of termination. Upon termination, **AUTHORITY** shall repay to **CITY** any unexpended funds provided to **AUTHORITY** under this Agreement, any funds determined by audit not to have been expended as provided for in this Agreement, and any interest that has accrued thereon. Upon notice of termination, the parties shall use their best efforts to prepare and facilitate a plan for timely completion of the Project.

5. Indemnity. Neither **CITY** nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by **AUTHORITY** under or in connection with any work, authority, or jurisdiction conferred upon **AUTHORITY** or arising under this agreement.

It is understood and agreed that **AUTHORITY** will fully defend, indemnify, and save harmless **CITY** and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by **AUTHORITY** under this agreement.

Neither **AUTHORITY** nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by **CITY** under or in connection with any work, authority, or jurisdiction conferred upon **CITY** or arising under this agreement.

It is understood and agreed that **CITY** will fully defend, indemnify, and save harmless **AUTHORITY** and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by **CITY** under this agreement.

6. Notices. Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such addresses which may be specified in writing to the parties hereto.

To **CITY**: Jason Nutt
Assistant City Manager/Operations and Transportation
100 Santa Rosa Avenue
Santa Rosa, CA 95404

To **AUTHORITY**: Suzanne Smith

Executive Director Sonoma County Transportation Authority
411 King Street
Santa Rosa, CA 95404

7. Additional Acts and Documents. Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

8. Integration. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

9. Amendment. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

10. Independent Agency. **AUTHORITY** renders its obligations under this Agreement as an independent agency. None of the **AUTHORITY**'s agents or employees shall be agents or employees of the **CITY**. As an independent agency, **AUTHORITY** hereby agrees to indemnify and hold City harmless from any and all claims that may be made against **CITY** based upon any contention by any of **AUTHORITY**'s employees or agents or by any third party, including but not limited to any State or Federal agency, that an employer-employee relationship exists by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement

11. Standard of Performance. Both parties shall perform all services to be performed under this Agreement in the manner and according to the professional standards currently expected of a competent and experienced public agency. Both parties shall assign only competent personnel to perform services under this Agreement. In the event that either party, at any time, desires the removal of any person assigned by the other party to perform services under this Agreement, the parties shall meet and confer to explore options for alternative performance of those services.

12. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

13. Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the **CITY** or **AUTHORITY** as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

14. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF SANTA ROSA

SONOMA COUNTY
TRANSPORTATION AUTHORITY

By: _____
Mayor

By: _____
SCTA Chair

ATTEST:

APPROVED AS TO SUBSTANCE:

By: _____
City Clerk

By: _____
Suzanne Smith, Executive Director

APPROVED AS TO LEGAL FORM

FOR CITY:

FOR AUTHORITY:

By: _____
City Attorney

By: _____
Legal Counsel Authority

EXHIBIT A
DESCRIPTION OF THE PROJECT

In the City of Santa Rosa, at the interchange of U.S. 101 and Hearn Avenue. Replace the US 101/Hearn Avenue over-crossing/interchange with a new over crossing/interchange including bicycle facilities, sidewalks, and re-aligned ramps to US 101. The project will relieve congestion on Hearn Avenue, improve traffic flow across Highway 101 and improve safety on the Hearn Avenue corridor and Highway 101.

Scope:

As part of the above-described project, **AUTHORITY** shall enter into a cooperative agreement with the California Department of Transportation (Caltrans) to have Caltrans advertise, award, and administer the construction of the project, including providing construction support services.

The **CITY** will be solely responsible for retaining the services of a qualified engineering consultant to prepare the project plans, specifications and estimates, provide design services during construction, and assist **AUTHORITY** with project closeout activities within consultant's expertise.

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EXHIBIT BFINANCIAL PLAN AND SCHEDULEFunding

<u>Fund Type</u>	<u>Source</u>	<u>Prior FY</u>	<u>FY 21/22</u>	<u>FY 22/23</u>	<u>FY 23/24</u>	<u>Total</u>
City	CITY	\$2,471,645			\$3,714,279	\$6,185,924
				Total CITY Funds: \$6,185,924		
Measure M	AUTHORITY	\$3,450,000	\$10,000,000			\$13,450,000
				Total AUTHORITY Funds: \$13,450,000		
STIP	State				\$3,400,000	\$3,400,000
LPP (f)	State			\$5,000,000		\$5,000,000
LPP (c)*	State				\$8,600,000	\$8,600,000
				State/Federal Funds: \$17,000,000		

*In the event that the LPP(c) grant is not awarded, the City agrees to provide an additional \$8,600,000 to complete the funding plan for the project.

Schedule

<u>Schedule</u>	<u>Begin (MO/YR)</u>	<u>End (MO/YR)</u>
Prepare and Submit Local Partnership Program Grant Applications to CTC	09/2022	11/2022
Project Ready to List	03/2023	04/2023
CTC Award of LPP Funding and Allocation Vote	06/2023	06/2023
Caltrans Advertise and Award Project for Construction	07/2023	10/2023
Construction	10/2023	12/2025
Project Close Out	01/2026	12/2026