

FUNDING AGREEMENT BETWEEN THE BAY AREA TOLL AUTHORITY,  
THE SOLANO TRANSPORTATION AUTHORITY, AND SOLANO COUNTY  
FOR THE RESILIENT STATE ROUTE 37 PROGRAM  
PROPERTY PURCHASE AND USE AGREEMENT

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Bay Area Toll Authority, (“BATA”), the Solano Transportation Authority (“STA”), and Solano County (“County”) individually referred to as a “Party” and collectively referred to as “the Parties.”

**RECITALS**

WHEREAS, the Bay Area Toll Authority (“BATA”) was created pursuant to Streets and Highways Code section 30950 et seq.; and

WHEREAS, the Solano Transportation Authority (“STA”) was created pursuant to California Public Utility Code section 180000 et seq.; and

WHEREAS, Solano County is a political subdivision of the State of California; and

WHEREAS, working cooperatively, the STA, BATA, and the California Department of Transportation (“Caltrans”) have developed the Resilient SR 37 Program (“Program”), which aims to address resiliency of transportation infrastructure to sea level rise and flooding, traffic congestion, and opportunities for ecological enhancements, transit, multimodal use and public access along the SR 37 corridor from I-80 to US 101. The Program includes near- and longer-term improvements for a majority of the 20-mile corridor, including the long-term sea level rise vulnerability of a number of low-lying areas throughout the corridor; and

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) identified 487 acres of private property adjacent to SR 37 that USFWS was interested in acquiring property for inclusion in the San Pablo Bay National Wildlife Refuge for conservation purposes only; and

WHEREAS, the County supported USFWS’s acquisition of the purchase on the condition that the County, or other entity as appropriate, be allowed to acquire 50 acres of the property (County Property) to secure the necessary right-of-way for transportation improvements and carrying out the restoration efforts that might qualify as mitigation credits for the Program; and

WHEREAS, the County is willing to initially purchase and hold title to the County

Property until such time as it is needed for the Program on the condition that the County be reimbursed.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree:

#### **Section I**

BATA AGREE:

1. BATA shall reimburse County, within sixty (60) days of the close of escrow, the purchase price paid for the 50 acres, estimated at \$7,000 to \$8,000 acre. Purchase price will be calculated using USFWS's final per acre amount. The maximum amount payable to County shall not exceed four hundred thousand dollars (\$400,000) ("Maximum Payment").

#### **Section II**

COUNTY AGREES:

1. County agrees to hold the Property until its use is needed for the Resilient SR 37 Program, at which point in time, County will transfer title to the designated entity as directed by STA and BATA.
2. County shall not sell the Property or use it for any purpose. At such time the Property is required for the Resilient SR 37 Program, the County will work cooperatively with the STA/BATA to transfer ownership
3. Within 60 days of the close of escrow, County shall submit an invoice electrically via email to BATA at [acctpay@bayareametro.gov](mailto:acctpay@bayareametro.gov), or in writing and delivered or mailed to BATA as follows:

Attention: BATA Accounting Section  
Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, CA 94105

#### **Section III**

IT IS MUTUALLY AGREED:

1. The terms of this Agreement shall commence on July 23, 2019 and remain in force and effect until such time as County transfers title to the County Property for the Program.
2. Each party shall indemnify, defend, protect, hold harmless and release the other, its officers, commissioners, directors, representatives, agents, and employees from and

against any and all claims, injuries, suits, demands, losses, proceedings, damages, causes of action, or liability, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure of act of each such indemnifying party, its officers, employees or agents, or subcontractors or any of them in connection with the performance of this Agreement.

3. This Agreement shall bind and benefit the Parties and their heirs, successors, and permitted assigns.
4. The Parties agree 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.
5. This Agreement may not be changed, modified or rescinded except in writing, signed by all Parties, and any attempt at oral modification of this Agreement shall be void and of no effect.
6. All required, 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:

Janet Adams  
Solano Transportation Authority  
One Harbor, Ste 130  
Suisun, CA 94585  
[jadams@sta.ca.gov](mailto:jadams@sta.ca.gov)

Matt Tuggle  
Solano County  
675 Texas St., Ste. 5500  
Fairfield, CA 94533  
[MRTuggle@solanocounty.com](mailto:MRTuggle@solanocounty.com)

Kevin Chen  
Bay Area Toll Authority  
375 Beale Street, Suite 800  
San Francisco, Ca 94105  
[kchen@bayareametro.gov](mailto:kchen@bayareametro.gov)

7. This Agreement is the entire agreement among BATA, STA, County relating to the subject matter of this Agreement. The Parties acknowledge they have not relied upon any promise, representation or warranty not expressly set forth in this Agreement in executing this Agreement.

8. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of BATA, STA or County 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.
9. No waiver by either party of any default or breach of any covenant by the other party 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.
10. The Parties represent and warrant that they are authorized to execute this Agreement.
11. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the day and year first written above.

BAY AREA TOLL AUTHORITY

SOLANO TRANSPORTATION  
AUTHORITY

\_\_\_\_\_  
Therese W. McMillan, Executive Director

\_\_\_\_\_  
Daryl K. Halls, Executive Director

SOLANO COUNTY

Approved as to form:

\_\_\_\_\_  
Birgitta E. Corsello, County Administrator

\_\_\_\_\_  
STA Legal Counsel

Approved as to form

  
\_\_\_\_\_  
County Counsel