

FUNDING AGREEMENT BETWEEN  
THE CITY OF PLACERVILLE AND  
THE COUNTY OF EL DORADO  
FOR THE WESTERN PLACERVILLE INTERCHANGE

Dated as of \_\_\_\_\_, 2012

## Recitals

A. The parties to this Funding Agreement (the "Agreement") are the County of El Dorado, a political subdivision of the State of California (the "County") and the City of Placerville ("City"). The effective date of this Agreement is \_\_\_\_\_, 2012.

B. The State of California, Department of Transportation ("Caltrans") and the City have entered into a Cooperative Agreement dated April 2, 2012 as thereafter amended, ("Cooperative Agreement") defining the terms and conditions by which the City will construct Phase 1A of the larger Western Placerville Interchange, which will consist of the construction of the Ray Lawyer Drive Westbound On-Ramp to US Route 50 and Fair Lane Road Modifications (hereinafter referred to as the "Project");

C. Under the Cooperative Agreement, Caltrans has agreed to reimburse the City up to the amount of \$6,000,000 of the actual construction capital and construction support costs incurred to complete the Project construction from Proposition 1B Corridor Mobility Improvement Account (CMIA) and City has agreed to fund one hundred percent (100%) of all costs exceeding the Caltrans reimbursement excepting only the Caltrans Independent Quality Assurance of Project work to be borne by Caltrans.

D. The City entered into a contract for construction management of the Project with Vali Cooper & Associates ("Vali Cooper") under which City has allocated up to \$750,000.00 to be reimbursed through the CMIA funds. City has also received bids for construction of the Project, with construction costs also reimbursed from the CMIA funds. The apparent low bidder was under the engineer's estimate but they subsequently gave notice of the withdrawal of their bid. The remaining bidders' bids are above the engineer's estimate by a substantial amount, and as a consequence the construction costs, when taken together with construction management costs, will exceed the CMIA funds allocated to this Project.

E. Unless the County assists the City by granting funds in addition to the CMIA funds, City will be unable to proceed with the Project and the CMIA funds will revert back to the State of California.

F. The Project will benefit the citizens of County in that County is the land owner adjacent to the Project, County offices are located near the Project site, and the Project will alleviate traffic impacts to the County offices for the benefit of the public. Further the Project will be of benefit to the new courthouse project currently anticipated to be located adjacent to the County's jail site.

G. In consideration of Recitals A through F, inclusive, and the mutual covenants, undertakings and obligations set forth below, the County, and the City agree as stated below.

## AGREEMENT

1. Grant to City. County shall grant up to the sum of \$1,200,000.00 to City for actual construction costs and Vali Cooper construction management costs incurred to complete the Project subject to the terms and conditions of this Agreement ("County Grant"). City shall use County Grant funds solely to fund these actual construction and Vali Cooper construction

management costs of the Project in excess of CMIA and City funds. In no event shall County's obligation under this Agreement exceed \$1,200,000.00.

2. City's Contribution to Project. City shall contribute the sum of \$100,000.00 towards Project to fund actual construction and Vali Cooper construction management costs in excess of CMIA funds ("City Funds"). City shall not use any CMIA or County Grant funds to pay and/or reimburse City for any staff support costs, including design, engineering, administration or other staff work and design consultants (hereinafter "Work Costs"). All City Work Costs shall be borne solely by City as a contribution to the Project.

3. Use and Priority of Funds. On or before October \_\_\_\_\_, 2012, County will deposit the sum of \$1,200,000.00 into City's treasury. City may utilize the County Grant funds together with City Funds to make the first two initial payments to the Project contractor, subject to reimbursement from CMIA. If City Funds are thereafter insufficient to cash flow the Project, City may use the County Grant funds as necessary for cash flow, subject to reimbursement from CMIA. The remaining County Grant funds will be held in contingency and may be used solely for actual Project construction costs subject to priority as set forth hereinbelow.

On a monthly basis as set forth in the Cooperative Agreement, City shall simultaneously furnish to County copies of each invoice submitted to Caltrans for reimbursement, together with all supporting documents and change orders, reflecting current project construction capital and support costs.

Upon completion of Project, and the final payment of Contractor's Final Pay Estimate together with Vali Cooper final invoice, City will furnish to County a complete final accounting of the actual costs incurred in construction capital and support costs ("Actual Project Costs"), fully supported by detailed documentation, reflecting use of the CMIA, City Funds and County Grant Funds. CMIA funds shall be applied first to the Actual Project Costs up to a maximum of \$6,000,000.00, thereafter City Funds shall be applied to Actual Project Costs in excess of \$6,000,000.00, and then County Grant Funds applied to Actual Project Costs in excess of \$6,100,000.00. Excess County Grant funds shall be returned to County no later than 25 days from Project completion and final accounting.

4. Compliance with Laws. All Project work performed by City, its consultants and contractors, shall be in accordance with all State and Federal laws, regulations, policies and procedures, and in accordance with the terms and conditions of the Cooperative Agreement.

5. Audit. For a period of three (3) years from the date of final payment under the project construction contract, City will retain or cause to be retained for audit by County all records and accounts relating to Project construction. Such accounting records shall be available for inspection by the County's designee during normal business hours at the City offices.

6. Future RTIP Allocations. The El Dorado County Transportation Commission ("EDCTC") receives Regional Transportation Improvement Program ("RTIP") funds bi-annually consistent with the State Transportation Improvement Program funding cycles in the even years. RTIP funds are programmed by the EDCTC for regionally significant projects. EDCTC has programmed the RTIP advance funding for the Western Placerville Interchange Phase 2A, 2B,

and 2C projects in fiscal year 2016/2017. City agrees to support the programming of an amount equal to the actual grant amount of this Agreement after close-out, up to \$1,200,000.00, of future RTIP funds allocations in the next available funding cycle, to the project of County's choice, and City agrees to cooperate with County in providing any necessary resolution to EDCTC at that time.

7. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any rights of any kind or nature in any other person or legal entity not named in and not a party to this Agreement.

8. Independent Contractor. City is, and shall at all times be deemed, independent and shall be wholly responsible for the acts of City's employees, agents, contractors and consultants, in connection with the construction and administration of the Project.

9. Termination of Project. In the event that the City cannot complete the Project as currently called for in the Project plans and specifications, or terminates the work prior to completion, City will return County's Grant forthwith.

10. Indemnification and Hold Harmless. City assumes the defense of, and indemnifies and saves harmless the County, and each of its officers, directors, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the City or its agents and employees, consultants and contractors, in the performance of this Agreement, or arising out of construction of the Project, inclusive of claims made by the Contractor that exceed the Project funding. The indemnity set forth herein shall survive the expiration or completion of this Agreement.

11. Notices. All notices relating to this Agreement shall be mailed to:

If to the County:

County of El Dorado  
Chief Administrative Office  
330 Fair Lane  
Placerville, CA 95667  
Attn: Kim Kerr

With a copy to:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Robert Slater

If to the City:

City of Placerville  
3101 Center Street  
Placerville, CA 95667  
Attn: Cleve Morris, City Manager

Any party may change its address by giving notice in writing to the other party.

12. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

13. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement.

14. Counterparts and Authority. This Agreement may be executed in counterparts, each of which shall be deemed an original. The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

15. Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The City may not assign its rights or obligations hereunder without the prior written consent of the County. This Agreement may be amended by mutual consent of the parties hereto so long as the amendment is in writing and fully executed by duly authorized officials of the parties hereto.

16. Remedies in General. It is acknowledged by the parties that the County would not have entered into this Agreement if were to be liable in damages under or with respect to this Agreement or the application thereof. The County shall not be liable in damages to the City's consultants or contractors.

17. Contract Administrator. The County officer or employee with responsibility for administering this Agreement is Kim Kerr, Assistant Chief Administrative Officer and Acting Director of the Department of Transportation, or successor.

18. Taxpayer Identification. City's tax identification number is \_\_\_\_\_.

19. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

20. Entire Agreement. This document and documents referred to herein or exhibits hereto are the entire agreement between the parties and incorporate or supersede all prior written or oral agreements or understandings.

**Contract Administrator Concurrence:**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Kimberly A. Kerr  
Assistant Chief Administrative Officer

**Requesting Department Concurrence:**

By: \_\_\_\_\_ Dated: \_\_\_\_\_

Kimberly A. Kerr, Interim Director  
Department of Transportation

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

COUNTY OF EL DORADO

By \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Terri Daly  
Acting Clerk of the Board of Supervisors

By \_\_\_\_\_

Deputy Clerk

City of Placerville

By \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
SUSAN ZITO,  
City Clerk