

**REGIONAL FUNDING AGREEMENT
FOR THE PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT PHASE OF THE
BLACKIE ROAD EXTENSION PROJECT**

This Regional Funding Agreement ("Agreement") is made and entered into on _____ by and between the County of Monterey ("Sponsor") and the Transportation Agency for Monterey County ("TAMC"), collectively referred to herein as "Parties," or in the singular, as "Party."

RECITALS

WHEREAS, on September 26, 2018, the Transportation Agency Board of Directors approved the 2018 Regional Development Impact Fee Nexus Study Update; and

WHEREAS, the Regional Development Impact Fee program identifies the State Route 156 project as an eligible use of funds from collected revenues; and

WHEREAS, part of the State Route 156 Corridor includes the extension of Blackie Road to a new interchange at State Route 156 and Castroville Boulevard in the County of Monterey; and

WHEREAS, Sponsor has proposed a manner of extending Blackie Road (hereinafter the "Project") which is more thoroughly described in Exhibit "A," attached hereto; and

WHEREAS, TAMC was awarded funds from Senate Bill 1 Local Partnership Program Formula funds, in the amount of \$250,000, to assist in the Preliminary Engineering (including Environmental and Preliminary Design / Engineering) phase of the Project; and

WHEREAS, Sponsor desires to receive regional funding from TAMC as match for phase of the Project; and

WHEREAS, TAMC is authorized to program funds to the Project in amounts not-to-exceed those shown in the Funding Summary, attached hereto as **Exhibit "D"**; and

WHEREAS, the Parties understand and agree that as between TAMC and Sponsor, any cost savings developed in implementing the Project will be retained by TAMC and may be re-programmed for other eligible projects;

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the Parties hereto represent, covenant and agree as follows:

SECTION I
Covenants of Sponsor

1.1. Project Definition. The Project Description and Scope of Work for the Project is attached hereto as Exhibit A. The Project Schedule is attached hereto as Exhibit B. The Project's Estimate of Cost, both as a whole and by activity, is attached hereto as Exhibit C. The anticipated amount and type of funds, and fiscal year of funding, are specified in Exhibit D, Funding Summary. Each of these Exhibits A, B, C, and D are incorporated herein by this reference.

1.2. Change In Project Scope. No change in the Project Description or Scope of Work as described in Exhibit A may be approved or implemented until it has been reviewed and approved by the TAMC Board of Directors as an amendment to Exhibit A. Changes implemented without TAMC approval will not be eligible for reimbursement.

1.3. Eligible Costs. Eligible costs to be reimbursed by TAMC pursuant to this Agreement are those costs directly related to the Project's implementation including final design, specifications, engineering costs, construction and construction management costs (including staff time and costs incurred by the city that are directly related to the Project) as specified in Exhibit C. City overhead costs are not eligible for reimbursement. In no event shall expenses incurred prior to the execution of this Agreement be considered eligible reimbursement costs under this Agreement.

1.4. Timing of TAMC Disbursements. TAMC shall issue payments in the form of reimbursements to Sponsor pursuant to a Request for Payment submitted by the Sponsor, as described in Section 1.5. As the Sponsor complies with the procedure set forth in Section 1.5, below, the Sponsor will submit its documentation in a sufficiently timely basis to allow TAMC to review Requests for Payment and to disburse funds directly to Sponsor within a period of fifteen (15) business days. TAMC shall not be responsible for any penalties or charges related to late payments to Sponsor or Sponsor contractors, if TAMC has made a disbursement to the Sponsor within this period, or if TAMC has complied with Section 2.4 ("Suspension of Disbursements) for any invoices/Requests for Payments that are disputed. Sponsor understands that in no event shall payments from TAMC, when aggregated with previously approved reimbursement requests, exceed the amount listed as Total Reimbursable Amount" in Exhibit D.

1.5. Invoices and Progress Reports. Starting one month after the execution of this Agreement, Sponsor will submit to TAMC monthly progress reports and Requests for Payment for activities conducted over the prior unbilled month. These documents will include the following specified information:

1.5.1. Invoices. Sponsor will provide TAMC with one (1) copy of all invoices submitted to Sponsor by every contractor, subcontractor, consultant, or subconsultant performing work related to the Project, timecards reflecting hours invoiced for reimbursement by Sponsor's employees and staff, and invoices supporting direct expenses billed to project by Sponsor.

1.5.2. Progress Reports. The monthly progress reports will include a brief description of the status of the Project, including the work completed to date and public outreach efforts. This summary may be included on the invoices submitted to TAMC or be attached to those invoices.

1.5.3. Allocation of Funds as Between Sponsor and TAMC. Each Request for Payment shall allocate requested funds equally between the Sponsor Contribution and TAMC Reimbursable Funds until such time as all of Sponsor's Contribution has been exhausted. That is, for each \$100 invoiced, \$50 shall be paid by Sponsor's Contribution and \$50 from TAMC funds until such time as all of the funds identified in the Funding Summary as "not reimbursable" (i.e., Sponsor's funds) have been used.

1.5.4. Request for Payments. A Request for Payment for an amount not to exceed the total invoice(s) for the prior month, shall accompany the invoices and progress reports. Requests for Payment shall consist of a cover letter stating the time period for which reimbursement is requested, a Progress Report as detailed in section 1.5.2 above, the name of the Project, total amount requested and contact name and telephone number, as well as all invoices and progress reports for which the Sponsor requests reimbursement.

1.6. Use of Funds. Sponsor will expend funds consistent with the Project's Scope of Work described in Exhibit A and Estimate of Cost described in Exhibit C, or approved by TAMC pursuant to Section 1.2. Sponsor shall encumber the funds no later than the Project schedule as listed in Exhibit B.

1.7. Submittal of Documents. Sponsor will provide copies to TAMC of all executed contracts which relate to the Project's Scope of Work, as described in Exhibit A, or approved by TAMC pursuant to Section 1.2. Sponsor will retain records pertaining to the Project for as long as required by law, but not less than a minimum of five (5) years following completion of the Project.

1.8. Completion of Project. Sponsor will be responsible for the timely completion of the Project, including meeting any timely use of funds deadlines, if applicable, set forth in Exhibit B and provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the Scope of Work. Any and all costs which exceed the total Project costs eligible for TAMC reimbursement as described herein, shall be the sole responsibility of Sponsor. This provision shall apply in all instances, including situations where a change in scope has been approved by TAMC pursuant to Section 1.2. Responsibility for the timely completion of the Project includes, but is not limited to:

1.8.1 Construction Support. Sponsor is responsible for all construction support work.

1.8.2 Disadvantaged Business Enterprise. Sponsor will include a Disadvantaged Business Enterprise (DBE) utilization goal in the Project construction contract(s) in accordance with the Caltrans Local Assistance Procedures Manual. Sponsor will award the construction contract to the lowest responsive bidder who makes a Good Faith Effort to meet the DBE goal.

1.8.3 Construction Bonds. Sponsor will require the construction contractor to furnish payment and performance bonds naming Sponsor as obligee, and TAMC as additional obligee, and to carry liability insurance in accordance with Caltrans Standard Specifications.

1.8.4 Bid Process. Sponsor will advertise, open bids, award, and approve the construction contract in accordance with the California Public Contract Code and the California Labor Code.

1.8.5 Bids in Excess of Designated Funding. If the lowest responsible construction contract bid is greater than the funding commitments of TAMC and Sponsor identified in the Funding Summary included with Exhibit B, Parties shall meet and agree in writing on a course of action within fifteen (15) business days. If no agreement is reached within fifteen (15) business days, the Sponsor shall not award the construction contract, and the Parties shall agree to a Mutual Termination pursuant to Section 3.2.1.

1.8.6 Resident Engineer. Sponsor will provide a Resident Engineer and construction support staff that are independent of the construction contractor. The Resident Engineer will be a Civil Engineer, licensed in the State of California, who is responsible for construction contract administration activities.

1.8.7 Change Orders. Sponsor will implement changes to the construction contract only through written Change Orders. Through their designated Project Managers, the Parties must review and concur on all Change Orders over \$10,000, as well as all Change Orders that cumulatively amount to \$50,000, or more. Any Change Orders that would cause the estimated Total Project Cost to be exceeded shall require approval of the TAMC Board of Directors.

1.8.8. Notice of Completion. Sponsor will, within 45 calendar days of the Project becoming operable, provide a Notice of Completion to TAMC, which includes final cost, revenues, and schedule of future and completed activities.

1.9. Closure Statement. Within one hundred eighty (180) calendar days following the completion and acceptance of the Project, Sponsor shall furnish TAMC with a document signed by Sponsor that verifies the completion of all obligations included in this Agreement. This letter shall accompany the final invoice/ Request for Payment from the Sponsor.

1.10. Public Outreach. Sponsor will be responsible for the development and administration of a public outreach effort to ensure public awareness and TAMC involvement in the Project development and delivery process. Sponsor will provide a copy of the public outreach plan and all materials documenting the public outreach activities, including public notices, press releases, flyers, etc. to TAMC. The public outreach plan must accompany the first invoice/ Request for Payment from the Sponsor. "Before" and "after" photos of the project must accompany the final invoice for payment from the Sponsor.

1.11. Provision of Signs. Sponsor shall install signs consistent with TAMC's Project Signs Guidelines and Specifications set forth in Exhibit "E" of this Agreement, attached hereto and incorporated herein by this reference.

1.12. Cost Savings and Excess Costs

1.12.1. Cost Savings. As between Sponsor and TAMC, after the Project has been accepted by Sponsor as complete, any positive difference between the costs, as listed in Exhibit C or approved by TAMC pursuant to Section 1.2, and the total amount paid by TAMC and not returned to the State, shall be considered cost savings. All (100%) of the cost savings will be re-credited to TAMC for re-programming by TAMC on other eligible projects.

1.12.2. Excess Costs. In the event the actual Project cost exceeds the estimates shown in Exhibit C or D, this amount will be considered an excess cost. Sponsor is solely responsible for all costs over the amounts identified in Exhibit C as reimbursable project costs.

1.13. Errors and Omissions. Sponsor shall diligently monitor and manage all aspects of the Project and shall aggressively pursue any and all remedies, including full restitution and damages from any consultant, contractor or sub-contractor and their insureds and sureties suspected of any acts, errors, or omissions committed during business activities that economically or legally damage the Project.

SECTION II

Covenants of TAMC

2.1. Funding Commitments. TAMC shall provide funding to Sponsor for eligible Project costs as specified in the Funding Summary included with Exhibit B consistent with the procedures described in Section 1.5.

2.1.1. Deadline to Submit Reimbursement Requests. Requests for Payment shall be submitted to TAMC on or before 5:00 p.m. on the tenth (10th) calendar day of the month in which the Sponsor requests reimbursement payments. Copies of invoices must be complete and legible, or the Request for Payment will be returned. TAMC shall make payments to Sponsor on or before the last day of the month for all timely submittals.

2.1.2. Late Submittals. If Sponsor fails to submit invoices, documentation or progress reports, as set forth in this agreement, to TAMC in a timely manner, then TAMC may delay the reimbursement payments until the required documentation is provided.

2.1.3. Costs Ineligible for Reimbursement. In addition to any other remedy detailed herein, or otherwise afforded by law, TAMC reserves the right to adjust current or future reimbursement payments to Sponsor if an invoice includes ineligible costs.

2.1.4. Reimbursement Amount. The amount of reimbursement payments to Sponsor shall be equivalent to 50% of eligible expenditures for each invoice submitted to TAMC until such time as Sponsor's Contribution is exhausted, as specified in Exhibit A and Section 1.5.3, except as provided in 2.2., below.

2.2. Delay or Suspension of Reimbursement Payments. Notwithstanding the reimbursement provisions listed above, if TAMC determines that an invoice includes ineligible costs, lacks adequate supporting documentation, or lacks a progress report, the TAMC Project Manager or Fiscal Officer shall provide the Sponsor with a written dispute notice outlining the reason for the return and the

proposed remedy, if one exists, which would make the invoice acceptable. TAMC will delay payment until within 15 days of when the revised invoice or requested documentation is received. If Sponsor disputes the TAMC finding or request, Sponsor may immediately submit a new invoice representing only the amounts which are not in dispute, while setting aside the disputed amounts for review in accordance with the provisions set forth in the Dispute Resolution policies of the Measure X Master Programs Funding Agreement (Article V, Section B).

2.3. Making of Payment Does Not Result In Waiver. TAMC payments pursuant to an approved Request for Payment does not result in a waiver of the right of TAMC to require fulfillment of all terms of this Agreement.

2.4. Right to Conduct Audit. TAMC shall, at TAMC's expense, have the right to conduct an audit of all Sponsors' records pertaining to the Agreement at any time during construction and up to a five (5) year period after completion of the Project. If any irregularities are found as a result of an audit, Sponsor shall reimburse TAMC for the cost of the audit.

SECTION III **Mutual Covenants**

3.1. Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.15.

3.2. Discharge/Termination. This Agreement shall be subject to discharge as follows:

3.2.1. Termination by Mutual Consent This Agreement may be terminated at any time by mutual consent of the Parties. At the time of any such mutual termination, TAMC shall be obligated to provide funding for only such Requests for Payment as may be outstanding and approved at the time of termination.

3.2.2. Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified in Section 3.14, this Agreement shall be discharged, and the Parties shall have no further obligation to each other, upon completion of the Project and submission of the Closure Statement, as set forth in Section 1.9.

3.3. Indemnity. It is mutually understood and agreed, relative to the indemnification of TAMC and Sponsor:

3.3.1. Sponsor shall, to the full extent permitted by law, fully defend, indemnify and hold harmless TAMC, its Board and Directors, and any officer, agent, or employee of TAMC, against any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under the Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Sponsor shall fully defend, indemnify and hold TAMC, its Board and Directors, its officers, agency and employees, harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Sponsor under this Agreement or in connection with any work, authority, or jurisdiction delegated to Sponsor or funded by Sponsor under this Agreement.

3.3.2. TAMC shall, to the full extent permitted by law, fully defend, indemnify and hold harmless Sponsor, and any officer or employee of Sponsor, against any damage or liability occurring by reason of anything done or omitted to be done by TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC under the Agreement.

3.4. Liability. As TAMC is only providing certain funds, and not the primary or responsible agency for carrying out the Project herein identified, TAMC is not liable for any loss, cost, liability, damage, claim, lien, action, cause of action, demand or expense which may arise as a result of the acts or omissions of Sponsor or its agents, contractors, consultants, engineers, or representatives. Nor shall TAMC be liable for any loss, cost, liability, damage, claim, lien, action, cause of action, demand or expense which may arise as a result of TAMC's provision of funds which may be utilized in, but not limited to the acquisition of, the design, implementation, or construction of the Project herein described.

3.5 Contract Administrators. Sponsor's designated principal responsible for administering Sponsor's work under this Agreement shall be Randy Ishii, Project Manager; TAMC's designated administrator of this Agreement shall be Debra L. Hale, Executive Director. TAMC's Project Manager under this Agreement shall be Doug Bilse.

3.6 Notices. Any notice which may be required under this Agreement shall be in writing and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below:

TAMC
Debra L. Hale
Executive Director
55B Plaza Circle
Salinas, California 93901

SPONSOR
Randy Ishii
Director of Public Works, Facilities and Parks
1441 Schilling Place, Second Floor
Salinas, California, 93901

Either Party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.6 All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

3.7. 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.

3.8. Integration. This Agreement, together with the State funding agreement for the Local Partnership Program funds, 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.

3.9. 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.

3.10. Independent Agency. Sponsor renders its services under this Agreement as an independent agency and TAMC is also an independent agency under the Agreement. None of the Sponsor's agents or employees shall be agents or employees of TAMC and none of TAMC's agents or employees shall be agents or employees of Sponsor.

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

3.12. Binding on Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of TAMC or Sponsor, 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.

3.13. 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.

3.14. Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by the Parties; each counterpart shall be deemed an original, but all counterparts shall constitute a single document.

3.15. Survival. The following provisions in this Agreement shall survive discharge:

3.15.1. Sponsor. As to Sponsor, the following sections shall survive discharge: Section 1.6 (obligation to apply funds to Project), Section 1.7 (obligation to provide copies and retain records), Section 1.8 (obligation to continue to manage Project).

3.15.2. TAMC. As to TAMC, the following section shall survive discharge: Section 2.3 (right to conduct audit).

3.15.3. Both Parties. As to both Parties, the following section shall survive discharge: Section 3.3. (indemnity) and Section 3.4 (Liability), until the expiration of all relevant statutes of limitations.

3.16. Limitation. All obligations of TAMC under the terms of this Agreement are expressly contingent upon TAMC's continued authorization to administer the reimbursable funds identified in the Funding Summary included with Exhibit A. If for any reason, TAMC's right or ability to collect or expend such funds are terminated or suspended in whole or part so that it materially affects TAMC's ability to fund the Project, TAMC shall promptly notify Sponsor, and the Parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the

Parties, this Agreement shall be deemed terminated by mutual or joint consent. Any future obligation to fund this Project or any other project or projects of Sponsor, not already specifically covered by a separate Agreement, shall arise only upon execution of a new Agreement.

3.17. Time. Time is and shall be of the essence of this Agreement and each of its provisions in which performance is a factor.

3.18. Remedies Cumulative. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.

3.19. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

3.20. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

3.21. No Continuing Waiver. The waiver by any Party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.

3.22. No Rights in Third-Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies on any third-party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third-party to any Party to this Agreement, nor shall any provision of this Agreement give any third-party any right of subrogation or action over or against any Party to this Agreement.

3.23. Signatory's Warranty. Each Party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other Party.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

COUNTY OF MONTEREY

TRANSPORTATION AGENCY FOR
MONTEREY COUNTY:

By: _____
Randy Ishii
Director

By: _____
Debra L. Hale
Executive Director

APPROVED AS TO FORM:

By: _____
[Name]
County Counsel

By: _____
Katherine Hansen
TAMC Counsel

EXHIBIT A

PROJECT DESCRIPTION & SCOPE OF WORK

Project Name: Blackie Road Extension

Project Contact: Randy Ishii, Director, County of Monterey

Project Manager: [To be determined]

PROJECT DESCRIPTION

Responsible Agency: County of Monterey

Project Limits: The project will construct a new road from the interchange at Castroville Boulevard & State Route 156 to the existing segment of Blackie Road in north Monterey County.

Project Phase:

- Phase 1 – Preliminary Engineering (includes Environmental and Preliminary Design / Engineering)
- Phase 2 – Right-of-Way Acquisition
- Phase 3 – Construction (includes Project Construction & Construction Management)

Project Purpose:

This project will connect to two other projects that are also planned in the corridor: the State Route 156 / Castroville Boulevard Interchange Improvements; and the State Route 156 West Corridor Improvements. The Blackie Road Extension will provide a new connection from the major distribution center in south Castroville to State Route 156, reducing truck traffic and congestion on State Route 183/Merritt Street through town.

Transportation Benefit:

The project provides traffic congestion relief; improves safety for local and regional travelers; improves movement of valuable goods to market.

EXHIBIT B

PROJECT SCHEDULE

To be provided by County prior to final execution

EXHIBIT C

PROJECT COST ESTIMATE

To be provided by County prior to final execution

EXHIBIT D

FUNDING SUMMARY

Project Phase	Fund Source	Fiscal Year	Amount	Agency	Reimbursable Under this Agreement	Funding Secured?
PA&ED	Regional Development Impact Fees	2021/22	\$250,000	TAMC	Yes	Yes
PA&ED	Senate Bill 1 Local Partnership Program	2021/22	\$250,000	TAMC	Yes	Yes
Total Reimbursable Amount:			\$500,000			
County of Monterey's Share:			\$0			
Total Project Cost:			\$500,000			

EXHIBIT E

PROJECT SIGNS

The Sponsor shall install project signs consistent with the requirements of the California Transportation Commission's Senate Bill 1 Local Partnership Program.