



BOARD MEETING AGENDA SUBMITTAL

TO: GCSB Board of Directors

FROM: Peter Kampa, General Manager

DATE: September 12, 2023

SUBJECT: Agenda Item 6B: Adoption of a Resolution Approving a Master Funding Agreement Between the District and Tuolumne County Transportation Council for the Hetch Hetchy Project

RECOMMENDED ACTION:

Staff recommends the following action:

I move to adopt Resolution 43-2023 Approving a Master Funding Agreement Between the District and Tuolumne County Transportation Council for the Hetch Hetchy Project.

BACKGROUND:

The district was awarded Caltrans funding through the active transportation program (ATP) for the Hetch Hetchy Railroad Trail project. In order to receive allocation of the money for the project, we must either have a master funding agreement with Caltrans or work with a partner using their master funding agreement with Caltrans. We were counseled by Caltrans staff that it could take up to a year for the district to receive its own master funding agreement, which due to the delay could actually jeopardize our funding for the project. We therefore approached the Tuolumne County Transportation Council (TCTC) with a request to partner on this project.

TCTC has been extremely accommodating and has agreed to allow the district to proceed with the project using their Caltrans master funding agreement. To facilitate the process of using their master funding agreement, we must have our own agreement between the district and TCTC. The attached master funding agreement was prepared by TCTC and has been reviewed by district legal counsel, who recommended several non-substantial changes and one substantial change to the draft agreement, which has yet to be approved by TCTC. Our amended form of the agreement is attached and we expect minor revisions and changes prior to its consideration by the TCTC board at their upcoming September meeting.

The resolution approving the agreement has been prepared allowing additional non-substantial amendments to this form of agreement, understanding that changes will likely be made. If substantial changes to the agreement need to be made we will bring this item back to a future meeting for board consideration. Time is of the essence in completing this agreement to stay on schedule with Caltrans 's allocation of funds at their October meeting.

ATTACHMENTS:

1. Resolution 43-2023
2. Master Funding Agreement

FINANCIAL IMPACT:

There is no fiscal impact associated with this agreement. TCTC will be compensated using administrative allocations contained within the grant funds.

Master Funding Agreement Between Groveland Community Services District and The Tuolumne County Transportation Council

Agreement No. _____

This Master Funding Agreement ("Agreement") is made effective _____, 2023 by the Tuolumne County Transportation Council, a regional transportation planning agency, hereafter referred to as "**TCTC**", and the Groveland Community Services District, hereafter referred to as "**GCSD**".

WHEREAS, as the Regional Transportation Planning Agency for Tuolumne County, TCTC is held responsible to manage various federal, state and local funding programs, including but not limited to, the State Transportation Improvement Program (STIP); Planning, Programming and Monitoring (PPM); Regional Planning Assistance (RPA); Federal Transit Administration Sections 5310 and 5311 grants; Regional Surface Transportation Program (RSTP); Congestion Mitigation and Air Quality (CMAQ); Transportation Development Act (TDA) Program's Local Transportation Funds and State Transit Assistance Funds, hereafter referred to as the "Funding"; and

WHEREAS, TCTC has an approved Master Funding Agreement ("MFA") with the State of California that guarantees compliance with State and Federal laws, regulations, and requirements; and

WHEREAS, TCTC allows jurisdictions within its region to deliver projects under its MFA with the State; and

WHEREAS, TCTC is required to ensure agencies to whom it allocates Funding to deliver projects under its MFA comply with the policies, procedures and requirements of the specific program that allocates the Funding, such as, but not limited to, Article 19 of the California State Constitution and Sections 133(b) and 133(c) of Title 23, of the United States Code, other regulations, and requirements; and

WHEREAS, GCSD has secured State and Federal transportation funds and has requested to deliver projects under TCTC's MFA; and

WHEREAS, TCTC is willing to enter into an Agreement with GCSD to delineate those certain obligations placed upon GCSD relative to the use of Funding allocated by TCTC.

Section 1

IT IS MUTUALLY AGREED AS FOLLOWS:

- 1.1. This Agreement shall have no force or effect with respect to any programmed project unless and until a project-specific resolution that allocates funds to the specific project and adopts the terms and conditions of this Agreement has been adopted by TCTC, hereafter referred to as the "Allocating Resolution", and a project-specific supplemental agreement has been executed by both parties.
- 1.2. A financial commitment of Funding from TCTC will occur only following the execution of this Agreement together with the subsequent adoption of an Allocating Resolution.
- 1.3. GCSD shall be responsible for implementing (a) each specific project and its various phases, and (b) the terms and conditions of the respective Funding program and the matching funds provided by GCSD or others as appropriate. Adoption and execution of this Agreement together with adoption of an Allocating Resolution shall be sufficient to bind GCSD to these terms and conditions when performing a project.

- 1.4. A project shall be acquired, designed and constructed: (a) as described in GCSD's Project -specific supplemental agreement and a Project Study Report or equivalent document attached as an exhibit to supplemental agreement; (b) in compliance with all policies, procedures and requirements related to the Funding program; (c) pursuant to such other TCTC procedures as may be applicable; and (d) as specified in this Agreement.
- 1.5. Unless otherwise provided in the Project-specific supplemental agreement, GCSD shall be the lead agency for projects funded pursuant to this Agreement. GCSD is entitled to subcontract any portion of the work it deems necessary to complete projects.
- 1.6. The estimated cost, scope and schedule of each project will be as described in the Project Study Report, grant application or equivalent document, which shall be attached as an exhibit to project-specific supplemental agreement. Funding is limited to the amounts as set forth in the project-specific supplemental agreement. GCSD may award a project contract in excess of the approved estimate contained in the project-specific supplemental agreement, provided that: (a) GCSD provides the necessary additional funding for the excess cost, or (b) GCSD requests a project cost increase and TCTC approves the project cost increase, in accordance with Section 1.10 below.
- 1.7. Subsequent to the inclusion of a project in a plan or program approved by TCTC and GCSD, GCSD may request and receive payment for eligible work as follows:
 - (a) Unless otherwise specified in funding supplemental agreement, TCTC will reimburse GCSD's share of eligible project costs each month upon submittal of signed monthly progress pay invoices for expenditures actually made by GCSD.
 - (b) TCTC funds will not be eligible for any portion of project work performed in advance of the effective date of this Agreement and the effective date of the approved project-specific supplemental agreement.
 - (c) Payments from State or Federal agencies for project expenses may be made directly to GCSD or as a pass-through from TCTC after receipt of funds from State or Federal agencies.
- 1.8. Monthly invoices, an original and one copy, shall be submitted to the TCTC Executive Director on GCSD letterhead and shall include: (a) this Agreement number, (b) project title and number, (c) the progress billing number for the project, (d) appropriate backup documentation to support costs identified, as may be requested by TCTC, and (e) be signed by an authorized representative of GCSD.
- 1.9. Invoices submitted for reimbursement shall not exceed the total allowable project cost, including but not limited to, all planning, administration, preliminary engineering work, right of way acquisition, design, construction and construction administration included within the project description contained in the project-specific supplemental agreement.
- 1.10. TCTC programmed amounts may be increased to cover project cost increases only if: (a) such funds are available, (b) TCTC concurs with the proposed increase, and (c) the parties execute an amended project-specific supplemental agreement.
- 1.11. Indemnification and Hold Harmless: GCSD shall hold harmless, defend, and indemnify TCTC, its agents, officers, employees and volunteers against any and all claims, losses, liability and damages (including but not limited to injury to person or property, and related costs and expenses, including reasonable attorneys' fees) arising directly or indirectly out of any act or omission of contract performance by GCSD, its agents, officers, employees or volunteers, except to the extent the claims, losses, liability and damages arise from TCTC's, its agents', officers', employees', and

volunteers' willful misconduct or gross negligence. This paragraph shall survive any expiration or termination of this Agreement.

- 1.12. The Executive Director of TCTC is authorized to take any action on behalf of TCTC under this Agreement pertaining to plans, financial matters, audits, project inspection and monitoring.
- 1.13. The GCSD General Manager is authorized to take any action on behalf of GCSD under this Agreement.

Section 2

GCSD agrees:

- 2.1 As a condition of accepting Funding, GCSD agrees to abide by all Federal, State and TCTC policies, procedures and requirements pertaining to the specific funding program from which the Funding is allocated.
- 2.2 As a condition to the release and payment of TCTC funds encumbered to a project described in a project-specific supplemental agreement, GCSD agrees to comply with the terms and conditions contained in this Agreement and all of the agreed upon special covenants and conditions attached or made a part of the Allocating Resolution, identifying and defining the nature of the specific project.
- 2.3 GCSD agrees to use the funds received from TCTC pursuant to this Agreement and each project-specific supplemental agreement only for projects as defined under Article XIX of the California State Constitution and Sections 133(b) and 133(c) of Title 23, United States Code, Caltrans Local Procedures Manual or other funding program requirements as appropriate.
- 2.4 GCSD agrees to establish separate, special accounts for each project for the purposes of depositing all payments received from TCTC pursuant to this Agreement and each project-specific supplemental agreement and identifying project expenditures.
- 2.5 In the event project costs exceed the funds included in the project-specific supplemental agreement, additional TCTC funding may be programmed pursuant to Section 1.10 of this Agreement. When additional TCTC funds are not available, GCSD agrees that payment of TCTC funds will be limited to the amounts already approved in the project-specific supplemental agreement and that any increases in project costs will be paid for by GCSD. GCSD is not obligated to provide additional funds for cost increases to complete a project, and may discontinue any project anytime and refund any used allocation back to TCTC.
- 2.6 The Legislature and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain employment practices with respect to contract work and other work financed with State funds. GCSD shall ensure that work performed under this Agreement is done in conformance with state labor and employment rules and regulations, as may be applicable.
- 2.7 GCSD agrees to produce and present reports, at least quarterly, to TCTC on the progress and status of all projects receiving TCTC funds through this Agreement.
- 2.8 GCSD agrees to prepare a "Final Report of Expenditures" reporting the actual costs expended on each project receiving funds through this Agreement. GCSD shall submit that report to the Executive Director of TCTC no later than 60 days following completion of expenditures.
- 2.9 GCSD and its subcontractors shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support reimbursement payment invoices which segregate and accumulate costs of project work elements.

- 2.10. GCSD shall produce monthly reports which clearly identify reimbursable costs, matching costs and other expenditures by GCSD.
- 2.11. GCSD agrees to grant TCTC and state auditors access to GCSD's books and records for the purpose of verifying that funds paid hereunder are properly accounted for and proceeds are expended in accordance with this Agreement and the project-specific supplemental agreement. All documents shall be available for inspection by authorized TCTC or Caltrans agents at any time during project development and for a four-year period from the date of project completion or one year after the audit is completed or waived by TCTC or Caltrans, whichever is later.
- 2.12. TCTC reserves the right to conduct an audit on the project. GCSD agrees to provide records and allow an audit on the project, if required by TCTC.
- 2.13. Unless otherwise agreed to in writing by the parties, GCSD agrees to maintain and operate the project property that GCSD acquired, developed, improved, rehabilitated, or restored for the project for its intended public use, as proposed in GCSD's funding request, this Agreement, or the project-specific supplemental agreement. With the approval of TCTC, GCSD or its successors-in-interest in the property may transfer this obligation and responsibility to maintain and operate the property to another public entity.
- 2.14. GCSD agrees to allow TCTC, State, or Federal agents on project sites to inspect completed work for compliance with applicable standards or requirements.
- 2.15. GCSD agrees to only hire qualified consultants or contractors with demonstrated experience and professional expertise in functional areas of project responsibility.
- 2.16. GCSD agrees to remedy any work not consistent with applicable State or Federal standards or requirements.

Section 3

- 3.1. The Executive Director of TCTC may issue a "Notice of Non-Compliance" to GCSD in the event TCTC finds non-compliance issues with a specific project. The notice shall describe the instance(s) of non-compliance and specify the applicable documents and sections that constitute the basis of non-compliance.
- 3.2. GCSD shall respond to the issues addressed in the Notice of Non-Compliance within a reasonable period of time, which shall not be less than a thirty (30) day period.
- 3.3. If GCSD fails to correct the non-compliance issues or has not demonstrated to TCTC that it is taking appropriate actions to correct the non-compliance within a reasonable time period, then the TCTC Executive Director may issue a "Notice to Repay Funding."
- 3.4. GCSD agrees that in the event GCSD fails to use funds received hereunder in accordance with the terms of this Agreement and the respective project-specific supplemental agreement, as proven through an audit, GCSD shall be required to repay all or a portion of the funds to TCTC, or the State or Federal government, within thirty (30) days of GCSD receiving the Notice to Repay Funding.
- 3.5. The Parties acknowledge that it is critical to maintain compliance with the applicable Funding program in order for GCSD to receive the Funding secured by GCSD. In the event GCSD has a reasonable basis that TCTC is not allocating the Funding in accordance with the requirements of the applicable Funding program, the Parties agree that GCSD shall have the right to select a consultant at its expense to maintain compliance with the applicable Funding program. The

consultant shall have access to all TCTC documents, records, and files as may be necessary to maintain compliance with the applicable Funding program.

Section 4

General provisions:

- 4.1 This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the California Transportation Commission that may affect the provisions, terms or funding of this Agreement in any manner.
- 4.2 This Agreement and any project-specific supplemental agreement shall terminate upon sixty (60) days prior written notice by TCTC except those obligations relative to GCSD's indemnification shall not expire and GCSD's duties assumed under Sections 2.10, 2.11 and 2.12 shall continue for so long as a project remains operable.
- 4.3 Amendment. No alteration to the terms of this Agreement or any project-specific supplemental agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
- 4.4 Governing Law. The laws of the State of California shall govern the rights, obligations, duties, interpretation, and liabilities of this Agreement.
- 4.5 Severability. In case any one or more provisions contained in this Agreement shall for any reason be held invalid or illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof; and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.
- 4.6 Headings and Subtitles. Headings and subtitles of this instrument have been used for convenience only and do not constitute matter to be considered in interpreting this Agreement.

The undersigned, having read the foregoing, accept, and agree to the terms set forth therein.

In witness hereof, the parties have caused their authorized representatives to execute this Agreement on the _____ day of _____, 2023.

**TUOLUMNE COUNTY TRANSPORTATION
COUNCIL**

**GROVELAND COMMUNITY SERVICES
DISTRICT**

Chairperson

Chairperson

Groveland Community Services District,
General Manager

Approved as to Legal Form:

General Counsel

**Approved as to Risk Management:
Groveland Community Services District**

Date: _____

RESOLUTION 43-2023

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GROVELAND COMMUNITY SERVICES DISTRICT APPROVING A MASTER FUNDING AGREEMENT BETWEEN THE DISTRICT AND TUOLUMNE COUNTY TRANSPORTATION COUNCIL FOR THE HETCH HETCHY TRAIL PROJECT

WHEREAS, the Groveland Community Services District (herein referred to as District) is a local government agency formed and operating in accordance with Section §61000 et seq. of the California Government Code; and

WHEREAS, the district has plans for the development of an accessible, multi purpose trail linking district park facilities with the Groveland Community Resilience Center and downtown Groveland; and

WHEREAS, the Hetch Hetchy Railroad Trail has received funding from that Caltrans Active Transportation Program (ATP), cycle 6 and the district is prepared to proceed with project design, land acquisition and construction of the project; and

WHEREAS, to receive ATP funding from Caltrans, the district must either have a master funding agreement with Caltrans or partner with another entity who already has a Caltrans master agreement to serve as the implementing agency for the project; and

WHEREAS, the time required to secure a master funding agreement with Caltrans can be up to a year, which could jeopardize funding for the project; and

WHEREAS, the Tuolumne County Transportation Council has a master funding agreement with Caltrans and has offered for the district to use their master agreement for the implementation of the Hetch Hetchy Railroad Trail project; and

WHEREAS, a master funding agreement has been prepared by the Tuolumne County Transportation Council and reviewed by District legal counsel and is included herein.

NOW THEREFORE BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF THE GROVELAND COMMUNITY SERVICES DISTRICT DOES HEREBY

1. Adopt and approve the execution of the Master Funding Agreement with the Tuolumne County Transportation Council for the Hetch Hetchy Railroad Project as presented.
2. Authorize non-substantial amendments to the final version of the Agreement to be approved by the Tuolumne County Transportation Council.

WHEREFORE, this Resolution is passed and adopted by the Board of Directors of the Groveland Community Services District on September 12, 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT

APPROVE:

Nancy Mora, Board President

ATTEST:

Rachel Pearlman, Board Secretary

CERTIFICATE OF SECRETARY

I, Rachel Pearlman, the duly appointed and acting Secretary of the Board of Directors of the Groveland Community Services District, do hereby declare that the foregoing Resolution was duly passed and adopted at a Regular Meeting of the Board of Directors of the Groveland Community Services District, duly called and held on August 8, 2023.

DATED: _____