

EXHIBIT A

REIMBURSEMENT AGREEMENT BETWEEN THE NEVADA COUNTY TRANSPORTATION COMMISSION AND THE COUNTY OF NEVADA

REGARDING REGIONAL TRANSPORTATION MITIGATION FEE FUNDS

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 20__, by and between the NEVADA COUNTY TRANSPORTATION COMMISSION ("NCTC") and the COUNTY OF NEVADA (the "COUNTY"). NCTC and the COUNTY are sometimes collectively referred to herein as the "PARTIES".

RECITALS

A. NCTC is the Administrator of the Western Nevada County Regional Transportation Mitigation Fee Program ("RTMF Program") as set forth in the (1) RTMF 2008 Fee Schedule Update Nexus Study Report, June 2008, prepared by Parsons Brinkerhoff; (2) the Western Nevada County RTMF Administrative Plan, June 30, 2008, prepared by the Nevada County Transportation Commission; and (3) the RTMF Agreements between NCTC and the cities of Grass Valley and Nevada City and the County of Nevada.

B. NCTC has identified certain transportation improvement projects located throughout western Nevada County as projects of regional importance by their inclusion in the RTMF Capital Improvement Program as set forth in the Western Nevada County RTMF Administrative Plan.

C. The RTMF Program is funded by fees paid by new development in western Nevada County (collectively, "RTMF Program Funds"). RTMF Program Funds are held in trust by NCTC for the purpose of funding the RTMF Capital Improvement Program projects.

D. The COUNTY proposed to implement a RTMF Capital Improvement Program project, and it is the purpose of this Agreement to identify the project and to set forth the terms and conditions by which NCTC will financially assist the COUNTY.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the PARTIES hereby agree as follows:

1. Description of the RTMF Capital Improvement Program Project. This Agreement is intended to distribute RTMF Program Funds to the COUNTY for the Brunswick/Loma Rica Intersection Improvement project, (the "Project"), a RTMF Capital Improvement Program Project. A description of the Project, its implementation schedule, a detailed scope of work, and the COUNTY's estimated project cost and budget, are more particularly described in Exhibit

"A" attached hereto and, pursuant to Section 15 below, are subject to modification. It is understood and agreed that the COUNTY shall expend RTMF Program Funds only as set forth in the Agreement and only for the Project.

2. NCTC Funding Amount. NCTC hereby agrees to distribute to the COUNTY, on the terms and conditions set forth herein, a sum not to exceed Four Hundred Eighty-Eight Thousand Seven Hundred Ninety Dollars (\$488,790), as listed under the RTMF Share in Exhibit "A" to be used for reimbursing the COUNTY for approved eligible project expenses as described in Section 3 herein ("Project Costs Eligible for Advance/Reimbursement"). The PARTIES acknowledge and agree that the Funding Amount may be less than the actual cost of the Project. Nevertheless, the PARTIES acknowledge and agree that NCTC shall not be obligated to contribute RTMF Program Funds in excess of the maximum RTMF Share identified in the RTMF Capital Improvement Program ("RTMF Share").

3. Project Costs Eligible for Advance/Reimbursement. Project costs ("Total Project Cost") may include the items included in the scope of work and budget attached as Exhibit "A", which include, but are not limited to: (1) the COUNTY and/or consultant costs associated with Project coordination and support; (2) funds expended in preparation and/or review of preliminary engineering studies and design; (3) funds expended for preparation and/or review of environmental review documentation for the Project; (4) all costs associated with right-of-way acquisition, including right-of-way engineering, appraisal, acquisition, legal costs for condemnation procedures if authorized by the COUNTY, and costs of reviewing appraisals and offers for property acquisition; (5) costs incurred if condemnation proceeds; (6) costs incurred relating to the final design documents, including the preparation and/or review of plans, specifications, and estimates by the COUNTY or consultants; (7) the COUNTY costs associated with bidding, advertising, and awarding of the Project contracts; (8) construction costs, including change orders to construction contracts approved by the COUNTY; (9) construction management, field inspection and material testing costs; and (10) financing costs associated with the project so long as the financing and other project costs do not exceed the amount budgeted for the Project.

4. Ineligible Project Costs. The Total Project Cost shall not include the following items, which shall be borne solely by the COUNTY without reimbursement: (1) the COUNTY administrative costs, which are included in the COUNTY's fully burdened hourly rates (fully burdened hourly rates include the direct department staff hourly rate plus overhead costs); (2) the COUNTY costs attributed to the preparation of invoices, billings, and payments; (3) any COUNTY fees attributed to the processing of the Project, not including any connection and/or impact fees; and (4) items of work not included within the scope of work in Exhibit "A".

5. Procedures for Distribution of RTMF Program Funds to the COUNTY.

(a) Initial Payment by the COUNTY. The COUNTY shall be responsible for initial payment of all the Project costs as they are incurred. Following payment of such Project costs, the COUNTY shall submit invoices to NCTC requesting reimbursement of eligible Project costs. Each invoice shall be accompanied by detailed contractor invoices or other demands for payment addressed to the COUNTY, and documents providing evidence of the COUNTY's payment of the invoices or demands for payment. Documents evidencing the COUNTY's payment of the invoices shall be retained for four (4) years and shall be made available for

review by NCTC. The COUNTY shall submit invoices not more often than monthly and not less often than quarterly.

(b) Review and Reimbursement by NCTC. Upon receipt of an invoice from the COUNTY, NCTC shall review the invoice and may request additional documentation or explanation of the Project costs for which reimbursement is sought within fourteen (14) days of the receipt of the invoice. Reimbursement to the COUNTY shall not be made unless approved by NCTC. NCTC approval shall not be unreasonably withheld. Approved amounts shall be paid by NCTC to the COUNTY within fourteen (14) days of approval of the invoice. In the event that NCTC disapproves all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the matter. If the meet and confer process is unsuccessful in resolving the matter, the COUNTY may appeal NCTC's decision as to the eligibility of one or more invoices to the RTMF Administrative Committee. The COUNTY may appeal the decision of the RTMF Administrative Committee to the RTMF Executive Committee, the decision of which shall be final.

(c) Funding Amount/Adjustment. If a post-Project audit or review indicates that NCTC has provided reimbursement to the COUNTY in an amount in excess of the maximum eligible RTMF Share of the Project, as determined by the RTMF Capital Improvement Program, or has provided reimbursement of ineligible Project costs, the COUNTY shall reimburse NCTC for the excess or ineligible payments within thirty (30) days of notification by NCTC.

6. Increases in Project Funding. As set forth in the RTMF Administrative Plan, the funding amount may be increased with additional RTMF Program Funds if the RTMF Capital Improvement Program and/or Nexus Study Report are amended to increase the maximum eligible RTMF Share for the Project (e.g. annual inflation adjustment). Any such increase in the funding amount must be approved in writing by the RTMF Executive Committee. In no case shall the amount of RTMF Program Funds allocated to the COUNTY exceed the then-current maximum eligible RTMF Share for the Project. No such increased funding shall be expended to pay for any Project already completed. For purposes of this Section 6, the Project shall be deemed complete upon its acceptance by the COUNTY, and subsequently, upon acceptance by NCTC's Executive Director.

7. The COUNTY's Funding Obligation to Complete the Project. In the event that the RTMF Program Funds allocated to the Project represent less than the total cost of the Project, the COUNTY shall provide such additional funds as may be required to complete the Project as described in Exhibit "A".

8. The COUNTY's Obligation to Repay RTMF Program Funds to NCTC. In the event that: (1) the COUNTY, for any reason, determines not to proceed with or complete the Project; or (2) the Project is not timely completed, subject to any extension of time granted by NCTC pursuant to the terms of this Agreement; the COUNTY agrees that any RTMF Program Funds that were distributed to the COUNTY for the Project shall be repaid in full to NCTC. The Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism for expended funds. Unexpended funds shall be returned immediately.

9. Term/Notice of Completion. The term of this Agreement shall be from the date first herein above written until: (1) the date NCTC formally accepts the Project as complete; (2)

termination of this Agreement; or (3) the date NCTC determines that the COUNTY has fully satisfied its obligations under this Agreement, whichever occurs first. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

10. Expenditure of Funds by the COUNTY Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude the COUNTY from expending funds on the Project prior to the execution of the Agreement, or from requesting reimbursement from NCTC for such expenditures. However, the COUNTY understands and acknowledges that any expenditure of funds on the Project prior to the execution of the Agreement is made at the COUNTY's sole risk, and that some expenditures by the COUNTY may not be eligible for reimbursement under this Agreement.

11. Review of Services. The COUNTY shall allow NCTC's Representative to inspect or review the progress of the Project at any reasonable time in order to determine whether the terms of this Agreement are being met. NCTC may request the COUNTY to provide NCTC with progress reports concerning the status of the Project.

12. Termination.

(a) Notice. Either NCTC or the COUNTY may terminate this Agreement, in whole or in part, in response to a material breach hereof by the other Party or in response to a termination of the RTMF Administrative Agreement, by giving written notice to the other party of such termination and specifying the effective date thereof. The written notice shall provide a thirty (30) day period to cure any alleged breach. During the thirty (30) day cure period, the Parties shall discuss, in good faith, the manner in which the breach can be cured. A material breach is a substantive default or action or omission of the other party which violates the terms of the Agreement.

(b) Effect of Termination. In the event that the COUNTY terminates this Agreement, the COUNTY shall, within one hundred eighty (180) days, repay to NCTC, in full, all RTMF Program Funds provided to the COUNTY under this Agreement. In the event that NCTC terminates this Agreement, NCTC shall, within ninety (90) days, distribute to the COUNTY, RTMF Program Funds in an amount equal to the aggregate total of all unpaid invoices, which have been received from the COUNTY regarding the Project at the time of the notice of termination; provided, however, that NCTC shall be entitled to exercise its rights under Section 5(b), including, but not limited to, conducting a review of the invoices and requesting additional information. This Agreement shall terminate upon receipt by the non-terminating Party of the amounts due it hereunder.

(c) Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

13. Indemnification.

(a) COUNTY Responsibilities. The COUNTY agrees to indemnify, defend, and hold harmless NCTC, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement, including all design and construction activities, due to

negligent acts, errors or omissions or willful misconduct of the COUNTY or its subcontractors, except as caused by the sole or gross negligence of NCTC.

(b) NCTC Responsibilities. NCTC agrees to indemnify, defend, and hold harmless the COUNTY, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement, due to negligent acts, errors or omissions or willful misconduct of NCTC, except as caused by the sole or gross negligence of the COUNTY.

14. Insurance. The COUNTY shall require all persons or entities hired to perform the Project, to obtain and require their subcontractors to obtain insurance of the types and in the amounts described below, unless other amounts are approved by NCTC and the COUNTY. Such insurance shall be maintained throughout the term of this Agreement or until completion of the Project, whichever occurs last.

(a) Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Project or be no less than two times the occurrence limit. Such insurance shall:

(i) Name NCTC and the COUNTY, and their respective officials, officers, employees, agents, and consultants as additional insureds with respect to performance of the services on the Project, and shall contain no special limitations on the scope of coverage or the protection afforded to those insured;

(ii) Be primary with respect to any insurance or self insurance programs covering NCTC and the COUNTY, and/or their respective officials, officers, employees, agents, and consultants; and

(iii) Contain standard separation of insured provisions.

(b) Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

(c) Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than \$1,000,000.00 professional liability insurance, shall only be required of design or engineering professionals.

(d) Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.

15. Project Amendments. Changes to the characteristics of the Project, including the deadline for Project completion, which do not change the Project's costs, are subject to the approval of the COUNTY with ratification by the RTMF Executive Committee. Changes to the Project's costs must be accepted by the RTMF Executive Committee, and approved by the COUNTY and NCTC. However, NCTC's Executive Director can approve changes to the costs of Project components (e.g. environmental approval, design, right-of-way, project management,

and construction) so long as the changes do not change the Project component's costs by more than 15%, and the change does not alter the approved total Project cost or the approved RTMF Share of cost. Nothing in this Agreement shall be construed to require or allow completion of the Project without full compliance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA") and the National Environmental Policy Act of 1969 (42 USC 4231 *et seq.*), if applicable, but the necessity of compliance with CEQA and/or NEPA shall not justify, excuse, or permit a delay in completion of the Project.

16. Conflict of Interest. For the term of this Agreement, no member, officer or employee of the COUNTY or NCTC, during the term of his or her service with the COUNTY or NCTC, as the case may be, shall have any direct interest in this Agreement or any related Agreements or subcontracts, or obtain any present or anticipated material benefit arising therefrom.

17. Limited Scope of Duties. NCTC's and the COUNTY's duties and obligations under this Agreement are limited to those described herein. NCTC has no obligation with respect to the safety of any Project performed at a job site. In addition, NCTC shall not be liable for any action of the COUNTY or its contractors relating to the condemnation of property undertaken by the COUNTY or construction or pre-construction activities related to the Project, including environmental work.

18. No Joint Venture. This Agreement is for funding purposes only and nothing herein shall be construed to make NCTC a party to the construction of the Project or to make it a partner or joint venture with the COUNTY for such purpose.

19. Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Project under this Agreement. They shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees, such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the Parties for at least four (4) years following termination of this Agreement, and they shall have access to such information during the four-year period for the purposes of examination or audit.

20. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California.

21. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

22. Time of Essence. Time is of the essence for each and every provision of this Agreement.

23. Headings. Article and Section Headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

24. Compliance with the Law. The COUNTY shall comply with all applicable laws, rules and regulations governing the implementation of the Project, including, where applicable, the rules and regulations pertaining to the participation of Disadvantaged Business Enterprises (DBE's) promulgated by the federal Highway Administration and the federal Department of Transportation.

25. Notices. All notices hereunder and communications regarding interpretation of the terms of this Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to the COUNTY: Nevada County Department of Public Works
950 Maidu Avenue
Nevada City, CA 95959
Attention: Steve Castleberry, Director

If to NCTC: Nevada County Transportation Commission
101 Providence Mine Road, STE 102
Nevada City, CA 95959
Attention: Daniel B. Landon, Executive Director

Any notice so given shall be considered served on the other party three (3) days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

26. Integration: Amendment. This Agreement contains the entire agreement between the PARTIES. Any agreement or representation respecting matters addressed herein that are not expressly set forth in this Agreement is null and void. This Agreement may be amended only by mutual written agreement of the PARTIES.

27. Severability. If any term, provision, condition or covenant of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

28. Conflicting Provisions. In the event that provisions of any attached appendices or exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the PARTIES and the interpretation of the PARTIES' understanding concerning the Agreement.

29. Contract Amendment. In the event that the PARTIES determine that the provisions of this Agreement should be altered, the PARTIES may execute a contract amendment to add any provision to this Agreement or delete or amend any provision of this Agreement. All such contract amendments must be in the form of a written instrument signed by the original signatories to this Agreement or their successors or designees.

30. Independent Contractors. Any person or entities retained by the COUNTY or any contractor shall be retained on an independent contractor basis and shall not be employees of NCTC. Any personnel performing services on the Project shall at all times be under the exclusive direction and control of the COUNTY or contractor, whichever is applicable. The COUNTY or contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services on the Project and as required by law. The COUNTY or consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

31. Equal Opportunity Employment. The PARTIES represent that they are Equal Opportunity Employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex, or age. Such nondiscrimination shall include, but not be limited to, all activities related to initial employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

32. Prevailing Wages. The COUNTY and any other person or entity hired to perform services on the Project are alerted to the requirements of California Labor Code Section 1770, et seq., which would require the payment of prevailing wages where the services, or any portion thereof, are determined to be a public work, as defined therein. If applicable, the COUNTY shall ensure compliance with these prevailing wage requirements by any person or entity hired to perform the Project. The COUNTY shall defend, indemnify, and hold harmless NCTC, its officers, employees, consultants, and agents from any claim or liability, including without limitation, attorneys' fees arising from its failure or alleged failure to comply with California Labor Code Section, 1770 et seq.

33. Effective Date. This Agreement shall not be effective until executed by both PARTIES. The failure of one party to execute this Agreement within forty-five (45) days of the other party executing this Agreement shall render any execution of this Agreement ineffective.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed by their duly authorized representatives to be effective on the day and year first above-written.

By: 
Jason Fouyer, Vice Chairman
Nevada County Transportation Commission

By: _____
Edward C. Scofield, Chair
Nevada County Board of Supervisors

Attachments:
Exhibit A

Nevada County Department of Public Works CIP 2015 Project Detail

CIP No.:	DF 1-01	
Project:	Brunswick at Loma Rica Intersection Improvement	
Construction Year:	2015	
Budget:	\$1,052,490	Supervisory District: III

Project Description: This project proposes to construct a traffic signal, install pavement treatments and associated drainage improvements to address deficiencies at the Loma Rica Drive/Brunswick Road Intersection. Additionally, advanced warning intelligent transportation systems will be installed to account for limited sight distance approaching the intersection and improve intersection safety.

Project Justification: The Brunswick Road/Loma Rica Drive intersection is currently the only access to the Loma Rica Industrial Park. The intersection is projected to operate at a deficient Level of Service (LOS) in the future and within the County maintained mileage system this intersection has a high collision rate.

Design Exemptions: None

FUNDING

Source	Prior Yr	2013/2014	2014/2015	2015/2016	2016/2017	TOTAL
Dev Fees	\$488,791					\$488,790
HSIP			\$50,000	\$471,900		\$521,900
NCTC		\$41,800				\$41,800
					TOTAL	\$1,052,490

BUDGET/DELIVERY:

Activity:	PE	Construction	CE
Budget:	\$172,490	\$800,000	\$80,000
Fiscal Year:	2014	2015	2015

DESIGN DATA: N/A

	Lane Width	Shoulder Width	
Existing			
Standard			
Proj. Design			

TRAFFIC DATA:

	Loma Rica / Brunswick
Present ADT	5,603 / 15,588
Future ADT	
Road Classification	Minor Collector/Arterial
Road Section No.	2410010 / 2401040

LOCATION MAP:

