

ORIGINAL

MASTER COOPERATIVE AGREEMENT NO. 05E.02

BETWEEN
THE CONTRA COSTA TRANSPORTATION AUTHORITY
AND
CONTRA COSTA COUNTY

This **AGREEMENT** is made and entered into on _____ 2009 by and between **CONTRA COSTA COUNTY** hereinafter referred to as "**COUNTY**" and the **CONTRA COSTA TRANSPORTATION AUTHORITY** hereinafter referred to as "**AUTHORITY**".

RECITALS

1. **AUTHORITY** and **COUNTY** pursuant to the Measure C Sales Tax Renewal Ordinance (# 88-01 as amended by # 04-02), hereinafter referred to as "**MEASURE J**", approved by the voters of Contra Costa County on November 2, 2004, hereby desire to enter into a Cooperative **AGREEMENT** to define a framework to enable the two parties to work cooperatively in developing transportation improvements on East County Corridors in Contra Costa County.

2. **COUNTY** desires transportation improvements to East County Corridors in Contra Costa County, as described in **Exhibit A** to this **AGREEMENT**, hereinafter referred to as "**PROJECT**".

3. The **PROJECT** is eligible for funding under the "East County Corridors" project category in **MEASURE J**.

4. **AUTHORITY** plans to authorize specific funding amounts in one or more resolutions for purposes of accomplishing **PROJECT**, pursuant to specific request(s) for appropriation of funds by the **COUNTY**. Each funding appropriation resolution will set forth additional conditions if any, purpose, and timing for release of identified funds to **COUNTY** for **PROJECT**. A chronological listing of appropriation resolutions will be included in and made a part of **Exhibit B** (attached), which is hereby incorporated into this **AGREEMENT** and made a part hereof. **Exhibit B** will be updated with each new appropriation resolution. Each request for appropriation of funds will include the most current overall financial plan for the **PROJECT**.

NOW, **THEREFORE**, in consideration of the foregoing, the **AUTHORITY** and **COUNTY** do hereby agree as follows:

SECTION I

COUNTY AGREES:

1. To submit the initial request for appropriation of funds to the **AUTHORITY** for specific components of the **PROJECT** detailing the project scope, schedule and proposed funding plan at least 60 days before the funds are needed.

2. To apply any funds received under this **AGREEMENT** to **PROJECT** consistent with the terms and conditions specified in the funding appropriation resolution approved by the **AUTHORITY**.

3. To allow the **AUTHORITY** to audit all expenditures relating to the **PROJECT** funded through this **AGREEMENT**. For the duration of the **PROJECT**, and for four (4) years following completion of the **PROJECT**, or earlier discharge of the **AGREEMENT**, **COUNTY** will make available to the **AUTHORITY** all records relating to expenses incurred in performance of this **AGREEMENT**.

4. To provide invoices and progress reports consistent with **Exhibit C**, along with the summary of expenditures to date, and to maintain strict accounting of all eligible expenses for which future reimbursement will be requested.

5. To prepare a report on an annual basis within ninety (90) days of the last day of the **AUTHORITY**'s fiscal year which itemizes (a) the expenditure of all funds for the **PROJECT**, and (b) progress to date in its implementation.

6. To comply with **AUTHORITY** Policy on the Implementation of **MEASURE J** Projects (Resolution 08-13-P) and all other applicable policies that the **AUTHORITY** may adopt in the future.

7. To be responsible for evaluation of prospective consultants and contractors retained by **COUNTY** and subsequent award of work consistent with this **AGREEMENT** and any appropriation resolutions.

8. Upon request, to provide copies to the **AUTHORITY** of all executed contracts and other **PROJECT** documents between **COUNTY** and consultants, contractors and others, involved in the **PROJECT**. Copies of such executed contracts shall be retained for four (4) years following completion of **PROJECT** or earlier discharge of the **AGREEMENT**.

9. To be responsible for the **PROJECT** financing and to provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of any appropriation resolution.

10. If the **PROJECT** involves construction, to install a sign approved by the **AUTHORITY** consistent with the specifications included in **Exhibit D** of this **AGREEMENT**

(attached), that identifies the Contra Costa Transportation Authority as a funding source, no later than 30 days after the commencement of construction.

11. With respect to funding right-of-way, the **AUTHORITY's** bond indenture or other financing agreement may prevent deposit of financing proceeds into an escrow account, unless any interest earned on the escrow account is restricted so that it cannot exceed the yield on the **AUTHORITY's** bonds or notes. To the extent that **AUTHORITY**, pursuant to a request from **COUNTY**, funds right-of-way escrows with financing proceeds, **AUTHORITY** will notify **COUNTY**, and **COUNTY** agrees to comply with any required restrictions on investment yield.

12. If the **PROJECT** involves right-of-way acquisition, to follow the requirements of state law and the Federal Uniform Acquisition and Relocation Assistance Act and, if applicable, to transfer net proceeds, after deducting auditable costs of sales, to the **AUTHORITY** resulting from the sale of excess lands purchased in whole or in part with financing proceeds, in the same proportion to the net proceeds as the original contribution of such financing proceeds was to the purchase price of the original parcel.

SECTION II

AUTHORITY AGREES:

1. In response to the **COUNTY** request for appropriation of funds, provided notice of cancellation or termination of the **AGREEMENT** pursuant to Section III, paragraph 2 hereof, has not been given, to consider Resolution(s) consistent with available funds and any relevant components of the *Strategic Plan* then in effect to finance specific work components for the **PROJECT**, setting forth the level of funding, purpose, timing, and scope of work to be performed by **COUNTY** pursuant to this **AGREEMENT**. Such resolutions will be incorporated into **Exhibit B** (attached), and by this reference made a part hereof. If warranted, funding resolution(s) may authorize advances or wire transfers to **COUNTY** to address anticipated cash flow needs.

2. To transfer funds to **COUNTY** for the purposes described in the relevant resolution subject to **COUNTY's** compliance with, and in the manner specified in **Exhibit C** (attached).

3. To provide timely notice if an audit is to be conducted.

SECTION III

IT IS MUTUALLY AGREED:

1. Term: This **AGREEMENT** will remain in effect until discharged as provided in Paragraph 2 below or as a result of paragraph 11 below.

2. Discharge: This **AGREEMENT** shall be subject to discharge as follows:

a. Either party may terminate this **AGREEMENT** at any time for cause

pursuant to a power created by the **AGREEMENT** or by law, other than for breach, by giving written notice of termination to the other party which shall specify both the cause and the effective date of termination. Notice of termination under this provision shall be given at least ninety (90) days before the effective date of such termination.

b. This **AGREEMENT** may be canceled by a party for breach of any obligation, covenant or condition hereof by the other party, upon notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching party shall have 30 days from the date of the notice to initiate steps to cure. If the breaching party diligently pursues cure, such party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. On cancellation, the non-breaching party retains the same rights as a party exercising its right to terminate under the provisions of paragraph 3(a), except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

c. By mutual consent of both parties, this **AGREEMENT** may be terminated at any time.

3. Indemnity: It is mutually understood and agreed, relative to the reciprocal indemnification of **AUTHORITY** and **COUNTY**:

a. That neither **AUTHORITY**, nor any officer or employee thereof, shall be responsible for, and **COUNTY** shall fully indemnify and hold harmless **AUTHORITY** against any damage or liability occurring by reason of anything done or omitted to be done by **COUNTY** under or in connection with any work, authority or jurisdiction delegated to **COUNTY** under the **AGREEMENT**. It is also understood and agreed that, pursuant to Government Code Section 895.4, **COUNTY** shall fully indemnify and hold the **AUTHORITY** 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 **COUNTY** under this **AGREEMENT** or in connection with any work, authority, or jurisdiction delegated to **COUNTY** under this **AGREEMENT**.

b. That neither **COUNTY**, nor any officer or employee thereof, shall be responsible for, and **AUTHORITY** shall fully indemnify and hold harmless **COUNTY** against any damage or liability occurring by reason of anything done or omitted to be done by **AUTHORITY** under or in connection with any work, authority or jurisdiction delegated to **AUTHORITY** under the **AGREEMENT**. It is also understood and agreed that, pursuant to Government Code Section 895.4, **AUTHORITY** shall fully indemnify and hold the **COUNTY** 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 **AUTHORITY** under this **AGREEMENT** or in connection with any work, authority, or jurisdiction delegated to **AUTHORITY** under this **AGREEMENT**.

4. Notices: Any notice which may be required under this **AGREEMENT** shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such addresses which may be specified in writing to the parties hereto.

David Twa
County Administrator
Contra Costa County
651 Pine Street, 11th Floor
Martinez, CA 94553

Robert K. McCleary
Executive Director
Contra Costa Transportation Authority
3478 Buskirk Avenue, Suite 100
Pleasant Hill, CA 94523

5. 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**.

6. Integration: This **AGREEMENT** 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.

7. 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.

8. Independent Agency: **AUTHORITY** renders its services under this **AGREEMENT** as an independent agency. None of the **AUTHORITY**'s agents or employees shall be agents or employees of the **COUNTY**. **COUNTY** renders its services under this **AGREEMENT** as an independent agency. None of the **COUNTY**'s agents or employees shall be agents or employees of the **AUTHORITY**.

9. Assignment: The **AGREEMENT** may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

10. Binding on Successors, Etc.: This **AGREEMENT** shall be binding upon the successor(s), assignee(s) or transferee(s) of the **AUTHORITY** or **COUNTY** 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.

11. 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.

12. Counterparts: This **AGREEMENT** may be executed in counterparts.

13. Survival: The following provisions in **AGREEMENT** shall survive discharge.

a. As to **COUNTY**:

Section I, paragraph 2 (obligation to apply funds to **PROJECT**)

Section I, paragraph 3 (obligation to allow audit and retain records)

Section I, paragraph 5 (for the year in which discharge occurs only, to prepare an annual report to the **AUTHORITY**)

Section I, paragraph 8 (obligation to provide copies)

Section I, paragraph 9 (obligation to continue to manage **PROJECT**)

Section I, paragraph 12 (obligation to reimburse funds on sale of excess land)

b. As to **AUTHORITY**:

Section II, paragraph 3 (obligation to provide notice of audit)

c. As to both parties:

Section III, paragraph 2a (obligation which survives termination)

Section III, paragraph 3 (indemnity obligations)

14. Limitation: All obligations of **AUTHORITY** under the terms of this **AGREEMENT** are expressly subject to the **AUTHORITY**'s continued authorization to collect and expend the sales tax proceeds provided by **MEASURE C** and **MEASURE J**. If for any reason the **AUTHORITY**'s right to collect or expend such sales tax proceeds is terminated or suspended in whole or part, the **AUTHORITY** shall promptly notify **COUNTY**, 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; provided, that any obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of the **AUTHORITY** to expend sales tax proceeds for the purposes of the **AGREEMENT**; and (ii) the availability, taking into consideration all the obligations of the **AUTHORITY** under all outstanding contracts, agreements to other obligations of the **AUTHORITY**, of funds for such purposes.

CONTRA COSTA COUNTY

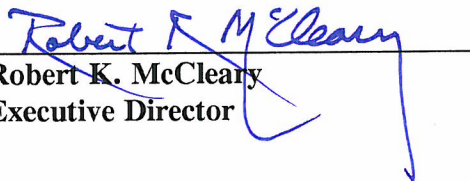
**CONTRA COSTA TRANSPORTATION
AUTHORITY**

by: _____
Susan A. Bonilla, Chair

by: 
Maria T. Viramontes, Chair

ATTEST:

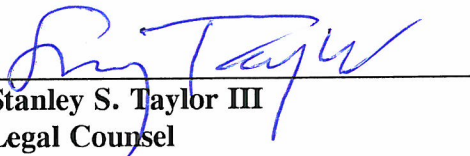
by: _____

by: 
Robert K. McCleary
Executive Director

APPROVED as to form:

APPROVED as to form:

by: _____

by: 
Stanley S. Taylor III
Legal Counsel

COOPERATIVE AGREEMENT NO. 05E.02

between

Contra Costa Transportation Authority

and

Contra Costa County

EXHIBIT A

DESCRIPTION OF THE PROJECT

East County Corridors funding category in Measure J will construct capacity and safety enhancements to Vasco Road, the State Route 4 Bypass, Byron Highway and the existing Route 4 through Brentwood and Oakley.

Potential improvements include:

- Vasco Road Safety Improvements: Construct a passing lane in the southbound direction (Brushy Creek area) and install a solid median barrier.

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EXHIBIT B

Chronological Listing of Fund Appropriation Resolutions

Project Number	Resolution Number	DATE	FUNDS APPROPRIATED	CUMULATIVE TOTAL
				0

**TOTAL FUNDS
APPROPRIATED**

0

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EXHIBIT C

Method of Payment

1. The **COUNTY** will submit a monthly invoice to the **AUTHORITY** which includes all costs of the **PROJECT** for the stated time period.

2. The monthly invoice shall include the following;

A. COUNTY expenses (if eligible)

1. A listing of staff time providing the name, number of hours worked and charge rate for each. The allowable overhead **COUNTY** Staff charge may not exceed 50%. Staff working on activities chargeable to more than one funding resolution (design versus environmental activities for example), should show the appropriate split in hours for each resolution.

2. An itemized list of all other direct costs with identification of the activity to which the expense is chargeable.

B. Consultant/contractor expenses

1. A listing of the prime consultant/contractor and any sub-consultant/sub-contractor labor costs, broken out by funding resolution.

2. An itemized list of all other non-labor costs with identification of the activity to which the expense is chargeable.

3. If the above two items are prepared by the **COUNTY**, a copy of the consultants/contractor invoice should be attached as backup to the above information.

C. Certification

The following statement will be included "We hereby certify that the funds requested by Contra Costa County are to reimburse Contra Costa County for project costs already incurred and have not been included in a previous invoice request."

D. Invoice summary

The following page presents an example of the monthly summary report to be provided with each invoice. All of the information should be provided.

E. Progress Reports

The **COUNTY** will submit a progress report that summarizes the activities covered by the invoice.

3. No detail of **COUNTY** or consultant/contractor expenses will be required if total costs are less than \$1,000 for the month. The above mentioned detail will be required on the next invoice totaling more than \$1,000.

4. The **AUTHORITY** will process reimbursement to the **COUNTY** within **thirty** working days after receipt by the **AUTHORITY** of a monthly invoice, containing all of the information required under item 2 above. The **AUTHORITY** reserves the right to adjust future reimbursements should subsequent review indicate that an invoice included ineligible costs. **AUTHORITY** may reimburse **COUNTY** either by check, or at **AUTHORITY**'s discretion, by wire transfer from its sales tax bond proceeds construction account.

Proponents Name

INVOICE SUMMARY

10-Oct-07

Project: 9848

Project Description

Period Covered (9/1/07 to 10/1/07)

Invoice Number: 62319

Resolution: 07-51-P

I. Proponent Expenditures - Direct Labor

Person	Position	Hours	Rate	Amount	Total
Smith, Mike	Senior Engineer	16.00	24.56	392.96	
Ross, John	Project Manager	3.5	29.58	103.53	
Total Direct Labor:					496.49
Overhead @ 35.00%					173.68
Total Direct Labor This Period					670.17

II. Proponent Expenditures - Direct Expenses

Vendor	Description	Total
Quick Copy	Reproduction	78.65
The Blueprint Shop	Bluelines	251.64
Total Direct Expenses		330.29

Total Direct Expenses by Proponent for Resolution 07-51-P

1,000.46

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EXHIBIT D

Approved Signs for Construction Projects

The **COUNTY** shall install signs consistent with the specifications detailed in Exhibit D-1 or Exhibit D-2, (attached), if **PROJECT** involves construction.

Subject	Contra Costa County – Vasco Road Safety Improvements - Phase 1 (Project 5006) – Authorization to Execute Cooperative Agreement 05E.02 and Approve Appropriation Resolution 09-58-P
Summary of Issues	<p>Contra Costa County is requesting an appropriation of \$647,000 of Measure J funds for the Vasco Road Safety Improvements - Phase 1.</p> <p>Approval of Cooperative Agreement 05E.02 and Resolution 09-58-P will allow Contra Costa County to begin incurring expenses against Measure J funds. The cooperative agreement spells out the responsibilities of each party, requirements, and timing of reimbursement – including strict accounting of the eligible expenses for which future reimbursement will be requested.</p>
Recommendations	Staff recommends that the Authority authorize the Chair to: (1) execute Cooperative Agreement 05E.02 with Contra Costa County; and (2) approve resolution 09-58-P appropriating \$647,000 of Measure J funds for construction and construction management for the Vasco Road Safety Improvements - Phase 1.
Financial Implications	The <i>Draft 2009 Measure J Strategic Plan</i> sets aside \$647,000 for the Vasco Road Safety Improvements - Phase 1 under the “East County Corridors” funding category. This project is fully funded.
Options	The Authority could defer action pending further deliberation, but project is ready to move forward.
Attachments	<p>A. Cooperative Agreement No. 05E.02</p> <p>B. Letter from the Contra Costa County requesting appropriation of \$647,000 for Vasco Road Safety Improvements - Phase 1.</p> <p>C. Resolution 09-58-P</p> <p>D. Project Fact Sheet</p>
Changes from Committee	

Background

Contra Costa County is requesting an appropriation of Measure J funds for the Vasco Road Safety Improvements - Phase 1 (Project 5006) in the amount of \$647,000. This appropriation will be used for construction and construction management.

The *Draft 2009 Measure J Strategic Plan* provides \$647,000 for the completion of the Vasco Road Safety Improvements – Phase 1. This project through the Brushy Creek area will alleviate congestion by providing a consistent cross section with a passing lane in the southbound direction and eliminates the need for a merge. The project also improves safety with the installation of a solid median barrier to prevent cross median collisions.