

COOPERATIVE AGREEMENT NO. 28SW.01

This COOPERATIVE AGREEMENT (this "AGREEMENT") is effective this ____ day of _____, 2014 among CONTRA COSTA TRANSPORTATION AUTHORITY, a local transportation authority ("AUTHORITY"), CONTRA COSTA COUNTY, a political subdivision of the State of California ("CONTRA COSTA"), TOWN OF DANVILLE, a municipal corporation of the State of California ("DANVILLE"), the CITY OF LAFAYETTE, a municipal corporation of the State of California ("LAFAYETTE"), the TOWN OF MORAGA, a municipal corporation of the State of California ("MORAGA"), the CITY OF ORINDA, a municipal corporation of the State of California ("ORINDA"), and the CITY OF SAN RAMON, a municipal corporation of the State of California ("SAN RAMON" and together with AUTHORITY, CONTRA COSTA, DANVILLE, LAFAYETTE, MORAGA, and ORINDA, the "PARTIES" and each separately, a "PARTY").

RECITALS

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings and intentions:

A. Pursuant to the Measure C Sales Tax Renewal Ordinance (#88-01) "hereinafter MEASURE C") as amended by (#04-02), hereinafter referred to as "MEASURE J" approved by the voters of the Contra Costa County on November 2, 2004, CONTRA COSTA, DANVILLE, LAFAYETTE, MORAGA, ORINDA, AND SAN RAMON (each, a "PARTNER JURISDICTION" and collectively, the "PARTNER JURISDICTIONS"), and AUTHORITY desire to enter into this AGREEMENT to define a framework to enable the parties to utilize Program 28c funds in MEASURE J.

B. PARTNER JURISDICTIONS shall propose programming Program 28c funds to any project or program identified in the Measure J Expenditure Plan or eligible under the provisions of the Local Transportation Authority and Improvement Act ("PROJECT") and AUTHORITY shall disburse collected funds under Program 28c as provided herein.

NOW, THEREFORE, in consideration of the mutual agreements set forth above and the rights and obligations set forth in this AGREEMENT and other good and valuable consideration,

the receipt and sufficiency of which is acknowledged, AUTHORITY and each PARTNER JURISDICTION hereby agree to the following:

SECTION 1

PARTNER JURISDICTIONS AGREE:

1. On September 1st of each year to submit a form indicating how Program 28c funds were expended for the previous fiscal year and how much, if any, of the funds are remaining.
2. Commit to not use Program 28c funds for staff time, unless it is directly related to a project funded by Program 28c.
3. Each PARTNER JURISDICTION shall maintain true and complete records in connection with the PROJECT, and shall retain all such records for at least thirty-six (36) months after the delivery of the form to the AUTHORITY as provided in Section 1.
4. To allow the AUTHORITY to audit all expenditures relating to the PROJECT funded through this AGREEMENT. For the duration of each fiscal year of the PROJECT, and for four (4) years following each fiscal year of the PROJECT, or earlier discharge of the AGREEMENT, PARTNER JURISDICTION will make available to the AUTHORITY all records relating to expenses incurred in performance of this AGREEMENT.

SECTION 2

AUTHORITY AGREES:

1. To disburse Program 28c funds to PARTNER JURISDICTIONS in March 2014 for revenues collected for Fiscal Year 2012-2013, and thereafter make annual allocations to PARTNER JURISDICTIONS starting in November for the previous fiscal year, from November 2014 until November 2034 using a 50/50 population and road miles split formula as provided in Exhibit A attached hereto and incorporated herein by reference.

SECTION 3

IT IS MUTUALLY AGREED:

1. Term. The term of this AGREEMENT shall commence on _____, 2014 and

shall remain in effect until terminated as provided in Section 9.

2. 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. 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.

4. Assignment. This AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any PARTY without the express written consent of the other PARTIES.

5. Binding on Successors. This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of the PARTIES. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

6. Indemnification.

a. AUTHORITY hereby agrees to indemnify, defend, assume all liability for and hold harmless each PARTNER JURISDICTION, its officers, employees, agents, and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons (collectively, "CLAIMS") arising out of or in any way connected to AUTHORITY its officers, agents, or employees in connection with or arising from any of its activities pursuant to this AGREEMENT. This indemnification shall survive the termination of the AGREEMENT and shall apply except as to the sole negligence or willful misconduct of a PARTNER JURISDICTION.

b. Each PARTNER JURISDICTION hereby agrees to indemnify, defend, assume all liability for and hold harmless AUTHORITY and its member agencies, officers, employees, agents and representatives, to the maximum extent allowed by law, from all CLAIMS arising out of or in any way connected to the PARTNER JURISDICTION, its officers,

agents or employees in connection with or arising from any of its activities pursuant to this AGREEMENT. This indemnification shall survive the termination of the AGREEMENT and shall apply, except as to the sole negligence or willful misconduct of AUTHORITY.

7. Compliance with Laws. AUTHORITY and each of the PARTNER JURISDICTIONS shall comply with all applicable federal and state laws and regulations regarding the work performed and the reimbursements requested.

8. Notices. All required or permitted payments, reports, demands and notices may be sent by regular mail or electronic mail. Notices that are mailed by regular mail shall be deemed delivered two (2) business days after deposited in the mail. Notices may be personally delivered and shall be deemed delivered at the time delivered to the appropriate address set forth below. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day of the recipient. Unless and until notified otherwise in writing, a PARTY shall send or deliver all such communications relating to this Agreement to the following address:

Hisham Noeimi
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597
hnoeimi@ccta.net

John Cunningham
Contra Costa County
30 Muir Road
Martinez, CA 94553
john.cunningham@dcd.cccounty.us

Tai J. Williams, AICP
Town of Danville
510 La Gonda Way
Danville CA 94526
twilliams@danville.ca.gov

Tony Coe
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549
tcoe@ci.lafayette.ca.us

Shawna Brekke-Read
Town of Moraga
329 Rheem Blvd
Moraga, CA 94556
sread@moraga.ca.us

Lawrence Theis, P.E.
City of Orinda
22 Orinda Way
Orinda, CA 94563
ltheis@cityoforinda.org

Lisa Bobadilla
City of San Ramon
2401 Crow Canyon Road, San Ramon, CA 94583
lbobadilla@sanramon.ca.gov

9. Termination of Agreement. A PARTY may terminate this Agreement at any time by giving written notice of termination to each of the other PARTIES which shall specify the effective date thereof; provided that any notice of termination shall be given at least thirty (30) days before its effective date.

10. Entire Agreement. This Agreement is the entire agreement among AUTHORITY and the PARTNER JURISDICTIONS relating to the subject matter of this Agreement. All PARTIES acknowledge they have not relied upon any promise, representation or warranty not expressly set forth in this Agreement in executing this Agreement. If any provision of this Agreement is void or otherwise unenforceable, the remainder of the Agreement shall continue in full force and effect. Any changes to the terms and provisions of this Agreement or affecting the obligations of the PARTIES set forth in this Agreement shall be by written amendment signed by all PARTIES.

11. Severability. Should any part of this Agreement be declared unconstitutional,

invalid, or beyond the authority of a PARTY to enter into or carry out, such decision 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. Waiver. No waiver by a PARTY of any default or breach of any covenant by the other PARTIES shall be implied from any omission to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in such waiver and then such waiver shall be operative only for the time and to the extent stated in such waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. No waiver of any provision under this Agreement shall be effective unless in writing and signed by the waiving PARTY.

13. Controlling Law and Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and venue shall be in Contra Costa County.

14. Authority. All PARTIES executing this Agreement represent and warrant that they are authorized to do so.

15. Counterparts. This AGREEMENT may be executed in counterparts.

16. Limitations. 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 PARTNER JURISDICTIONS, 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 this AGREEMENT; and (ii) the availability, taking into consideration all the obligations of the AUTHORITY under all outstanding contracts, agreement to other obligations of the AUTHORITY, of funds for such purposes.

[Signatures on the following pages]

CONTRA COSTA TRANSPORTATION AUTHORITY

By: Janet Abelson, Chair

Date _____, 2014

APPROVED AS TO FORM:

By: Malathy Subramanian, General Counsel

Date _____, 2011

CONTRA COSTA COUNTY

By:

Date _____, 2014

APPROVED AS TO FORM:
Sharon Anderson, County Counsel

By: Deputy County Counsel

Date _____, 2014

TOWN OF DANVILLE

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: _____, City Attorney

Date _____, 2014

CITY OF LAFAYETTE

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: _____, City Attorney

Date _____, 2014

TOWN OF MORAGA

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: _____, Town Attorney

Date _____, 2014

CITY OF ORINDA

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: _____, City Attorney

Date _____, 2014

CITY OF SAN RAMON

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: _____, City Attorney

Date _____, 2014

Exhibit A

Jurisdiction	50/50 Population & Road Miles Split (%)	Program 28c Allocations through FY2034*	Program 28c Allocations through June 30, 2013
County	20.78	\$ 1,323,700	\$ 138,783
Danville	21.16	\$ 1,347,906	\$ 141,321
Lafayette	13.74	\$ 875,247	\$ 91,765
Moraga	9.1	\$ 579,676	\$ 60,776
Orinda	12.28	\$ 782,244	\$ 82,014
San Ramon	22.94	\$ 1,461,294	\$ 153,208
SUM	100%	\$ 6,370,067	\$ 667,867

* subject to change as Measure J revenue forecast is revised