

**TRANSPORTATION SERVICE AGREEMENT FOR
OPERATION OF A SCHOOL BUS ROUTE WITHIN
COUNTY SERVICE AREA T-1**

This TRANSPORTATION SERVICE AGREEMENT (“Agreement”) is entered into effective this 11th day of February, 2014, by and between the MEASURE J TRAFFIC CONGESTION RELIEF AGENCY, dba TRAFFIX (the “Agency”), a joint exercise of powers entity created, existing, and in good standing under California Government Code section 6500, *et seq.*, and the COUNTY OF CONTRA COSTA (“County”), a political subdivision of the State of California.

RECITALS

A. In 2008, the County, the City of San Ramon (City), the Town of Danville (Town), and the San Ramon Valley Unified School District (School District), entered into an agreement entitled, “Joint Exercise of Powers Agreement to Implement the San Ramon Valley School Bus Program.” That agreement created the Agency, and authorized it to oversee implementation of a school bus program within the City, Town, and parts of the unincorporated area of the County (“Agency’s Bus Program”). The purpose of the Agency’s Bus Program is to reduce traffic congestion in the San Ramon Valley area by busing elementary, middle, and high school students to their respective schools within the School District.

B. The County desires to reduce traffic congestion in and around the County Service Area T-1 (the “Service Area”), consisting of two developments—Alamo Creek, and Monterosso—located on the south side of Camino Tassajara, between Hansen Lane and Finley Road, and east of the Town of Danville in unincorporated County, by funding one school bus route within the Service Area. The County desires for the school bus route to serve students who attend the high school designated for students residing within the Service Area. The Service Area is more particularly depicted in Exhibit A, attached hereto.

C. The Agency desires to expand the Agency’s Bus Program by adding a school bus route to serve students living within the Service Area (the “School Bus Route”). The Agency and the County agree that other students who do not live within the Service Area also may use the School Bus Route. The County and Agency agree that the Agency will implement, manage, and operate the new School Bus Route under the terms of this Agreement.

D. The County and Agency desire to partially fund the School Bus Route with assessment revenue that County collects from within the Service Area. The Agency sells annual passes for students that use its school bus routes. The Agency will sell annual passes for the School Bus Route. The Agency's revenue collected from the sale of annual School Bus Route passes will be used to offset the Agency's costs to operate the School Bus Route before calculating the amount of operational costs that will be paid by the County.

E. The Parties acknowledge that the Agency contracts with a bus operator, currently First Student, Inc., to provide bus services for Agency's Bus Program under a "Contract for Furnishing Transportation Services to Alleviate Traffic Congestion Within The San Ramon Valley Through July 31, 2016," dated September 19, 2013 (the "Bussing Contract"). The Bussing Contract contains the base rate per day that the Agency pays its contractor.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

1. Term. This Agreement is effective on February 11, 2014, and shall remain in effect until the expiration of the Bussing Contract, including any exercise of the Agency's option to extend that contract, unless this Agreement is terminated earlier as provided in paragraph 8, below.

2. Payment Limit. For the term of this Agreement, the County's payments to the Agency to operate the School Bus Route each year (*i.e.*, between and including July 1 and June 30 of the following year) shall not exceed the actual cost to the Agency to operate the School Bus Route during that year, which shall be calculated in the manner specified in paragraph 4, below.

3. Invoicing for Payment. The Agency shall submit an invoice to the County on each of the following dates: July 1 immediately prior to the beginning of each School District academic year and January 1 during each School District academic year (each an "Invoice Date"). Each invoice that the Agency submits to the County must include the information specified below.

a. *July 1 Invoice*. The invoice submitted on each July 1 shall include:

(i) The Agency's anticipated costs to operate the School Bus Route during School District's upcoming academic year from July 1 immediately prior to the beginning of the academic year through the June 30 immediately following the conclusion of the academic year (the "Projected Annual Operational Costs"). To calculate the Projected Annual Operational Costs, the Agency shall multiply the base rate per day that the Agency will pay its contractor

under the Bussing Contract by the number of School District instructional days that will occur during the upcoming academic year. The number of instructional days shall be determined by the School District's academic calendar.

(ii) For each July 1 Invoice following the 2014-2015 academic year:

(A) The Projected Annual Operational Costs that the Agency included in the invoice that it submitted to the County on July 1 of the immediately preceding year (the "Prior Year Projected Annual Operational Costs").

(B) The Agency's actual costs to operate the School Bus Route from July 1 of the previous academic year through June 30 of the same academic year (the "Prior Year Actual Operational Costs"). To calculate the Prior Year Actual Operational Costs, the Agency shall multiply the base rate per day that the Agency paid its contractor under the Bussing Contract by the number of School District instructional days that occurred during the immediately preceding academic year. The number of instructional days shall be determined by the School District's academic calendar.

(C) The amount of revenue collected by the Agency from the sale of annual School Bus Route passes that occurred from January 1 through June 30 immediately preceding the Invoice Date ("Spring Pass Sale Revenue").

b. *January 1 Invoice.* The invoice submitted on each January 1 shall include the amount of revenue collected by the Agency from the sale of annual School Bus Route passes from July 1 immediately prior to the beginning of the academic year through December 31 immediately preceding the Invoice Date ("Fall Pass Sale Revenue").

4. County's Payments to Agency. Within 60 days after the receipt of each invoice submitted by the Agency, the County shall pay the Agency as follows:

a. *Payment on July 1 Invoice.* The County shall pay the Agency one-half of the Projected Annual Operational Costs reported on the July 1 invoice, minus (1) the amount of Spring Pass Sale Revenue reported on that invoice, and minus (2) the difference between the Prior Year Projected Annual Operation Costs and the Prior Year Actual Operational Costs, if any, reported on that invoice.

By way of example only, if the Agency's Projected Annual Operational Costs are \$88,000, the Spring Pass Sale Revenue is \$1,000, and the difference between the Prior Year Projected Annual Operational Costs and the Prior Year Actual Operational Costs is \$400, the County's payment on the July 1 invoice would be \$42,600 (\$44,000 - \$1,000 - \$400).

b. *Payment on January 1 Invoice.* The County shall pay the Agency one-half of the Projected Annual Operational Costs reported on the invoice submitted on the preceding July 1, minus the amount of Fall Pass Sale Revenue reported on the January 1 Invoice.

By way of example only, if the Agency's Projected Annual Operational Costs are \$88,000 and the Fall Pass Sale Revenue is \$7,500, the County's payment on the January 1 invoice would be \$36,500 (\$44,000 -\$7,500).

5. Agency's Obligations.

a. *School Bus Route Operational Requirements.* The Agency shall be responsible for operating and managing the School Bus Route through its contractor under the Bussing Contract. The Agency shall require its contractor to operate the School Bus Route on each day of instruction, as scheduled on School District's academic year calendar ("Instructional Day"), during each School District academic year that this Agreement is effective. The Agency shall require its contractor to provide, on each Instructional Day, round-trip bus service for high school students to and from one or more bus stops located within the Service Area, and to and from the high school that School District has designated to serve students living within the Service Area (the "Designated High School"). The Agency shall be responsible for ensuring that all School Bus Route pickup and drop-off times are scheduled to ensure that students using the School Bus Route will arrive at the Designated High School before classes start on each Instructional Day, and that students are picked up from the Designated High School after the end of all classes on each Instructional Day. Except as specified above, the Agency shall be responsible for determining all morning pickup times from the Service Area and drop-off times at the Designated High School, all afternoon pickup times from the Designated High School and drop-off times within the Service Area, the specific bus route, the number of bus stops on the School Bus Route, and the location of each bus stop served by the School Bus Route.

b. *School Bus Route Minimum Level of Service.* The Agency shall be responsible for ensuring that the bus serving the School Bus Route under this Agreement has reserved capacity for at least 28 students, or 50% of bus capacity, whichever is greater.

c. *School Bus Route Annual Pass Sales.* The Agency shall be responsible for selling and issuing annual School Bus Route passes to students that will utilize the School Bus Route.

d. *Bus Maintenance.* The Agency shall be responsible for ensuring that each school bus that serves the School Bus Route is in good repair and working condition, and meets

all State of California requirements for school buses. The Agency shall be responsible for ensuring that each school bus is serviced and receives preventative maintenance.

e. *Compliance with Applicable Laws and Regulations.* The Agency shall be responsible for operating the School Bus Route and all school buses serving that route in a manner that complies with all applicable local, state, and federal laws and regulations, including but not limited to the Americans with Disabilities Act (ADA) of 1990.

f. *School Bus Drivers.* The Agency shall be responsible for ensuring that each driver that is assigned to the School Bus Route possess all training and licensing required of school bus drivers by the State of California.

g. *Monitoring School Bus Route Performance.* The Agency shall monitor the performance of the School Bus Route. On dates to be agreed to by the Agency's Program Director, or designee, and County's Director of Public Works, or designee, the Agency shall submit a report to the County that states the average daily ridership on the School Bus Route during the period agreed to by the Agency's Program Manager, or designee, and County's Director of Public Works, or designee, the total number of riders during that period, and the number of Resident Riders and Non-Resident Riders during that period.

6. Suspension of School Bus Route for Lack of Ridership.

a. *Notice of Suspension of School Bus Route.* If, by December 31 of any academic year, the Agency has sold fewer annual passes for the School Bus Route than is required to fill the capacity of the school bus serving the School Bus Route, as specified in paragraph 5.b., the Agency, at its sole discretion, may suspend operation of the School Bus Route for the remainder of the School District's current academic year. If the Agency suspends operation of the School Bus Route, the Agency shall provide the County, and each person who as of December 31 purchased an annual School Bus Route pass, written notice of the effective date of the suspension, and shall stop selling annual School Bus Route passes for the current academic year. The notice of suspension shall be given to the County with the Agency's January 1 invoice. The effective date of the suspension shall be at least 60 days after the date the notice is given.

b. *Refunds and Payment Following Notice of Suspension.* The Agency shall be solely responsible for issuing refunds to persons who as of December 31 purchased the annual School Bus Route passes for the current academic, in accordance with Agency's refund policies. The Agency's notice of suspension given to the County shall indicate the amount of annual School Bus Route pass sale revenue that will be refunded by the Agency. When the County

calculates its payment to the Agency on its January 1 invoice under paragraph 4.b., above, the County shall reduce the amount of the Fall Pass Sale Revenue reported on the January 1 invoice by the amount of annual School Bus Route pass sale revenue to be refunded by the Agency, if any, as indicated on the County's notice of suspension. The County shall not be responsible for making any further payment to the Agency on and after the effective date of the suspension, through June 30 of that academic year.

c. *Resuming School Bus Route Service Following Suspension.* Following any suspension in operation of the School Bus Route under this paragraph 6, the Agency shall restart operation of the School Bus Route during the next School District academic year.

7. Indemnification and Insurance.

a. The Agency shall defend, indemnify, save, and hold harmless the County and its board members, officers, and employees from any and all claims, losses, damages, costs, injuries, and liabilities arising out of the Agency's performance of its powers, duties, and responsibilities under this Agreement.

b. The Agency may not modify the insurance and indemnification provisions contained in Section 4 of the Bussing Contract without the written consent of the County.

8. Termination. This Agreement may be terminated only as follows:

a. *Termination of the Bussing Contract.* If the Bussing Contract between the Agency and the Agency's contractor is terminated, this Agreement terminates.

b. *Elective Termination.* Except as specified in subparagraph 8.a., either party may terminate this Agreement by giving the other party written notice at least 90 days prior to the termination date. However, if this Agreement is terminated under this subparagraph 8.b., the termination date may not occur after the first Instructional Day and before the last Instructional Day of any School District academic year.

c. *Invoicing and Payment after Termination.* Within 10 days after any termination of this Agreement, the Agency shall provide the County an invoice that includes the information specified in paragraphs 4.a. and 4.b., calculated from and including July 1 of the current fiscal year, through the termination date. Within 60 days after receipt of that invoice and subject to the Payment Limit specified in paragraph 2, the County shall pay the Agency the difference between the Agency's Actual Operational Costs for the School District academic year preceding the termination date, minus (1) all prior County payments to the Agency from and including July 1 of the current fiscal year, through the termination date, and minus (2) annual School Bus Route pass sale revenue collected by the Agency from and including the Invoice

Date immediately prior to the termination date, through the termination date. If the preceding calculation results in a negative number, indicating an overpayment by the County, the amount of overpayment shall be paid by the Agency to the County within 30 days after demand for payment by the County.

9. Independent Contractor. In performing under this Agreement, the Agency shall act at all times as an independent contractor. Nothing contained herein shall be construed or applied so as to create the relationship of principal and agent, or of employer and employee, between the County and Agency or its agents or employees.

10. Notices. All required or permitted payments, reports, demands and notices may be sent by ordinary mail. Notices that are mailed 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. Until notified otherwise in writing, the Agency shall send or deliver all notices relating to this Agreement to the following address:

Contra Costa County Public Works Department
Special District Section
255 Glacier Drive
Martinez, CA 94553
Attention: Public Works Director

The County shall send all notices to the following address:

TRAFFIX
P.O. Box 1130
Danville, CA 94526-8130
Attention: TRAFFIX Program Manager

11. Records and Audit. The Agency shall maintain true and complete records in connection with the service and all transactions related thereto, and shall retain all such records for at least thirty-six (36) months after the end of the calendar year in which the service is performed. The County may from time to time and at any time during the foregoing period of record retention make an audit of all records of the Agency relating to the service; but only for the purpose of assessing the accuracy of reports or information received from the Agency.

12. No Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity that is not a party to this Agreement.

13. Entire Agreement. This Agreement is the entire agreement of this matter between the parties and supersedes all prior negotiations and understandings with respect thereto. The Agency and the County each acknowledge that it has 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. Changes affecting the obligations of the parties set forth in this Agreement shall be by written amendment signed by both parties. The County and the Agency acknowledge that, if the Bussing Contract is terminated by the Agency, the Agency and County may, but are not required to, agree to amend this Agreement to provide for the continued operation of the School Bus Route by another Agency contractor.

14. Severability. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either 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.

15. Headings. The descriptive headings used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

16. Time of Essence. Time is of the essence in this Agreement.

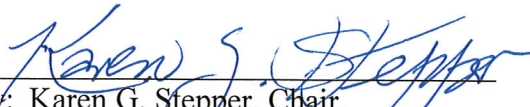
17. Waiver. No waiver by either party of any default or breach of any covenant by the other hereunder shall be implied from any omission to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then said waiver shall be operative only for the time and to the extent therein stated. 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.

18. Controlling Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

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


IN WITNESS WHEREOF, the parties have hereunto set their hands the date and year first above written.

MEASURE J TRAFFIC CONGESTION RELIEF AGENCY

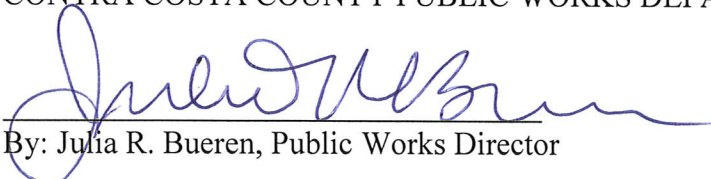

By: Karen G. Stepper, Chair,
TRAFFIX Board of Directors

Date: 2.3.14

APPROVED AS TO FORM:

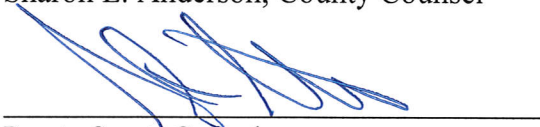

By: Michael Conneran, Legal Counsel
Measure J Traffic Congestion Relief Agency

CONTRA COSTA COUNTY PUBLIC WORKS DEPARTMENT


By: Julia R. Bueren, Public Works Director

Date: Feb 11, 2014

APPROVED AS TO FORM:
Sharon L. Anderson, County Counsel


Deputy County Counsel

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