



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
September 17, 2014**

TO: Mayor and City Council
FROM: Tim Tucker, City Engineer
SUBJECT: Cooperative Agreement No. 28C.01 between the Contra Costa Transportation Authority (CCTA) and the City of Martinez
DATE: August 11, 2014

RECOMMENDATION:

Adopt resolution authorizing the City Manager to execute Master Cooperative Agreement No. 28C.01 between the Contra Costa Transportation Authority and the City of Martinez regarding the disbursement of Measure J transportation funds.

BACKGROUND:

At its June 12, 2014 meeting, TRANSPAC recommended allocation of its share of the Subregional Transportation Needs Program (Program 28a) between its six jurisdictions based on “50/50” population and road miles split formula.

Measure J Expenditure Plan allocates 0.81% of Measure J annual sales revenues to Program 28c. The program is described in Measure J Expenditure Plan as follows:

“TRANSPAC will propose programming these funds to any project or program identified in the Expenditure Plan or meet other future transportation needs of Central County eligible under the provision of the Act.”

At this time, there has been a single Program 28a appropriation in the amount of \$750,000 made by the Authority to the City of Pleasant Hill for the Contra Costa Blvd Improvements project (Project 24026).

To streamline the process for the distribution of line 28a funds, a single multi-party cooperative agreement between the Authority and all six TRANSPAC jurisdictions is proposed. Under the proposed cooperative agreement, the Authority will agree to:

- Disburse Program 28a funds for revenues collected through June 30, 2014 by January 2015;
- Make annual allocations thereafter on November 1 (FY2015 – FY2034);
- Use the 50/50 population and road miles formula while taking into consideration approved appropriation made under Resolution 14-02-P to the City of Pleasant Hill.

The City of Martinez along with the other TRANSPAC jurisdiction, will agree under the cooperative agreement to:

- Submit on September 1 of every year a form indicating how Program 28a funds were expended and how much is remaining;
- Commit to not use Program 28a funds for staff time unless it is directly related to a project funded by Program 28a;
- Agree to audit, retention of records, and other standard items normally included in Measure J cooperative agreements.

Based on the revenue projection adopted, part of the 2013 Measure J *Strategic Plan* – approximately \$21.9 million – would be allocated to this program over the life of Measure J, of which \$2.3 million has been accumulated through June 30, 2013.

The following table shows the estimated disbursement amounts by jurisdiction, as adjusted for the appropriation made under Resolution 14-02-P to the City of Pleasant Hill. Future disbursements are subject to change as Measure J revenue forecast is updated. Disbursements will be based on actual receipts.

FISCAL IMPACT:

Execution of the Agreement is a requirement to receive the City’s share of discretionary transportation funds over the life of Measure J. The City share would be approximately \$2,484,500.

PROGRAMMING OF MEASURE J PROGRAM 28(a) FUNDS TO LOCAL JURISDICTIONS													
Jurisdiction	Distribution of Funds by Population & Road Miles			Projected Disbursements of Funds									
	Population	Road Miles	Average	Jan-15	Nov-15	Nov-16	Nov-17	Nov-18	Nov-19	Nov-20	Nov-21	Nov-22 to Nov-34	TOTAL
Clayton	3.47%	4.26%	3.87%	\$94,112	\$28,195	\$30,327	\$31,501	\$32,676	\$33,938	\$32,285	\$32,466	\$533,177	\$848,677
Concord	38.75%	34.34%	36.55%	\$889,866	\$266,590	\$286,748	\$297,856	\$308,964	\$320,895	\$305,270	\$306,978	\$5,041,383	\$8,024,551
County	15.24%	19.60%	17.42%	\$424,175	\$127,076	\$136,685	\$141,980	\$147,275	\$152,962	\$145,514	\$146,328	\$2,403,089	\$3,825,084
Martinez	11.45%	11.18%	11.32%	\$275,519	\$82,541	\$88,783	\$92,222	\$95,661	\$99,355	\$94,517	\$95,046	\$1,560,904	\$2,484,548
Pleasant Hill	10.53%	11.81%	11.17%	\$750,000	\$0	\$0	\$0	\$0	\$0	67,979	\$93,828	\$1,540,902	\$2,452,709
Walnut Creek	20.56%	18.81%	19.69%	\$479,327	\$143,599	\$154,457	\$160,441	\$166,424	\$172,850	\$164,434	\$165,354	\$2,715,546	\$4,322,432
TOTAL	100.00%	100.00%	100.00%	\$2,913,000	\$648,000	\$697,000	\$724,000	\$751,000	\$780,000	\$810,000	\$840,000	\$13,795,000	\$21,958,000

*Future disbursements are subject to change as Measure J revenue forecast is updated. Disbursements will be based on actual receipts

**City of Pleasant was appropriated \$750,000 on January 15, 2014 for the Contra Costa Blvd Improvements project (Project 24026) under Resolution 14-02-P (Cooperative Agreement 28C.01) which will be provided under reimbursement basis.

ACTION:

Adopt resolution authorizing the City Manager to execute Master Cooperative Agreement No. 28C.01 between the Contra Costa Transportation Authority and the City of Martinez.

Attachments:

Resolution

Cooperative Agreement No. 28C.01

APPROVED BY:

A handwritten signature in blue ink, appearing to read "Stan Stakel".

Interim City Manager

RESOLUTION NO. -14

AUTHORIZING THE CITY MANAGER TO EXECUTE MASTER COOPERATIVE AGREEMENT NO. 28C.01 BETWEEN THE CITY OF MARTINEZ AND THE CONTRA COSTA TRANSPORTATION AUTHORITY

WHEREAS, the Contra Costa Transportation Authority (Authority) among other things administers Measure J Transportation Funds; and

WHEREAS, at its June 12, 2014 meeting, TRANSPAC recommended allocation of its share of the Measure J, Subregional Transportation Needs Program (Program 28a) between its six jurisdictions based on "50/50" population and road miles split formula; and

WHEREAS, the Authority has agreed in principal for the disbursement of Measure J annual sales revenues to Program 28c for any project or program identified in the Expenditure Plan or that meet other future transportation needs of Central County eligible under the provision of Measure J; and

WHEREAS, the City must enter into a Master Cooperative Agreement with the Authority as a condition for receiving its share of the Program 28c funds totaling approximately \$2,484,500 over the life of the Measure.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Martinez authorizes the City Manager to execute Master Cooperative Agreement No. 28C.01 between the City of Martinez and the Contra Costa Transportation Authority for the Berrellesa Bay Trail Project.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 17th day of September, 2014, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

COOPERATIVE AGREEMENT NO. 28C.02

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"), CITY OF CONCORD, a municipal corporation of the State of California ("CONCORD"), the CITY OF CLAYTON, a municipal corporation of the State of California ("CLAYTON"), the CITY OF MARTINEZ, a municipal corporation of the State of California ("MARTINEZ"), the CITY OF PLEASANT HILL, a municipal corporation of the State of California ("PLEASANT HILL"), and the CITY OF WALNUT CREEK, a municipal corporation of the State of California ("WALNUT CREEK" and together with AUTHORITY, CONTRA COSTA, CONCORD, CLAYTON, MARTINEZ, PLEASANT HILL and WALNUT CREEK, 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, CONCORD, CLAYTON, MARTINEZ, PLEASANT HILL, AND WALNUT CREEK (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 28a funds in MEASURE J.

B. PARTNER JURISDICTIONS shall propose programming Program 28a 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 28a 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 28a funds were expended for the previous fiscal year and how much, if any, of the funds are remaining.

2. Commit to not use Program 28a funds for staff time, unless it is directly related to a project funded by Program 28a.

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 28a funds to PARTNER JURISDICTIONS in January 2015 for revenues collected for Fiscal Year 2013-14 and prior, and thereafter make annual allocations to PARTNER JURISDICTIONS starting in November for the previous fiscal year, from November 2015 until November 2034 using a 50/50 population and road miles split formula, adjusted for appropriation made to Pleasant Hill under Resolution 14-02-P, 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

Charlie Mullen
City of Clayton
6000 Heritage Trail
Clayton, CA 94517
cmullen@ci.clayton.ca.us

Ray Kuzbari
City of Concord
1950 Parkside Drive
Concord, CA 94519
ray.kuzbari@cityofconcord.org

Tim Tucker
City of Martinez
525 Henrietta Street
Martinez, CA 94553
ttucker@cityofmartinez.org

Eric Hu
City of Pleasant Hill
100 Gregory Lane
Pleasant Hill, CA 94523
EHu@ci.pleasant-hill.ca.us

Jeremy Lochirco
City of Walnut Creek
1666 North Main Street
Walnut Creek, CA, 94596
lochirco@walnut-creek.org

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: Ken Romick, Chair

Date _____, 2014

APPROVED AS TO FORM:

By: Malathy Subramanian, General Counsel

Date _____, 2014

CONTRA COSTA COUNTY

By:

Date _____, 2014

APPROVED AS TO FORM:
Sharon Anderson, County Counsel

By: Deputy County Counsel

Date _____, 2014

CITY OF CLAYTON

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: Best Best & Krieger, City Attorney

Date _____, 2014

CITY OF CONCORD

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: Mark Coon, City Attorney

Date _____, 2014

CITY OF MARTINEZ

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: Walter & Pistole, City Attorney

Date _____, 2014

CITY OF PLEASANT HILL

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: Janet Coleson, City Attorney

Date _____, 2014

CITY OF WALNUT CREEK

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: Steve Mattas, City Attorney

Date _____, 2014

Exhibit A*

PROGRAMMING OF MEASURE J PROGRAM 28(a) FUNDS TO LOCAL JURISDICTIONS													
Jurisdiction	Distribution of Funds by Population & Road Miles			Projected Disbursements of Funds									
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