

**MEASURE A
PROJECT COOPERATIVE AGREEMENT**

**For projects awarded to Santa Barbara County in Cycle 1 of the Measure A Bicycle and Pedestrian
and Safe Routes to School Programs**

This Cooperative Agreement ("Agreement") is made and entered into on March 15, 2012 by and between the County of Santa Barbara ("Sponsor") and the SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS, acting as the Santa Barbara County Local Transportation Authority ("Authority").

RECITALS

WHEREAS, Authority and Sponsor desire to enter into a Cooperative Agreement to coordinate the funding of transportation improvements in Santa Barbara County pursuant to the authority provided by the Road Repair, Traffic Relief and Transportation Safety Measure ("Measure A"), which was approved by the voters of Santa Barbara County on November 4, 2008; and

WHEREAS, the Sponsor has proposed that the Authority provide funding from the Measure A South Coast and North County Bicycle and Pedestrian and Safe Routes to School Programs specified herein ("Program") to Sponsor's projects for the particular transportation improvement project work specified herein ("Project"); and

WHEREAS, the Authority has determined that the Project is eligible as approved by the SBCAG Board on January 19, 2012 and February 16, 2012 and described in Attachments to this Agreement for Measure A funds; and

WHEREAS, the Authority is authorized to issue Measure A funds to Sponsor for eligible projects; and

WHEREAS, the Authority and Sponsor desire to have this Agreement serve as the Agreement for the Authority to provide Measure A funding to Sponsor for eligible projects proposed by Sponsor, provided that such funding has been authorized by the Board of the Authority.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant, and agree as follows:

AGREEMENT
SECTION I
Covenants of Sponsor

- 1.1 Project Description. The complete Project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will supplement Measure A funds, and the anticipated timing for release of Measure A funds are specified in Attachments to this Agreement.
- 1.2 Change In Project Description. A change in the Project as described in Attachments to this Agreement may not be implemented until it has been approved in writing by the Authority. Any project implemented prior to Authority approval will not be eligible for reimbursement and in no event will a change in scope result in the Authority reimbursing more than the amount awarded for the Project as listed in Attachments to this Agreement.
- 1.3 Eligible Reimbursement Costs. Eligible project costs are specified in Attachments to this Agreement or as may be approved from time to time by the Authority pursuant to Section 1.2. In no event shall expenses incurred prior to the execution of this Agreement be considered eligible reimbursement costs.
- 1.4 Measure A Percentage Share Defined. The percentage of eligible Project costs to be paid using Measure A funds will not exceed the percentage of total Project costs listed in Attachments to this Agreement. Any Sponsor matching funds shall be used to pay for the remainder of Project costs.
- 1.5 Invoices and Progress Reports. Sponsor shall submit semi-annual progress reports and invoices consistent with the Program guidelines as adopted by the SBCAG Board on May 19, 2011. These documents shall include the following specified information:
 - 1.5.a Invoices. The Sponsor shall provide the Authority with one (1) copy of all invoices submitted to Sponsor by every contractor, subcontractor, consultant, or subconsultant as appropriate and any other backup documentation required to support direct and indirect costs for which a Sponsor submits an invoice.
 - 1.5.b Progress Reports. Progress reports shall include a brief description of the status of the Project including the work completed to date. This summary may be included on the invoices submitted to the Authority or be attached to those invoices.
- 1.6 Use of Funds. The Sponsor shall use existing Measure A funds consistent with the project description in Attachments to this Agreement or as approved by the Authority pursuant to Section 1.2. The Sponsor shall encumber the funds no later than the Project schedule as listed in Attachments to this Agreement and consistent with the Program guidelines.
- 1.7 Submittal of Documents. The Sponsor shall provide copies to the Authority of all executed contracts that relate to the Project scope as described in Attachments to this Agreement and Section 1.3 or approved by the Authority pursuant to Section 1.2. The Sponsor will

retain records pertaining to the Project for a five (5) year period following completion of the Project.

- 1.8 Completion of Project. Sponsor shall be responsible for the timely completion of the Project set forth in Attachments to this Agreement, including meeting any use of funds deadlines as stated in the Program guidelines. Sponsor shall provide management of any consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work. When the Sponsor is responsible for the construction management and oversight, any construction management costs that exceed 15% plus indirect costs of the total eligible project costs, set forth in Attachments to this Agreement shall be the sole responsibility of the Sponsor. This provision shall apply in all instances, including situations where a change in scope has been approved by the Authority pursuant to Section 1.2.
- 1.8.a Project Completion Report. Within 6 months of project completion, Sponsor shall provide a project completion report to Authority that includes final cost, revenues, and schedule of completed and future activities. For construction projects, pictures of the completed project must accompany the report. Whenever possible, pictures of the “before” project conditions should also be submitted. This Report shall accompany the final invoice for payment from Sponsor to provide notice of Agreement account closing by Authority. The Report shall meet all requirements set forth in the Authority’s Program Guidelines.
- 1.9 Public Outreach. The Sponsor is responsible for development and administration of a public outreach effort to ensure public awareness and involvement in the Project development and delivery process. The Sponsor will provide a copy of the public outreach plan and all materials documenting the public outreach activities, including public notices, press releases, flyers, etc. to the Authority. The public outreach plan must accompany the first invoice for payment from Sponsor. The materials documenting the public outreach activities must accompany the final invoice for payment from Sponsor.
- 1.10 Provision of Signs. Sponsor shall install signs consistent with the Authority’s Project Signs Guidelines and Specifications as adopted by the SBCAG Board on August 18, 2011, or as appropriate.
- 1.11 Cost Savings and Excess Costs
- 1.11.a Cost Savings. After the Project has been accepted by the Sponsor and Authority as complete, any positive difference between the cost, as listed in Attachments to this Agreement or approved by the Authority pursuant to Section 1.2, and the total amount invoiced to the Authority shall be considered cost savings. 100% of the cost savings will revert to the Measure A program for re-programming by the Authority on other eligible projects.
- 1.11.b Excess Costs. In the event the actual Project cost exceeds the estimate shown in Attachments to this Agreement, this amount will be considered an excess cost. Sponsor

is solely responsible for all costs over the amount identified in Section 1.3 and pursuant to Section 1.2.

- 1.11.c Reconciliation of Excess Costs. Excess project costs to complete a project are not eligible for reimbursement unless approved pursuant to Section 1.2. The amount of Measure A funds as identified in Section 1.3 are the maximum funds available for reimbursement to the Sponsor and cannot be increased unless agreed to by the Authority pursuant to Section 1.2. The Sponsor shall request an amendment if needed for this purpose in writing to the Authority. Such amended Agreement shall be effective only if signed and approved by the duly authorized representatives of both the Authority and Sponsor.
- 1.12 Errors and Omissions. The Sponsor shall diligently monitor and manage all aspects of the Project and shall aggressively pursue any and all remedies, including full restitution and damages from any consultant, contractor or sub-contractor and their insureds and sureties suspected of any acts, errors, or omissions committed during business activities that economically or legally damage the project.
- 1.13 Sponsor agrees to furnish or cause to be furnished all labor, materials, equipment, required licenses, permits, fees, and other appropriate legal authorization from all applicable federal, state, and local jurisdictions necessary to perform and complete, per schedule, in a professional manner, the obligations described herein.
- 1.14 Sponsor may implement projects herein through private organizations and nonprofit entities.

SECTION II

Covenants of Authority

- 2.1 Reimbursement Payments. The Authority shall make reimbursement payments to the Sponsor or implementing party designated pursuant to Paragraph 1.14 for eligible project costs as specified in the Attachments to this Agreement.
 - 2.1.a Ineligible Costs. The Authority reserves the right to adjust current or future reimbursement payments to Sponsor if an invoice includes ineligible costs.
 - 2.1.b Reimbursement Amount. The amount of reimbursement payments to the Sponsor shall be equivalent to 100% of eligible expenditures for each invoice submitted to the Authority as specified in Attachments to this Agreement. The total reimbursement percentage share for this Agreement is as stated in Attachments and Section 1.4 costs.
 - 2.1.c Suspension of Reimbursement. If the Authority determines that any costs in an invoice are not allowable, or lacks supporting progress reports, the Authority shall return the invoice to the Sponsor with an invoice dispute notice outlining the reason for the return and the proposed remedy, if one exists, which would make the invoice acceptable for payment. The Sponsor may re-submit the invoice for payment after reviewing the invoice dispute notice and making any necessary corrections. The Sponsor may also

immediately submit a new invoice representing only the amounts which are not in dispute, while setting aside the disputed amounts for review in accordance with the provisions set forth in this Section 2.1.

2.1.c.1 Meeting. Once a dispute has occurred, the Authority shall arrange a meeting between Authority and Sponsor staff to discuss and attempt to resolve the dispute

2.1.c.2 Subregional Committee. If an agreement cannot be reached at the meeting, then the Sponsor or the Authority shall have the option to take the dispute to the Authority's North or South County Subregional Committee, as appropriate. In this case reimbursement for the disputed cost item(s) will be delayed until a resolution of the matter is reached.

2.1.c.3 Authority's Board Decision. If the Sponsor or the Authority disagrees with the resolution by the Subregional Committee then the dispute shall be submitted to the Authority's Board for resolution. If the Board determines that the disputed cost item(s) is ineligible, the Authority shall not provide reimbursement payment to the Sponsor for the disputed item(s). If the Board determines that the disputed cost item(s) is eligible, then the Authority shall provide reimbursement payment to the Sponsor for the disputed cost.

2.1.c.4 Reservation of Rights. By utilizing the above procedures, the Sponsor does not surrender any rights to pursue available legal remedies if the Sponsor disagrees with the Board decision.

2.1.d Acceptance of Work Does Not Result In Waiver. Reimbursement payments do not result in a waiver of the right of the Authority to require fulfillment of all terms of this Agreement.

2.2 Right to Conduct Audit. The Authority shall have the right to conduct an audit of all Sponsors' records pertaining to the Agreement at any time during the course of construction and up to a five (5) year period after completion of the Agreement.

2.3 Records. Sponsor shall keep and provide to Authority or its agents, upon request, accurate financial records (including invoices and published price lists on which this Agreement was based) necessary to enable Authority to review Sponsor's performance of this Agreement. These records shall demonstrate the funding has been used as described in the Project Description. Sponsor shall maintain all such records for at least five years after completion of the project.

SECTION III **Mutual Covenants**

3.1 Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.15.

- 3.2 Discharge. This Agreement shall be subject to discharge as follows:
- 3.2.a Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties.
 - 3.2.b Discharge Upon Completion of Projects. Except as to any rights or obligations which survive discharge as specified in Section 3.14, this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of the Projects in the Attachments to this Agreement as certified by the Authority.
- 3.3 Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of the Authority and the Sponsor:
- 3.3.a Sponsor shall defend, indemnify and save harmless the Authority, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the Sponsor or its agents or employees or other independent contractors directly responsible to it; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the Sponsor.
 - 3.3.b Authority shall defend, indemnify and save harmless the Sponsor, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the Authority or its agents or employees or other independent contractors directly responsible to it; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the Authority.
- 3.4 Notices. Any notice which may be required under this Agreement shall be in writing and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below:

<p>AUTHORITY Santa Barbara County Association of Governments 260 North San Antonio Road, Suite B Santa Barbara, CA 93110</p>	<p>SPONSOR Santa Barbara County Public Works Transportation Division 123 E. Anapamu Street Santa Barbara, CA 93101</p>
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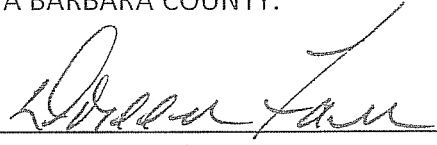
Either party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.5. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

- 3.5 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.
- 3.6 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.
- 3.7 Amendment. This Agreement may not be changed, modified or rescinded except in writing and approved by both parties.
- 3.8 Non-Partnership. This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein. Sponsor and Sponsor's subcontractors shall perform all services under this Agreement as independent parties and not as employees, officers or agents of the Authority.
- 3.9 Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.
- 3.10 Binding on Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the Authority or 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.
- 3.11 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.
- 3.12 Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.13 Survival. The following provisions in this Agreement shall survive discharge:
- 3.13.a The Sponsor. As to the Sponsor, the following sections shall survive discharge: Section 1.6 (obligation to apply funds to the Project), Section 1.7 (obligation to provide copies and retain records), Section 1.8 (obligation to continue to manage the Project).
- 3.13.b The Authority. As to the Authority, the following section shall survive discharge: Section 2.3 (right to conduct audit).
- 3.13.c Both Parties. As to both parties, the following section shall survive discharge: Section 3.3. (mutual indemnities).

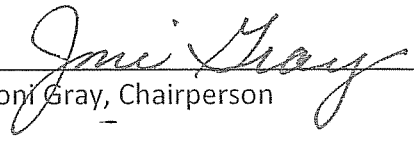
- 3.14 Limitation. All obligations of the Authority under the terms of this Agreement are expressly contingent upon the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure A. If for any reason the Authority's right or ability to collect or expend such sales tax proceeds is terminated or suspended in whole or part so that it materially affects the Authority's ability to fund the Project, the Authority shall promptly notify Sponsor, 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. Any future obligation to fund this project or any other project or projects of Sponsor, not already specifically covered by separate Agreement, shall arise only upon execution of a new Agreement.
- 3.15 Time. Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.
- 3.16 Remedies Cumulative. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.
- 3.17 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.
- 3.18 Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.
- 3.19 No Continuing Waiver. The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.
- 3.20 No Rights in Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.
- 3.21 Signator's Warranty. Each party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

SANTA BARBARA COUNTY:


By: 
Doreen Farr, Chair
Board of Supervisors

SBCAG, acting as the SANTA BARBARA COUNTY
LOCAL TRANSPORTATION AUTHORITY:

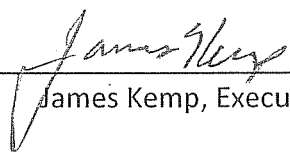
By: 
Joni Gray, Chairperson

ATTEST:

Chandra L. Wallar
Clerk of the Board

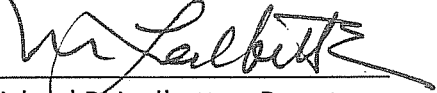
By: 
Deputy

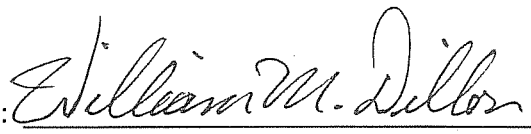
ATTEST:

By: 
James Kemp, Executive Director


APPROVED AS TO FORM:

DENNIS A. MARSHALL,
COUNTY COUNSEL

By: 
Michael R. Ledbetter, Deputy,
Counsel for County

By: 
William M. Dillon
Senior Deputy County Counsel

APPROVED AS TO FORM
Risk Management

By: 
Ray Aromatorio, Risk Manager

