

**MEASURE K RENEWAL
COOPERATIVE AGREEMENT (C-18-076)
FOR
SOUTH AIRPORT WAY SEPARATED BIKEWAY**

This Cooperative Agreement (“Agreement”) is made and entered into this ____ day of _____, 2018 by and between the CITY OF STOCKTON (“Sponsor”) and the SAN JOAQUIN COUNCIL OF GOVERNMENTS acting as the Local Transportation Authority (“Authority”). Sponsor and Authority may each be referred to herein as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, Authority and Sponsor desire to enter into a Cooperative Agreement for funding of transportation improvements in San Joaquin County pursuant to the authority provided by San Joaquin County Local Transportation Improvement Plan and Ordinance (“LTIP”), which was approved by the voters of San Joaquin County on November 7, 2006; and

WHEREAS, Sponsor desires to receive funding from the Authority for the particular transportation improvement project specified herein (“Project”); and

WHEREAS, the Project is eligible for funds (as specified in the Measure K Renewal Strategic Plan) within the **PASSENGER RAIL, BUS AND BICYCLE/PEDESTRIAN** and the **SMART GROWTH INCENTIVE PROGRAM** funding categories of the LTIP; and

WHEREAS, the Authority is authorized under the LTIP to issue Measure K Renewal funds to Sponsor in an amount up to \$2,020,000; and

WHEREAS, Authority shall issue reimbursement payments as provided in Section 2.1 to Sponsor pursuant to a request for reimbursement submitted by the Sponsor; however, the Sponsor understands that in no event shall reimbursement payments, when aggregated with previously approved reimbursement requests, exceed the Measure K Renewal commitment set forth in the Project Cooperative Agreement of \$2,020,000 or 89.98%, whichever is less, of the total project costs as listed in Exhibit “A”; and

WHEREAS, any difference in cost which results in less than \$2,020,000 of Measure K Renewal funds being spent on the Project shall be retained by the Authority for reallocation to any other eligible project; and

WHEREAS, Sponsor agrees to abide by the terms and conditions of the Authority as set forth herein for the receipt of Measure K Renewal funds; and

WHEREAS, Authority agrees to provide funding for the transportation improvements of the Sponsor’s Project according to the terms and conditions set forth herein.

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 Application. The Project description, scope of work, delivery schedule, corridor-specific cost by activity, anticipated amount and type of funds that will supplement Measure K Renewal funds, and the anticipated timing for release of Measure K Renewal funds and the Measure K Renewal “not to exceed” amount are specified in Exhibit “A,” and incorporated herein by this reference.

1.2. Change In Project Scope. A change in the Project scope as described in Exhibit “A” may not be implemented until it has been approved by the Authority. In no event will a change of scope result in the Authority reimbursing more than \$2,020,000.

1.3. Eligible Reimbursement Costs. Eligible reimbursement costs shall be as specified in Exhibit “A” or as may be approved from time to time by the Authority pursuant to Section 1.2.

1.4. Right of Way Costs. It is understood that right-of-way acquisition costs are not eligible reimbursement costs of the Project.

1.5. Measure K Renewal Percentage Share Defined. For this Project, the estimated Measure K Renewal share of eligible reimbursements shall not exceed the lesser of \$2,020,000 or 89.98% of the total project costs listed in Exhibit “A”.

1.6. Invoices and Progress Reports. Starting one month after the execution of this contract, Sponsor shall provide quarterly progress reports and may provide invoices as often as monthly for activities conducted over the prior unbilled month(s). These documents shall include the following specified information:

1.6.a. Copies of Consultant Invoices. Sponsor shall provide the Authority with one (1) copy of all invoices submitted to Sponsor by every consultant, subconsultant, contractor, or subcontractor performing work related to the Project.

1.6.b. Progress Reports. The quarterly progress reports shall include a brief description of the status of the Project, the work completed to date, including any issues that may impact Project schedule. This summary may be included on the invoices submitted to the Authority or be attached to those invoices.

1.7. Use of Funds. Sponsor shall use Measure K Renewal funds consistent with the Project scope of work, as described in Exhibit “A” or approved by the Authority pursuant to Section 1.2.

1.8. Submittal of Bid Documents. All consultant contracts entered into pursuant to this capital funding agreement shall follow a competitive bidding process or give justification for using a sole source in a manner substantially similar to that described in the San Joaquin Council of Governments Financial Management & Accounting Processing Manual. When the contract is awarded, Sponsor shall provide to the Authority one (1) copy of the bid tabulation, and the bid schedule of the successful bidder, complete with unit prices and total award amount. All awarded contracts shall include performance bonds, labor and material bonds, a provision for liquidated damages, and may include any other penalty clauses for nonperformance of the contract. Sponsor shall provide copies to the Authority of all other executed contracts which relate to the Project scope, as described in Exhibit "A" or approved by the Authority pursuant to Section 1.2. Sponsor shall retain records pertaining to the Project for a four (4) year period following completion of the Project.

1.8.a Communication to Authority. Upon inquiry, Sponsor shall communicate, verbal or written, to Authority or its representatives with Project documents, invoices and progress reports, at any time of Project activities consistent to the provisions specified in Section I (1.6), (1.7), (1.8), and Section II (2.2).

1.9. Completion of Project. Sponsor shall be responsible for the timely completion of the construction of the Project and provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work. Since Sponsor is responsible for project management and oversight, any and all costs which exceed \$2,020,000 of the total eligible costs set forth in Exhibit "A" shall be the sole responsibility of 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.

1.9.a. Letter of Project Completion. Sponsor shall provide a letter of project completion which includes final cost, revenues, schedule of activities, etc. This letter shall accompany the final invoice for payment from the sponsor to provide notice of project account closing by Authority.

1.10. Public Outreach. Sponsor shall be responsible for the development and administration of a public outreach effort to ensure public awareness and involvement in the project development and project delivery in construction. Sponsor shall include the Authority staff in the distribution list of all draft and final copy of the public outreach plan and materials of the public outreach activities. Sponsor shall provide the Authority timely email and postal distribution of all public outreach materials including but not limited to public meeting notices, postcards, and other meeting information. The public outreach plan shall identify the Authority in the list of interested stakeholders or project partners. The public outreach plan shall accompany in the first invoice for payment from the Sponsor. All other public outreach materials, meeting summary, and attendance list shall accompany in the invoice for the billing period which the public outreach was performed.

1.11. Excess Costs. In the event the actual Project cost exceeds the estimate shown in Exhibit “A,” this amount will be considered an excess cost. Sponsor is solely responsible for all costs over the amount identified in Section 1.5.

1.12. Errors and Omissions. 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 insured and sureties suspected of any acts errors, or omissions committed during business activities that economically damage the project.

1.13. Provision of Signs. Sponsor shall install signs approved by the Authority consistent with the specifications set forth in Exhibit “B” of this Agreement, attached hereto and incorporated herein by this reference. Signs shall be posted at both ends of the project boundaries so as to be visible to motorists traveling in either direction.

SECTION II Covenants of Authority

2.1. Reimbursement Payments. The Authority shall make reimbursement payments to Sponsor for all eligible Project costs. To receive monthly reimbursement payments for work completed on the Project, Sponsor shall comply with the following reimbursement procedures:

2.1.a. Deadline to Submit Reimbursement Requests. All invoices and progress reports shall be submitted to Authority on or before 5:00 p.m. on the tenth (10th) calendar day of the month in which the Sponsor requests reimbursement payments. Authority shall issue reimbursement payments to Sponsor on or before the last day of the month for all timely submittals.

2.1.b. Late Submittals. If Sponsor fails to submit documents to Authority as set forth in Section 2.1.a, above, then Authority shall provide reimbursement payments for late submittals in the following calendar month.

2.1.c. Ineligible Costs. The Authority reserves the right to adjust current or future reimbursement payments to Sponsor if an invoice includes ineligible costs.

2.1.d. Reimbursement Amount. The amount of reimbursement payments to Sponsor shall be equivalent to the Measure K Renewal percentage share for each invoice submitted to the Authority. The total reimbursement percentage share for this Project shall not exceed the lesser of \$2,020,000 or 89.98% and the available Measure K Renewal funds per fiscal year as specified in Exhibit “A”.

2.1.e. Suspension of Reimbursement. Reimbursement payments for the item(s) in question shall be suspended when a dispute arises as to whether or not the cost item(s) is eligible for reimbursement.

2.1.e.(1) Meeting. Once a dispute has occurred, the Authority shall arrange a meeting between the Authority and the Sponsor's staff to discuss and attempt to resolve the dispute. If the invoice was received on or before 5:00 p.m. on the 10th day of the month, the meeting shall be held no later than the 20th day of the same month. If the invoice was received after this date and time, then the meeting shall be held no later than the 20th day of the following month.

2.1.e.(2) Technical Advisory 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 Technical Advisory Committee, with the understanding that by doing so the reimbursement for the disputed cost item(s) will be delayed until a resolution of the matter is reached.

2.1.e.(3) Board Decision. If the Sponsor or the Authority disagrees with the resolution by the Technical Advisory Committee then the dispute shall be submitted to the San Joaquin Council of Governments 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.e.(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.f. 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 Sponsor's records pertaining to the Project at any time during the four (4) year period 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 3.14.

3.2. Discharge. This Agreement shall be subject to discharge as follows:

3.2.a. Breach of Obligation. If a Party believes that the other is in breach of this agreement, that Party shall provide written notice to the breaching Party and the written notice shall identify the nature of the breach. The breaching Party shall have thirty (30) days from the date of notice to initiate steps to cure any breach that is reasonably capable of being cured. 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. If the non-breaching Party is not satisfied that there has been a cure by the end of the time for cure, the non-breaching Party may seek available legal remedies.

3.2.b. Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the Parties.

3.2.c. Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified in Section 3.13, this Agreement shall be discharged, and the Parties shall have no further obligation to each other, upon completion of the Project as certified by the Authority.

3.3. Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Sponsor:

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

3.3.b. That neither Sponsor nor any officer or employee thereof, shall be responsible for, and Authority shall fully defend, indemnify and hold harmless Sponsor 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 defend, indemnify and hold the Sponsor 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.

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:

TO AUTHORITY:

Andrew T. Chesley

Executive Director
San Joaquin County
Transportation Authority
555 E. Weber Avenue

Stockton, CA 95202

Director
City of Stockton
Public Works Department
22. E Weber Avenue
Stockton, CA, 95202

TO SPONSOR:

Gordon MacKay

Either Party may change its address by giving notice of such change to the other Party in the manner provided in this Section 3.4. 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, signed by all Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.8. Independent Agency. Sponsor renders its services under this Agreement as an independent agency and the Authority is also an independent agency under the Agreement. None of the Sponsor's agents or employees shall be agents or employees of the Authority and none of the Authorities' agents or employees shall be agents or employees of Sponsor.

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. Sponsor. As to Sponsor, the following sections shall survive discharge: Section 1.6 (obligation to apply funds to Project), Section 1.7 (obligation to provide copies and retain records), Section 1.8 (obligation to continue to manage Project).

3.13.b. Authority. As to Authority, the following section shall survive discharge: Section 2.2 (right to conduct audit).

3.13.c. Both Parties. As to both Parties, the following sections shall survive discharge: Section 3.2.a. (obligation which survives termination), and Section 3.3 (mutual indemnities).

3.14. Limitation. All obligations of 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 K Renewal. 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. Attorneys' Fees. Should any litigation commence between the Parties concerning the rights and duties of any Party pursuant to, related to, or arising from, this Agreement, the prevailing Party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees and costs of such litigation, or in a separate action brought for that purpose.

3.16. 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.

3.17. 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.

3.18. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

3.19. 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 Project or interpretation of any of its provisions.

3.20. 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.

3.21. 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.

3.22. Signatory'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.

CITY OF STOCKTON

By: _____

By: _____

JOHN M. LUEBBERKE
City Attorney

KURT O. WILSON
City Manager

ATTEST:

SAN JOAQUIN COUNTY
TRANSPORTATION AUTHORITY

By: _____

By: _____

BRET HUNTER
City Clerk

KATHERINE MILLER
Chair

APPROVED AS TO FORM:

ATTEST:

By: _____

ANDREW T. CHESLEY
Executive Director

By: _____

STEVE DIAL
Deputy Executive Director/CFO

EXHIBIT A

**City of Stockton
South Airport Way Separated Bikeway**

1. Project Name, Location:

South Airport Way Separated Bikeway (See Attached Project Vicinity Map)

2. Project Sponsor, Contact Person, Phone Number:

City of Stockton
Wes Johnson, Engineering Services Manager
209-937-8088
Wes.Johnson@stocktonca.gov

3. Project Scope of Work:

South Airport Way in south Stockton has four lanes of traffic and carries substantial truck traffic. The project will install separated bike lanes with vertical delineator posts along South Airport Way between Martin Luther King Jr. Blvd and Performance Drive to provide low-stress bicycle access between southeast Stockton and downtown. The proposed improvements will also close gaps between existing sidewalks along South Airport Way and improve access to multiple schools, the San Joaquin County Fairgrounds, Williams Brotherhood Park, and provide connectivity between residences and transit, employment and commercial activity centers.

4. Expected Time of Delivery of Overall Project:

	<u>Start Date</u>	<u>Completion Date</u>
Preliminary Design/ Environmental	07/01/2018	03/01/2018
Final Design	07/01/2018	08/30/2019
Right of Way Acquisition	N/A	N/A
Construction	02/01/2019	08/31/2020

5. Estimated Project Cost (as applicable for each of the phases described above):

	<u>Measure K Amount</u>	<u>Total Cost</u>
Preliminary Design/ Environmental	N/A	\$133,000
Final Design	\$108,000	\$200,000
Right of Way Acquisition	N/A	N/A
Construction	\$1,912,000	\$2,020,000

Exhibit A**6. Expected Timing for Release of Measure K Funds by Quarter:**

	FY 18/19	FY 19/20	FY 20/21	
July - September	\$27,000	\$0	\$540,000	
October - December	\$27,000	\$0	\$0	
January - March	\$27,000	\$686,000	\$0	
April -June	\$27,000	\$686,000	\$0	
TOTAL	\$108,000	\$1,221,041	\$615,959	\$2,020,000

7. Source(s) and Amount(s) of Funds for Project

	<u>Amount</u>	<u>Percentage</u>
Measure K Bicycle, Pedestrian, and Safe Routes to School Competitive Program	\$20,000	0.89%
Measure K Smart Growth Incentive Program	\$2,000,000	89.09%
City of Stockton Measure K Maintenance Funds	\$225,000	10.02%
TOTAL	\$2,245,000	100%

8. Project Vicinity Map (see attached):

Exhibit B

4 Feet
8 Feet



Project Name

A _____

Funded By Measure K

(Other Funding Sources:)

Project Cost

SJCOG Logo
 Orange Pantone #1595
 Blue Pantone #2945
 White background

Measure K Logo:
 36" x 34 "
 Orange and blue lettering on white background

Project Name
 8" Upper case black lettering
 White background
 Black outline

Project Cost, Matching Funds, Partner(s):
 6" Upper case and 4" lower case black lettering
 White background
 Black outline
 All sign features to be reflectorized (engineer-grade Scotchlite)