

## **MEASURE R COOPERATIVE AGREEMENT**

This Cooperative Agreement ("Agreement") is made and entered into on \_\_\_\_\_, by and between the [Tulare County Redevelopment Agency] ("Sponsor") and the TULARE COUNTY ASSOCIATION OF GOVERNMENTS, acting as the Local Transportation Authority ("Authority").

### **RECITALS**

WHEREAS, Authority and Sponsor desire to enter into an Agreement for funding of transportation improvements in Tulare County pursuant to the authority provided by 2006 ½ Cent Transportation Sales Tax Measure Expenditure Plan ("Expenditure Plan") and Tulare County Transportation Authority Ordinance No. 2006-01, which was approved by the voters of Tulare County on November 7, 2006 as "Measure R"; and

WHEREAS, Sponsor desires to receive funding from the Authority for the transportation improvement projects ("Projects") specified in the Expenditure Plan; and,

WHEREAS, the Authority is authorized under the Expenditure Plan and Ordinance No. 2006-01 to issue Measure R funds to Sponsor in accordance with the Expenditure Plan; and,

WHEREAS, Authority is authorized to approve project funding in accordance with this agreement and the Expenditure Plan regarding the specific projects listed in the Expenditure Plan or as amended from time to time, and to provide payment or reimbursement for those specific projects in accordance with the Expenditure Plan.

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**

This agreement shall have no force or effect with respect to Regional Projects, Bike projects, or Transit Projects unless and until a project-specific Program Supplement to this Agreement herein after referred to as "Program Supplement", has been fully executed by both the Authority and the Sponsor.

#### **SECTION I** **Covenants of Sponsor**

Sponsor agrees to abide by the terms and conditions of the Authority as set forth herein for the receipt of Measure R funds and to comply with the Expenditure Plan and Tulare County Transportation Authority Ordinance No. 2006-01; and adopted Policies and Procedures, and current adopted Strategic Action Plan, as well as any subsequent amendments or updates; and,

## 1.1. Project Application.

1.1a Regional Projects - The complete Project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will supplement Measure R funds and the anticipated timing for release of Measure R funds shall be specified in the application and approved by the Authority.

1.1b Transit Operations – Sponsor must submit an annual Transit expansion plan summarizing how the transit planning funds will be expended. The transit plan is due each year by the end of May (prior to the fiscal year beginning)

1.1c Bike and Transit Capital Projects – Sponsor must submit an annual Bike and Transit Capital plan summarizing how the bike and transit capital funds will be expended. The plan is due each year by the end of May (prior to the fiscal year beginning)

1.1d Local Program Funding – Sponsor is not required to submit an annual report prior to the receipt of funding. However, an annual report is required at the end of the year in accordance with the Adopted Policies and Procedures. In addition, Sponsor in the first year must submit the baseline “Maintenance of Effort Summary” prior to any funding being received. The “Maintenance of Effort Summary” is due by June 29, 2010.

1.2. Project Scope. A Project scope of work or any change to such may not be implemented until it has been approved by the Authority in accordance with the Expenditure Plan.

1.3. Eligible Reimbursement Costs. Eligible reimbursement costs shall be costs as specified in the Expenditure Plan 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. *Authority agrees that Sponsor may use the Measure R funds to reimburse Sponsor for any lease payments or installment payments made with respect to any eligible Project described in the Project scope of work approved by the Authority pursuant to Section 1.2.*

1.4. Measure R Percentage Share Defined. For this Agreement, the Measure R percentage share of eligible costs shall be as set forth in the Adopted Strategic Action Plan.

1.5. Invoices and Progress Reports. Starting one month after the execution of this Agreement, Sponsor shall provide quarterly progress reports. Sponsor shall provide invoices no less than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:

1.5.a. Sponsor’s Staff Expenses. Sponsor may include in the invoice direct staff expenses for the eligible costs of the Project.

1.5.b. 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.

1.5.c. Progress Reports. The quarterly progress reports shall include a brief description of the status of the Project and the work completed to date. This summary may be included on the invoices submitted to the Authority or be attached to those invoices.

1.5.d. 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.

1.5.e. Late Submittals. If Sponsor fails to submit documents to Authority as set forth in Section 1.5.d, above, then Authority shall provide reimbursement payments for late submittals in the following calendar month.

1.6. Use of Funds. Sponsor shall use Measure R funds consistent with the Project scope of work approved by the Authority pursuant to Section 1.2.

1.7. Submittal of Documents. Sponsor shall provide copies to the Authority of all executed contracts which relate to the Project scope 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. Completion of Project. Sponsor shall be responsible for the timely completion of construction and provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work.

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

1.9. Provision of Signs. Sponsor shall install Measure R signs approved and/or required by the Authority. Measure R Signs shall be posted at both ends of the project boundaries so as to be visible to motorists traveling in either direction.

1.10. Cost Savings and Excess Costs.

1.10.a. Definition of Cost Savings. After a Project has been accepted by the Sponsor as complete, any positive difference between the total Project cost, as approved by the Authority pursuant to Section 1.2, and the total amount invoiced to the Authority shall be considered Project cost savings.

1.10.b. Cost Savings. If, according to the most recently amended Measure R Expenditure Plan, the Projects are not segments of a larger project, or if all other segments of the larger project have been completed, the Authority shall allocate the Measure R share according to the Adopted Policies and Procedures.

1.10.c. Segmented Projects. If, according to the most recently amended Measure R Expenditure Plan, the Project is a segment of a larger project and other segments have not been completed, the Authority shall allocate the Measure R share (as specified in Section 1.4) of these cost savings to the

uncompleted segment(s) of the larger project.

1.10.d. Excess Costs: In the event the actual total project costs exceed the estimate approved by the Authority, this amount will be considered an excess cost.

1.10.e. Reconciliation of Excess Costs: In the event that costs to complete the Project exceed the total amount of funds programmed, Sponsor will be fiscally responsible for the full amount of excess costs associated with the Sponsor's project, unless otherwise agreed by the parties pursuant to Section 2.4.

1.11. Provision of Groundbreaking and Ribbon Cutting Ceremonies. Sponsor shall be responsible for groundbreaking ceremonies and ribbon cutting ceremonies related to their project(s) and as determined necessary by the Authority. Sponsor may contract both ceremonies through a private consultant. All ceremonies shall be coordinated with the Public Relations Officer of the Authority. The cost of all ceremonies will be an expense of the project construction.

## SECTION II Covenants of Authority

Authority agrees to issue Measure R funds for the transportation improvements of the Sponsor's Project(s) according to the terms and conditions set forth herein, and to comply with the Expenditure Plan and Tulare County Transportation Authority Ordinance No. 2006-01; and Adopted Policies and Procedures, and current adopted Strategic Action Plan, as well as any subsequent amendments or updates

2.1. Reimbursement Payments. The Authority shall make reimbursement payments to Sponsor for eligible Project costs as specified in the Expenditure Plan and subsequent updates of the Expenditure Plan. To receive monthly reimbursement payments for work completed on the Project, Sponsor shall comply with the following reimbursement procedures:

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 Sponsor shall be made pursuant to the Expenditure Plan.

2.1.c. Suspension of Reimbursement. Reimbursement payments for the item(s) in question shall be suspended without interest when a dispute arises as to whether or not the cost item(s) is eligible for reimbursement.

2.1.c. (1) Meeting. Once a dispute has occurred, the Authority shall arrange a meeting between the Authority and the Sponsor 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 (or if the 10<sup>th</sup> is not a business day, then the next business day), 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.c. (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.c. (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 Authority Board for resolution. Reimbursement for the disputed cost item(s) will be further delayed until a resolution of the matter is reached by the Authority Board. If the Authority 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 Authority 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, Sponsor does not surrender any rights to pursue available legal remedies if Sponsor disagrees with the Authority Board decision.

2.1.d. Acceptance of Work Does Not Result In Waiver. Reimbursement payments shall 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 Projects at any time during the four (4) year period after completion of the Projects.

2.3. Reconciliation of Excess Costs. In the event that costs to complete the Project exceeds the total amount of funds programmed, Authority may, by further agreement with Sponsor, agree to provide additional funding.

### SECTION III Mutual Covenants

The Authority is released from any liability to Sponsor regarding the Authority's administration and issuance of the Measure R transportation sales tax proceeds except for any breach of Authority's fiduciary duty as set forth in the Expenditure Plan.

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. Termination by Mutual Consent. This Agreement may be terminated between Sponsor and the Authority at any time by mutual consent of Sponsor and Authority. If this Agreement is mutually terminated by the parties, Sponsor will no longer receive Measure R funds unless a new agreement between Sponsor and Authority is formed.

3.2.b. 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 all of Sponsor's projects 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. Indemnity. Sponsor shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under the Agreement and related to the Sponsor's Project(s). 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. Indemnity. Authority shall fully defend, indemnify and hold harmless Sponsor, and any officer or employee of 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 and related to Sponsor's Project(s). It is also understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold 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. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**AUTHORITY:**

Executive Director  
Tulare County Transportation Authority  
5961 S. Mooney Blvd.  
Visalia, CA 93277  
**Phone No.:** 559 733 6291  
**Fax No.:** 559 733 6720

**With A Copy To:**

**SPONSOR:**

**Phone No.:** \_\_\_\_\_  
**Fax No.:** \_\_\_\_\_

3.4.a. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

3.4.b. 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 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 Authority's 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 parties.

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), and 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. All Parties. As to all 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 R. 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.

3.16. 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. The parties agree that this contract is made in and shall be performed in Tulare County, 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 construction 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. Exhibits and Recitals. The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

3.23. 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.

COUNTY OF TULARE TRANSPORTATION AUTHORITY

By: \_\_\_\_\_

Chair of the Authority

ATTEST:

By: \_\_\_\_\_  
Authority Director

TULARE COUNTY REDEVELOPMENT  
AGENCY BOARD OF DIRECTORS

By: \_\_\_\_\_

Chair of the Board

ATTEST: Jean M. Rousseau  
County Administrative Officer/Clerk of  
the Board of Supervisors of the County  
of Tulare

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:  
OFFICE OF TULARE COUNTY COUNSEL

By: *Christina O. L...* 7-7-10  
Deputy 2010362

APPROVED AS TO FORM:

By: \_\_\_\_\_