

COOPERATIVE FUNDING AGREEMENT NO. M30406
BETWEEN
THE SONOMA COUNTY TRANSPORTATION AUTHORITY
AND
THE CITY OF SANTA ROSA

This Agreement is made and entered into as of _____, 2015 (“Effective Date”) by and between the City of Santa Rosa hereinafter referred to as “**CITY**” and the **SONOMA COUNTY TRANSPORTATION AUTHORITY** hereinafter referred to as “**AUTHORITY.**”

RECITALS

1. **AUTHORITY** adopted that certain 2014 Strategic Plan that sets forth **AUTHORITY**’s program and project implementation policies with regard to the use of funds provided under the 2004 Traffic Relief Act for Sonoma County Expenditure Plan and Ordinance approved by the voters of Sonoma County on November 2, 2004 (hereinafter referred to as “Measure M”). The 2014 Strategic Plan as such plan may be amended from time to time is hereinafter referred to as the “Strategic Plan”.

2. Pursuant to the Strategic Plan and Measure M, **AUTHORITY** and **CITY** desire to enter into a Cooperative Funding Agreement to define a framework to enable the two parties to work cooperatively in developing transportation improvements on Fulton Road in Sonoma County (hereinafter referred to as “Local Streets and Roads Program Improvements”).

3. In connection with the Local Streets and Roads Program, **CITY** desires to complete the Fulton Road Improvements Project (in phases), as more particularly described in Exhibit A to this Agreement (hereinafter referred to as the “Project”).

4. **CITY** has submitted a financial plan and schedule for completion of the Project which is attached hereto as Exhibit B (hereinafter referred to as the “Project Plan”).

5. Pursuant to the Strategic Plan and Measure M, **AUTHORITY** is committed to make available up to \$19,000,000 in 2004 dollars to assist with the Project.

6. In 2008 as part of private development activities, \$8,700,000 of improvements were completed on the northern reach of Fulton Road between Wood Road and Piner Road. This \$8,700,000 in previous expenditure is the City share of eligible expenses for Phase 1 of the Fulton Road Improvements Project which includes both northern and southern reaches as described in Exhibit A.

7. This Agreement governs the respective obligations of the parties for Phase 1 of the Project. In the event Phase 2 of the project is approved by the City, the parties intend to modify this Agreement to state the respective obligations for Phase 2 of the Project.

NOW, THEREFORE, in consideration of the foregoing, **AUTHORITY** and **CITY** do hereby agree as follows:

SECTION I

CITY AGREES:

1. CITY Contribution. To provide at least \$8,700,000 toward phase one of the Project in local funds as match to **AUTHORITY**'s contribution per the Strategic Plan and Recital 5 above. **AUTHORITY** acknowledges and agrees that **CITY** has met \$8,700,000 of its funding obligation for Phase 1 of the Project.

2. Project Completion. To timely complete the Project in accordance with the deadlines set forth in the Project Plan.

3. Invoices. Should **CITY** desire reimbursement of its expenses in connection with this Agreement, **CITY** shall do so by requesting a specific appropriation of Measure M funding by submitting to **AUTHORITY** a Request for Funding Appropriation in the form attached hereto as Exhibit C (hereinafter referred to as "Appropriation Request"). Once an Appropriation Request is approved by **AUTHORITY**, **CITY** may submit to **AUTHORITY** invoices for reimbursements for expenses authorized under the terms of this Agreement and an approved Appropriation Request. Invoices shall be submitted to **AUTHORITY** no more frequently than monthly, and no less frequently than every six months following initial appropriation, provided however that if **CITY** is unable to invoice in this time frame a written request for time extension shall be provided or the funds may be deobligated. Invoices shall be in a form reasonably acceptable to **AUTHORITY**'s Executive Director.

4. Compliance with Laws. With regard to administering and completing the Project, **CITY** shall at all times comply with all applicable laws of the United States, the State of California, the County, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

5. Records. To allow **AUTHORITY** to audit all expenditures relating to the Project funded through this Agreement. For the duration of the Project, and for five (5) years following completion of the Project, or earlier discharge of the Agreement, **CITY** shall

make available to **AUTHORITY** all records relating to expenses incurred in performance of this Agreement.

6. Reporting Requirements. To provide annual updates on the PROJECT to **AUTHORITY** in the form attached hereto as Exhibit D.

7. Excess Land Proceeds. **CITY** will transfer any net proceeds, after deducting auditable costs of sales, to **AUTHORITY** resulting from the sale of excess lands purchased in whole or in part with the Measure M funds, in the same proportion to the net proceeds as the original contribution of Measure M funds was to the purchase price of the original parcel.

SECTION II

AUTHORITY AGREES:

1. Reimbursement of CITY Expenses. Consistent with the Strategic Plan, to make available Measure M funds (currently set at \$8,700,000 in 2004 dollars) to assist with the Project. **AUTHORITY** shall process **CITY** invoices within forty-five (45) days of receiving an invoice in a form reasonably acceptable to **AUTHORITY**'s Executive Director.

2. Notice of Audit. To provide timely notice to **CITY** if an audit is to be conducted.

SECTION III

IT IS MUTUALLY AGREED:

1. Funding Availability and Needs. The funding available to the Project for expenditure is limited by the funds identified in Exhibit B and to approved appropriations by the SCTA Board. If additional funds beyond those identified in Exhibit B are necessary to complete the Project, **AUTHORITY** will cooperate with **CITY** to identify and secure new or increased fund commitments; however, completion of the Project remains the responsibility of **CITY**.

2. Term. This Agreement will remain in effect until discharged as provided in Paragraph 3 or 13 of this Section III.

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

a. This Agreement may be canceled by a party for breach of any obligation, covenant or condition hereof by the other party, upon notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching

party shall have thirty (30) days from the date of the notice to initiate steps to cure. 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. On cancellation, the non-breaching party retains the same rights as a party exercising its right to terminate under the provisions of paragraph 3(b), except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance. If the Agreement is cancelled by **AUTHORITY** because **CITY** has failed to wholly or partially complete the Project, **AUTHORITY** may, at its option, demand repayment of all unexpended funds and funds determined by audit not to have been expended as provided for in this Agreement, with interest accrued thereon as would have accrued had such funds been invested in the Sonoma County Treasury Pool; and, further, to offset such balances due **AUTHORITY** from any other Measure M funds due **CITY**.

b. By mutual consent of both parties, this Agreement may be terminated at any time. Upon termination by mutual consent, **CITY** shall repay to **AUTHORITY** any unexpended funds originally provided to **CITY** under this Agreement, and any interest that has accrued thereon.

4. Indemnity. **CITY** agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to **AUTHORITY**, and to defend, indemnify, hold harmless, reimburse and release **AUTHORITY**, its officers, agents, employees, successors and assigns from and against any and all actions, claims, damages, disabilities, liabilities and expense including, but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by **AUTHORITY** to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including **CITY**, arising out of or in connection with the receipt or use of funds provided pursuant to this Agreement, whether or not there is concurrent negligence on the part of **AUTHORITY**, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of **AUTHORITY**. If there is a possible obligation to indemnify, **CITY's** duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. **AUTHORITY** shall have the right to select its own legal counsel at the expense of **CITY**, subject to **CITY's** approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for **CITY** or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

5. Notices. Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by

certified or registered mail, return receipt requested, to the addresses set forth below, or to such addresses which may be specified in writing to the parties hereto.

To **CITY**: Transportation and Public Works Director
City of Santa Rosa
69 Stony Circle

Santa Rosa, CA 95401
(707) 543-3810

To **AUTHORITY**: Executive Director Sonoma County Transportation Authority
490 Mendocino Avenue, Suite 206
Santa Rosa, CA 95401
(707) 565-5373
suzsmith@sctainfo.org

6. 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.

7. Integration. This Agreement represents the entire agreement of the parties with respect to the subject matter herein. 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.

8. 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.

9. Independent Agency. **CITY** renders its services under this Agreement as an independent agency. None of the **CITY**'s agents or employees shall be agents or employees of the **AUTHORITY**.

10. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

11. Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the **AUTHORITY** or **CITY** 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.

12. 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.

13. Limitation. All obligations of **AUTHORITY** under the terms of this Agreement are expressly subject to **AUTHORITY**'s continued authorization to collect and expend the sales tax proceeds provided by Measure M. If for any reason **AUTHORITY**'s right to collect or expend such sales tax proceeds is terminated or suspended in whole or in part, **AUTHORITY** shall promptly notify **CITY**, 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 future obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of **AUTHORITY** to expend sales tax proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of **AUTHORITY** under all outstanding contracts, agreements to other obligations of **AUTHORITY**, of funds for such purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF SANTA ROSA

SONOMA COUNTY
TRANSPORTATION AUTHORITY

By: _____
Mayor

By: _____
SCTA Chair

ATTEST:

APPROVED AS TO SUBSTANCE:

By: _____
City Clerk

By: _____
Executive Director

APPROVED AS TO LEGAL FORM
FOR **CITY**:

APPROVED AS TO LEGAL FORM
FOR **AUTHORITY**:

By: _____
City Attorney

By: _____
Legal Counsel
Authority

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EXHIBIT A

DESCRIPTION OF THE PROJECT

Fulton Road Improvements Phases 1 and 2

Phase 1- Widen Fulton Road, including overlay existing pavement, or reconstruct as needed, add bike lanes, curb, gutter, sidewalk, and drainage improvements for approximately 2 miles from Guerneville Road northerly to Wood Road.

Northern Reach: Work to date- Improvements to the northern reach of Phase 1, Piner Road to Wood Road were completed in 2008 with development fees.

Southern Reach: Remaining work – Improvements to the southern reach of Phase 1, Guerneville Road to Piner Road will begin in 2015 beginning with preparation of an environmental document.

Phase 2 – Fulton Road Intersection at Route 12

Convert the existing signalized intersection of Fulton Road and Route 12 into a full interchange. Work has not begun on Phase 2.

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EXHIBIT B

FINANCIAL PLAN AND SCHEDULE PHASE 1 (2004 Dollars)

<u>Fiscal Year</u>	<u>Prior</u>	<u>FY14/15</u>	<u>FY15/16</u>	<u>FY16/17</u>	<u>FY17/18</u>	<u>TOTAL</u>
Measure M	\$0	\$	\$500,000	\$1,200,000	\$7,000,000	\$8,700,000
City funds	\$8,700,000	\$0	\$20,000*	\$48,000	\$280,000	\$9,048,000
Total	\$8,700,000	\$0	\$520,000	\$1,248,000	\$7,280,000	17,748,000

*Estimate of indirect city labor costs not eligible for reimbursement with Measure M funds as specified in Chapter 4 of the 2014 Measure M Strategic Plan. City's source of funds is expected to be Gas Taxes.

<u>Project Development Phase 1</u>	<u>Begin</u>	<u>End</u>
Scoping	July 2015	October 2015
Project Approval and Environmental Document (PA&ED)	October 2015	July 2016
Right of Way	July 2016	January 2017
Plans, specs, and estimate (PS&E)	July 2016	July 2017
Construction	August 2017	August 2018

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EXHIBIT C

REQUEST FOR FUNDING APPROPRIATION



Date _____

SCTA Chair
 Sonoma County Transportation Authority
 490 Mendocino Avenue, Suite 206
 Santa Rosa, CA 95401

FUNDING APPROPRIATION REQUEST

PROJECT NAME _____

AGREEMENT NO. _____

Dear SCTA Chair:

The City of *(name of City or County of Sonoma)* hereby requests that the Sonoma County Transportation Authority (SCTA) take action to appropriate funds at its next Board meeting for the *(name of project)*.

The City (or County) has entered into a cooperative funding agreement with the SCTA (Cooperative Agreement No. *(number of agreement)*) and is ready to begin work on the *(name of development phase)* phase of the project. Below is the specific appropriation request information.

Project Name & Description:	<i>Fill in Project Name & Description</i>
Project Category:	<i>Fill in Local Street Project or Bicycle/Pedestrian Project.</i>
Phase Development Phase of this Appropriation:	<i>Fill in Development Phase (Scoping, Environmental, Right of Way Capital, Right of Way Support, PS&E, Construction Capital, or Construction Management). Note: Only one phase per request.</i>
Amount of Measure M Appropriate Request:	<i>Fill in amount of appropriation request.</i>
Amount of Local Funding Match:	<i>Fill in \$ Local Match for this request</i>
Sources of Local Funding Match:	<i>Fill in amount and source(s) of matching funds.</i>
Total Project Cost:	<i>Fill in total cost of project, including all fund sources and phases.</i>

The current schedule for the *(name of project)* is as follows:

Project Development Phase	Begin	Complete
Scoping	date	date
Environmental	date	date
Right of Way	date	date
PS&E	date	date
Construction	date	date

Thank you for your consideration.
 Sincerely,

NAME _____
 Title _____
 Exhibit D
 cc: _____

Cooperative Funding Agreement No. ____
 City of _____
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EXHIBIT D

PROJECT REPORTING LETTER



Date

Sonoma County Transportation Authority
 490 Mendocino Avenue, Suite 206
 Santa Rosa, CA 95401

[Name of Project] - Annual Reporting Letter – FY _____

Dear SCTA Chairman:

The City of / County of _____ is pleased to present information related to Measure M funding for the following project for FY _____ Reported:

Work was performed on the following project using Measure M funds including:

A.	Project Name:	
	Project Phase/Development Phase:	
B.	Amount Appropriated in Previous Fiscal Years	\$ -
C.	Total Amount of Unexpended Appropriations from Prior FY	\$ -
D.	Amount Appropriated in FY 08/09	\$ -
E.	Reimbursements Received in FY 08/09	\$ -
F.	Amount of Matching Funds Provided	\$ -
G.	Total Measure M Reimbursements Received in Prior Years	\$ -
H.	Total Measure M Funding Reimbursed to Date	\$ -
I.	Total Appropriation Remaining Balance to Rollover to FY 09/10	\$ -

- J. Describe work completed this fiscal year.
- K. How were bike/pedestrian needs considered?

L.	Overall Status of Project by Phase	% Complete	Est. Completion Date
	Scoping		
	Environmental		
	Design		
	Right of Way		
	Construction & Construction Management		