MEASURE K RENEWAL COOPERATIVE AGREEMENT
FOR THE LANDSCAPE AND MITIGATION PLANTING FOR THE
FRENCH CAMP ROAD/INTERSTATE 5 (I-5) CONSTRUCTION PROJECT

This Cooperative Agreement ("Agreement") is made and entered into this ______ day of
______________, 2014 by and between the City of Stockton, a political subdivision of the State
of California ("Sponsor") and the SAN JOAQUIN COUNCIL OF GOVERNMENTS, acting as the
San Joaquin County Local Transportation Authority ("Authority").

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 as the Landscape and Mitigation Planting for the
French Camp Road/Interstate 5 (I-5) Interchange Project of the Congestion Relief category of
the LTIP; and

WHEREAS, the Authority is authorized under the LTIP to issue Measure K Renewal
funds in an amount up to $1,900,000 for eligible landscape and mitigation planting costs as
estimated by the Sponsor in Exhibit "A"; 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 landscape and mitigation planting, when aggregated,
exceed the lesser of $1,900,000 or 100% of the total landscape and planting mitigation
reimbursement cost as listed in Exhibit “A”; and

WHEREAS, Sponsor agrees, when aggregated, the total of this agreement, when
combined with all other related project agreements and phases, will not exceed $14,432,551 in
Measure K Renewal reimbursements; and

WHEREAS, any difference in cost which result in less than $1,900,000 being spent on
the Project may be retained by the Authority and may be re-programmed to the construction
phase of the French Camp Road/I-5 Interchange 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 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 complete Project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will supplement Measure K funds, and the anticipated timing for release of Measure K funds shall be specified in the application, which is attached as 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 in scope result in the Authority reimbursing more than $1,900,000.

1.3. Measure K Percentage Share Defined. For this Agreement, the combined Measure K/Measure K Renewal percentage share of eligible Project costs shall be 100% of Project costs with the total not to exceed the lesser of $1,900,000 or 100% of the total costs for Project costs listed in Exhibit "A".

1.3.a Eligible Reimbursement Costs. Eligible reimbursement costs shall be utility relocation costs for the Project 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. Construction and Other Costs. It is understood that construction, construction administration, and inspection costs are not a part of the eligible reimbursement costs of the Agreement.

1.6. Invoices and Progress Reports. Starting one month after the execution of this Agreement, Sponsor shall provide monthly progress reports and shall provide invoices no less than monthly for activities conducted over the prior unbilled month. 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 monthly progress reports shall include a brief description of 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 funds consistent with the project scope of work described in Exhibit "A" or approved in writing by the Authority pursuant to Section 1.2.

1.8. Submittal of Documents. Sponsor shall provide copies to the Authority of all 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 utility relocations 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 the lesser of $1,900,000 or 100% of the total eligible utility relocation 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. 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 1.3.**

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.

SECTION II
Covenants of Authority

2.1. Reimbursement Payments. The Authority shall make reimbursement payments to Sponsor for eligible Project costs as specified in Exhibit “A”. 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. The final invoice for reimbursement shall be submitted to the Authority no later than 90 days after the discharge of the Agreement.

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

2.1.c. Ineligible Expenditures. The Authority, in accordance with Section 2.1.e., reserves the right to adjust current or future reimbursement payments to Sponsor if an invoice includes ineligible expenditures.
2.1.d. **Reimbursement Amount.** The amount of reimbursement payments to Sponsor shall be equivalent to 100% of eligible utility relocation expenditures for each invoice submitted to the Authority as specified in Exhibit “A”. The total reimbursement percentage share for this Agreement is the lesser of $1,900,000 or 100% of the total utility relocation construction cost.

2.1.e. **Suspension of Reimbursement.** If the Authority determines that any costs in an invoice are not allowable, the Authority shall return the invoice to 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. Sponsor may re-submit the invoice for payment after reviewing the invoice notice and making any necessary corrections. 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.e. (1) **Meeting.** Once a dispute has occurred, the Authority shall arrange a meeting between the Authority and the Sponsor 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 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.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 Audits.** The Authority shall have the right to conduct audits of all Sponsor’s records pertaining to the Project at any time of Project activities and up to four (4) years after completion of the Project. Such audits during Project construction include quality assurance and cost control of Sponsor’s construction management activities to assure use of funds are consistent with the Project scope of work described in Exhibit “A” or approved in writing by the Authority pursuant to Section 1.2.
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 3.4.

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 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. 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. 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. 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. 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, California 95202

**TO SPONSOR:**
Gordon McKay  
Director  
City of Stockton  
Public Works Department  
22 E. Weber Avenue  
Stockton, CA 95202

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 1.7 (obligation to apply funds to Project), Section 1.8 (obligation to provide copies and retain records), and Section 1.9 (obligation to continue to manage Project).

3.13.b. **Authority.** As to Authority, the following section shall survive discharge: Section 2.1.a (submittal deadline and payment of final invoice), and Section 2.2 (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 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. 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 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.

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3.22. **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.

CITY OF STOCKTON

By: __________________________
    KURT O. WILSON
    City Manager

SAN JOAQUIN COUNTY
TRANSPORTATION AUTHORITY

By: __________________________
    STEPHEN DRESSER
    Chair

ATTEST:

By: __________________________
    BONNIE PAIGE
    City Clerk

ATTEST:

By: __________________________
    ANDREW T. CHESLEY
    Executive Director

APPROVED AS TO FORM AND CONTENT:
JOHN M. LUEBBERKE.
City Attorney

APPROVED AS TO FORM:

By: __________________________
    Deputy City Attorney

By: __________________________
    STEVE DIAL
    Deputy Executive Director/CFO
Exhibit “A”

MEASURE K RENEWAL DELIVERY PLAN
APPLICATION FOR MEASURE K FUNDING
FOR THE LANDSCAPING AND MITIGATION PLANTING FOR THE FRENCH CAMP ROAD/I-5 INTERCHANGE PROJECT

This application is a request for reimbursement of construction, maintenance, and related costs for the landscaping and mitigation planting for the French Camp Road/I-5 Interchange project.

1. Project Name, Location:
Landscaping and Mitigation Planting for the French Camp Road/I-5 Interchange, Project No. 99-01. (See Attached Project Vicinity Map)

2. Project Sponsor:
City of Stockton

3. Contact Person, Phone No.:
Ray Deyto, Associate Civil Engineer
Phone Number: (209) 937-8869

4. Project Scope of Work:
The proposed project consists of installing landscaping and mitigation planting for the French Camp Road/I-5 Interchange project. The landscaping and mitigation planting is not part of the construction contract for the interchange, and is to be installed separately. The landscaping will be installed within Caltrans right-of-way. The mitigation planting will be installed along the French Camp Slough at both east and west sides of I-5 as required by the environmental document. The landscaping will have a three-year maintenance period while the mitigation planting will have a five-year maintenance period.

Funds requested for this cooperative agreement are for landscaping/mitigation planting, maintenance, contingency, construction management/support, biologist oversight, and necessary city staffing.

5. Expected Timing for Delivery of Project:

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<td>Complete Design</td>
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<td>Start Construction</td>
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<td>Complete Construction</td>
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<tr>
<td>Start Maintenance Period</td>
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<td>End Maintenance Period</td>
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6. Estimated Project Cost:

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<tr>
<td>Construction</td>
<td>$1,600,000</td>
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<tr>
<td>Contingency (20%)</td>
<td>$320,000</td>
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<tr>
<td>Construction Management/Support</td>
<td>$330,000</td>
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<tr>
<td>Maintenance</td>
<td>$200,000</td>
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<tr>
<td>Biologist</td>
<td>$200,000</td>
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<td>Total</td>
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Cost eligible for Measure K Renewal in this contract: \$1,900,000

7. Expected Timing for Release of Measure K Renewal Funds by Quarter:

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<td>$300,000</td>
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<td>$800,000</td>
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<td>July – September</td>
<td>$800,000</td>
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<td>TOTAL</td>
<td>$1,600,000</td>
<td>$300,000</td>
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8. Source(s) and Amount of Funds for Project:

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<thead>
<tr>
<th>Source</th>
<th>Amount</th>
<th>Percentage</th>
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<tr>
<td>MK Regional Arterial</td>
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<td>City PFF</td>
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9. Project Vicinity Map (see attached):