



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute San Joaquin Council of Governments (SJCOG) Cooperative Agreement Amendment No. 1 for Dial-A-Ride Capital Purchase

MEETING DATE: January 17, 2007

PREPARED BY: Public Works Director

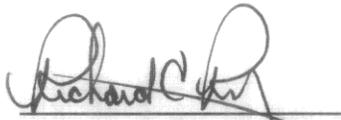
RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute San Joaquin Council of Governments (SJCOG) Cooperative Agreement Amendment No. 1 for Dial-A-Ride capital purchase.

BACKGROUND INFORMATION: The City of Lodi requested and received Measure K capital funds for use as the local match for a Congestion Mitigation/Air Quality (CMAQ) project to purchase five transit vehicles. These requests are eligible within the existing Measure K Ordinance and Expenditure Plan.

The original Measure K request was for \$125,000 in capital funds for Dial-A-Ride (DAR) services to match the CMAQ funding (\$300,000) the City received. The CMAQ grant was obtained earlier in a competitive process. The use of CMAQ funds has been delayed due to Federal and State processing. The proposed amendment will swap the CMAQ funding the City received for \$300,000 in Measure K which will allow the bus purchase to proceed sooner rather than later. The amended cooperative agreement total is \$475,000 and includes \$50,000 in previously approved Measure K matching funds for an earlier bus purchase.

FISCAL IMPACT: The Measure K funds will allow the City to purchase the proposed vehicles sooner, allowing for increased reliability in the fleet.

FUNDING AVAILABLE: N/A


Richard C. Prima, Jr.
Public Works Director

Prepared by Tiffani Fink, Transportation Manager
RCP/TMF/pmf
cc: Dennis Callahan, Fleet and Facilities Manager
Tiffani M. Fink, Transportation Manager

APPROVED: 
Blair King, City Manager

**DRAFT MEASURE K
COOPERATIVE AGREEMENT
FOR CITY OF LODI
DIAL-A-RIDE CAPITAL PURCHASE
AMENDMENT 1**

This Cooperative Agreement ("Agreement") is made and entered into this _____ day of January 2007, by and between the City of Lodi ("Sponsor") and the SAN JOAQUIN COUNCIL OF GOVERNMENTS acting as the 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 6, 1990; and

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

WHEREAS, the Dial-A-Ride Capital Purchase Project is eligible for Inter-City and Elderly and Handicapped Transit funds (as specified in the Measure K Strategic Plan) within the Passenger Rail and Bus funding category of the LTIP; and

WHEREAS, the Authority is authorized under the LTIP to issue Measure K funds to Sponsor as an eligible project under the ~~Commuter Transit/Intra-City~~ Inter-City and Elderly and Handicapped services category of the Passenger Rail and Bus Service program; and

WHEREAS, the Authority is authorized to issue Measure K funds in an amount not to exceed the lesser of ~~29%~~ 80% of total project costs or ~~\$175,000~~ \$475,000 for the Dial-A-Ride Capital Purchase Project as estimated by the Sponsor in Exhibit "A" starting FY 05/06 with a completion date of December 2007; and

WHEREAS, Authority expects that the Sponsor will supplement Measure K funds with available revenues as specified in Exhibit "A". The Use of Funds is for capital purchase costs only and not approved for operating costs; and

WHEREAS, Authority shall issue reimbursement payments as provided in Section 2.1 to Sponsor over the course of the Project and such funds shall be released 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 commitment set forth in the Project Cooperative Agreement of ~~\$175,000~~ \$475,000; 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 Project description, scope of work, delivery schedule, corridor-specific 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 and the Measure K "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.

1.3. Major Change in Capital Purchase Project. Any change in the intended use of the vehicles should be immediately reported to the Authority. If the Authority finds the change to be inconsistent with the scope of work specified in Exhibit "A", the Sponsor will reimburse the Authority for the fair market value of the vehicles. Minor changes, such as enhancing the vehicles, will not be a cause for reimbursement.

1.4. Eligible Reimbursement Costs. Eligible reimbursement costs shall be those costs as defined by the statutes, rules and regulations of the Federal Transit Administration and State of California, for Projects as specified and approved in the Project Cooperative Agreement or as may be approved from time to time by the Authority pursuant to Section 1.2. In no event shall expenses incurred prior November 1, 2005 be considered eligible reimbursement costs. Notwithstanding the provisions of this Section, the cost of purchasing vehicles pursuant to an agreement entered into prior to November 1, 2005 but not billed until after that date, are considered eligible reimbursement costs.

1.5. Measure K Percentage Share Defined. For this Project, the estimated Measure K percentage share of eligible reimbursements shall not exceed **the lessor of ~~29%~~ 80%** of the project total or ~~\$175,000~~ **\$475,000** except as provided in Section 1.10.

1.6. Invoices and Progress Reports. Starting one month after the execution of this contract, Sponsor shall provide monthly 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. Sponsor's Staff Expenses. Sponsor may include in the invoice staff expenses for the eligible costs of the project. Reimbursement payments for Sponsor's staff expenses in excess of ten percent (10%) of estimated operating costs as specified in Exhibit "A" shall be itemized by number of hours worked and the associated charge rate for those hours. Such amounts may include both direct and indirect costs, or these costs may be listed separately. **Reimbursements of sponsor staff expenses, when added to other reimbursements under this agreement, will not exceed the lessor of ~~29%~~ 80% of the project total or ~~\$175,000~~ \$475,000.**

1.6.b. Capital Purchase Expenses. Sponsor may include capital expense invoices both direct and indirect costs relating to the Project, and shall include in such invoices expense classifications such as Salaries and Wages, Fringe Benefits, Services, Materials and Supplies, Utilities, Insurance, Taxes, Purchased Transportation, Miscellaneous Expense and Local Depreciation.

1.6.c. Bimonthly Progress Reports. The monthly progress reports shall include a brief description of the status of the Project and the work completed to date. This progress report will be included with invoices submitted to the Authority.

1.7. Use of Funds. Sponsor shall use Measure K 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 operations 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.

1.9. Completion of Project. Sponsor shall be responsible for the timely completion of the Project and to provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work. The Co-operative agreement end date is December 2007. Within 30 days of its adoption, Sponsor shall copy and forward to the Authority the resolution certifying that the Project has been accepted as complete.

1.10. Cost Savings and Excess Costs.

1.10.a. Definition of Cost Savings. After the Project has been accepted by the Sponsor as complete, any positive difference between the total Project cost, as listed in Exhibit "A" or 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 Fund. If, according to the most recently amended Strategic Plan, the Project is not a segment of a larger project, or if all other segments of the larger project have been completed, the Authority shall allocate the Measure K share (as specified in Section 1.6) of the Project cost savings to the Measure K Cost Savings Fund. The Authority shall make these funds available for excess project costs as described in Section 1.10.d below.

1.10.c. Segmented Projects. If, according to the most recently amended

Strategic Plan, the Project is a segment of a larger project and other segments have not been completed, the Authority shall allocate the Measure K share (as specified in Section 1.6) 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 cost exceeds the estimate shown in Exhibit "A," this amount will be considered an excess cost. Sponsor may apply to the Authority to cover this excess cost. The Authority shall evaluate all applications and may allocate any available monies, if any, in the Measure K Cost Savings Fund to Sponsor to pay for excess costs not to exceed a per project allocation of 20% of the Measure K amount listed in Section 1.5. To receive additional Measure K funds above this 20% amount, the Sponsor must petition the Authority and request amendment of the Strategic Plan and reprogramming of the Project with a higher allocation of Measure K funds.

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 percentage share for each invoice submitted to the Authority. The reimbursement percentage share for this Project shall not exceed 29%.~~ **100%** for each invoice submitted to the Authority **not** to exceed \$475,000 Measure K share.

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. Advancement Options.

2.1.f.(1) 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
Interim Executive Director
San Joaquin Council
Of Governments
555 E. Weber Avenue
Stockton, CA 95202

TO SPONSOR:

Richard Prima
Public Works Director
City of Lodi
211 West Pine St.
P.O. Box 3006
Lodi, CA 95241

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 1.5 (obligation to apply funds to Project), Section 1.6 (obligation to provide copies and retain records), Section 1.7 (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. 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. 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 LODI

SAN JOAQUIN COUNCIL
OF GOVERNMENTS, acting as the Local
Transportation Authority

By: _____
BLAIR KING
City Manager

By: _____
John W. Harris
Chair

ATTEST:

ATTEST:

By: _____
Randi Johl
City Clerk

By: _____
ANDREW T. CHESLEY
Executive Director

APPROVED AS TO FORM

By: _____
STEVE DIAL
Deputy Director/CFO

By: _____
D. STEPHEN SCHWABAUER
City Attorney

EXHIBIT A

City of Lodi Dial-A-Ride Vehicles

1. Project Names, Locations: City of Lodi Dial-A-Ride Capital Purchase
Various Locations throughout Lodi

2. Project Sponsor, Contact Person, Phone Number:

City of Lodi
Tiffani M. Fink, 333-6800 x2678

3. Project Scope of Work:

The seven new vehicles will be utilized for the Dial-A-Ride service which not only serves the elderly and disabled of the City of Lodi but the communities of Woodbridge and Acampo. This service has been highly successful, but an aging vehicle fleet limits our availability.

The capital funds requested would provide the match for seven new vehicles that received funding from the Congestion Mitigation/Air Quality grant. Of the seven new vehicles, five will be replacements for the final five conventionally fueled vehicles that remain in the Transit fleet. The remaining two vehicles will replace two older vehicles, creating a reserve fleet that would be available when vehicles are in for maintenance or when service demands exceed the active fleet.

4. Expected Time of Delivery of Overall Project (indicate if task is already completed, and phasing of the project):

	<u>Start Date</u>	<u>Completion Date</u>
Vehicle Purchase	November 2005	December 2007

5. Estimated Project Cost (as applicable)

Vehicle Procurement	\$175,000.00	\$475,000.00
TOTAL	\$175,000.00	\$475,000.00

6. Expected Timing for Reimbursement of Sponsor by Quarter:

December 2007	\$175,000.00	\$475,000
Total	\$175,000.00	\$475,000

7. Sources and Amount of Matching Funds:

<u>Sources of Funds</u>	<u>Amount</u>	<u>Percentage</u>
Measure K	\$175,000.00 \$475,000	80%
CMAQ	\$420,000.00 \$120,000	20%
Total	\$595,000	100%

RESOLUTION NO. 2007-07

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE SAN JOAQUIN COUNCIL OF
GOVERNMENTS (SJCOG) COOPERATIVE AGREEMENT
AMENDMENT NO. 1 FOR DIAL-A-RIDE CAPITAL PURCHASE

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute San Joaquin Council of Governments (SJCOG) Cooperative Agreement Amendment No. 1 for the Dial-A-Ride capital purchase of five transit vehicles.

Dated: January 17, 2007

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I hereby certify that Resolution No. 2007-07 was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 17, 2007, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Katzakian, and Mayor Johnson
NOES: COUNCIL MEMBERS – None
ABSENT: COUNCIL MEMBERS – Hansen and Mounce
ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk