

**MASTER COOPERATIVE AGREEMENT  
BY AND AMONG THE  
CONTRA COSTA TRANSPORTATION AUTHORITY  
THE CITIES OF EL CERRITO, HERCULES, PINOLE, RICHMOND, AND SAN PABLO,  
THE COUNTY OF CONTRA COSTA  
AND THE  
WEST CONTRA COSTA TRANSPORTATION ADVISORY COMMITTEE**

**FOR THE 2006 SUBREGIONAL TRANSPORTATION MITIGATION FEE PROGRAM**

This AGREEMENT is made and entered into as of this 13<sup>th</sup> day of June, 2006, by and between the Contra Costa Transportation Authority, a local transportation and improvement authority organized under the provisions of California Public Utilities Code Section 180000 et seq., hereinafter referred to as AUTHORITY; the cities of El Cerrito, Hercules, Pinole, Richmond, San Pablo, and the County of Contra Costa, collectively referred to herein as SPONSORS; and individually as a SPONSOR, and the West Contra Costa Transportation Advisory Committee, a Joint Exercise of Powers Agency organized pursuant to a Joint Exercise of Powers Agreement among the cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo, the County of Contra Costa, and the transit agencies AC Transit, Bay Area Rapid Transit District, and Western Contra Costa Transit Authority, hereinafter referred to as WCCTAC. The AUTHORITY, SPONSORS, and WCCTAC shall sometimes be referred to collectively herein as the "Parties" and individually as a "Party".

**RECITALS**

**WHEREAS**, AUTHORITY, SPONSORS, and WCCTAC, pursuant to the Contra Costa Transportation Improvement and Growth Management Expenditure Plan and Ordinance (referred to herein as "Measure C") adopted and approved by the voters in 1988, and pursuant to the extension of the transportation sales tax (referred to herein as "Measure J") adopted and approved by the voters in November 2004, hereby desire to enter into a Cooperative Agreement for transportation improvements in West Contra Costa County to be funded in whole or in part by developer fees collected under the West County Subregional Transportation Mitigation Program ("STMP"). The 2006 program (the "2006 STMP") is intended to supersede the original STMP adopted in 1997 (the "1997 STMP"). The transition from the 1997 STMP to the 2006 STMP is outlined herein. This Agreement shall terminate and supersede the prior Master Cooperative Agreement Between Contra Costa Transportation Authority, the Cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo, the County of Contra Costa and the West Contra Costa Transportation Advisory Committee, dated September 17, 1997; and

**WHEREAS**, each SPONSOR by local ordinance or resolution, enacted the STMP, which levies a fee on new development to mitigate the impacts of new trips generated by that development in conformity with the Mitigation Fee Act (Gov. Code §§ 66000 et seq., referred to herein as the "Act"); and

**WHEREAS**, the 1997 STMP partially funded three projects – Highway 4 West, the El Cerrito Plaza BART Station Parking Structure, and the Richmond Intermodal Station Facilities Enhancement Program; and

**WHEREAS**, fees from the 2006 STMP are proposed to partially fund the following eleven regional transportation projects (collectively referred to herein as the “Projects” and individually as a “Project”):

1. Richmond Intermodal Station (*WCCTAC; Richmond Community Redevelopment Agency*);
2. Interchanges on I-80 at San Pablo Dam Road and Central Avenue, and on Highway 4 at Willow Avenue (*Authority*);
3. Capitol Corridor Improvements: Hercules Passenger Rail Station (*City of Hercules*) and capital improvements along the corridor (*WCCTAC; Capitol Corridor Joint Powers Authority*);
4. Ferry Service from Richmond and/or Hercules/Rodeo (*WCCTAC; San Francisco Bay Area Water Transit Authority, Cities of Richmond and Hercules*);
5. BART Access and/or Parking Improvements (*BART; WCCTAC*);
6. Bay Trail Gap Closure (*WCCTAC; East Bay Regional Park District*);
7. San Pablo Dam Road Improvements in downtown El Sobrante (*Contra Costa County*);
8. San Pablo Avenue Corridor Improvements (*WCCTAC Cities/Contra Costa County*);
9. North Richmond Road Connection Project (*Contra Costa County*);
10. Hercules Transit Center Relocation (*City of Hercules*); and
11. Del Norte Area Transit-Oriented Development Project Public Improvements (*City of El Cerrito*).

**WHEREAS**, the nexus findings, in conformity with Government Code section 66000 et seq. can be found in the 2006 STMP, including the “Project Nexus Discussion” for each project; and

**WHEREAS**, the designated lead agency for each project in the 2006 STMP (“Project Sponsor”) is listed in parenthesis in the above list (with participating agencies listed after the lead agency); and

**WHEREAS**, this Agreement outlines the roles and responsibilities of the Parties relative to the administrative, fiscal, and project management of the 2006 STMP projects; and

**WHEREAS**, WCCTAC is the primary responsible entity for the program, and will coordinate and administer the STMP expenditures, the priority for fee disbursements, and provide general management of the STMP consistent with its mission; and

WHEREAS, WCCTAC has evaluated the components of the 2006 STMP and finds that the establishment, imposition, collection, transfer and use of development fees for the purposes and Projects described herein are necessary to mitigate traffic impacts caused by new development and authorized by all applicable legal authorities;

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

**A. PURPOSE**

The purpose of this Agreement is to formalize the institutional arrangements for the collection, oversight, and expenditure of the 2006 STMP fees and the close out of the 1997 STMP program.

**B. CLOSE-OUT OF FEE COLLECTION AND EXPENDITURE FROM THE 1997 STMP**

Fees will no longer be collected for the Highway 4 West, the El Cerrito Plaza BART Station Parking Structure, and the Richmond Intermodal Station Facilities Enhancement Program projects as of the Effective Date.

1. Fees collected and unspent for the Highway 4 West project shall be spent no later than December 31, 2006.
2. Fees collected and unspent for the El Cerrito Plaza BART Station Parking Structure project shall be spent no later than December 31, 2006; or the funds may be transferred to the Del Norte Area Transit-Oriented Development Project in the 2006 STMP for design, engineering, and/or environmental activities.
3. Fees collected and unspent for the Richmond Intermodal Station Facilities Enhancement Program project shall be spent no later than December 31, 2006; or the funds may be transferred to the Richmond Intermodal Station project in the 2006 STMP for design, engineering, and/or environmental activities.

**C. FEES**

1. Imposition of the Fees. In order to fund the 2006 STMP, SPONSORS shall consider the adoption, by ordinance or resolution, the following developer fees, to be payable at the time of issuance of building permits:

<u>LAND USE</u>	<u>FEE</u>
Single-Family Residential	\$2,595/DU*
Multi-Family Residential	\$1,648/DU
Senior Housing	\$701/DU
Hotel	\$1,964/Room
Retail	\$1.82/KSF**
Office	\$3.51/KSF
Industrial	\$2.45/KSF

Storage Facility	\$0.53/KSF
Church	\$1.58/KSF
Hospital	\$4.21/KSF
Other	\$3,507 per AM peak hour trip

\*DU = Dwelling Unit

\*\*KSF = Thousand Square Feet

The fees for uses not listed above shall be determined by the SPONSOR collecting the fee according to information generated by appropriate traffic studies or other means of determining traffic impacts as approved by WCCTAC, or in accordance with the Institute of Traffic Engineers (ITE) Manual.

2. Tribal Gaming Facility Developments.

The Parties agree that a tribal gaming facility's subregional traffic impacts should be mitigated and that WCCTAC shall be included in any evaluation and determination of such impacts and their mitigation. Monies to pay for mitigation of such subregional impacts may be governed by a tribal-state compact or a tribal-local agency agreement. The collection of any such monies shall be subject to applicable state and federal law, including but not limited to the Indian Gaming and Regulatory Act, 25 U.S.C. §§ 2701-2721.

3. Transfer of the Fees.

No more than thirty (30) days following the close of each calendar quarter ending after the Effective Date, all STMP fee revenue collected by a SPONSOR will be transferred by the SPONSOR to the City of San Pablo with a brief Quarterly Report that describes the revenue and any fee reduction(s) granted by the SPONSOR. The City of San Pablo shall deposit the funds into a separate interest-bearing capital facilities account for the STMP revenues to be used solely for the purposes described herein, and in the fee resolutions or ordinances adopted by the SPONSORS pursuant to this Agreement. The revenues, including any accrued interest from the account, will be disbursed and expended only for the eleven projects identified in Section D below.

4. Project Sponsors; Oversight Responsibilities.

- i. WCCTAC is responsible for the oversight of: (1) the Richmond Intermodal Station project; (2) Ferry Service from Richmond and/or Hercules/Rodeo; (3) the Bay Trail Gap Closure project; and (4) the San Pablo Avenue Corridor Improvements.
- ii. The AUTHORITY is responsible for the oversight of the Interchanges on I-80 at San Pablo Dam Road and Central Avenue, and on Highway 4 at Willow Avenue.

- iii. The City of Hercules is responsible for the oversight of the Capital Corridor Improvements at the Hercules Passenger Rail Station and the Hercules Transit Center Relocation.
- iv. The San Francisco Bay Area Rapid Transit District is responsible for the oversight of BART Access and/or Parking Improvements.
- v. Contra Costa County is responsible for the oversight of the San Pablo Dam Road Improvements in downtown El Sobrante and the North Richmond Road Connection Project Public Improvements.
- vi. The City of El Cerrito is responsible for the oversight of the Del Norte Area Transit-Oriented Development Project.

5. Reports.

Pursuant to Government Code section 66006(b)(1), within 150 days after the end of each fiscal year, the City of San Pablo, in cooperation with the Project Sponsors, shall make available to the public and to SPONSORS a status report on the progress attained and costs incurred to date on each Project in the 2006 STMP, including but not limited to:

- i. A brief description of the type of fee in the account or fund.
- ii. The amount of the fee.
- iii. The beginning and ending balance of the account or fund.
- iv. The amount of the fees collected and the interest earned.
- v. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.
- vi. An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001 of the Government Code, and the public improvement remains incomplete.
- vii. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

viii. The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

6. Report Reviews.

Pursuant to Government Code section 66006(b)(2), SPONSORS shall review the information contained in the report referenced in Section C.5 of this Agreement at the next regularly-scheduled public meeting not less than fifteen (15) days after this information is made available to the public.

7. Periodic Findings.

Pursuant to Government Code section 66001(d), after the fifth fiscal year following the first deposit of 2006 STMP revenues and every five (5) years thereafter, WCCTAC shall make all required findings with respect to that portion of the fee account or fund remaining unexpended, whether committed or uncommitted, held by the City of San Pablo on its behalf. Such findings shall be made in connection with the release of public information required by Government Code section 66006(b) and Section C.5 of this Agreement.

8. Fee Adjustments.

A provision shall be included in the fee resolutions or ordinances adopted by SPONSORS pursuant to this Agreement, requiring automatic annual fee increases or decreases, effective July 1 of each year after 2006, based on the percentage change in the Engineering News-Record Construction Cost Index for the San Francisco Bay Area for the 12-month period ending with the June index of the same calendar year.

9. Exemptions.

Developments shall be exempted from the 2006 STMP and the development fees pursuant thereto if (1) the development has obtained rights vested prior to the effective date of the applicable 2006 STMP fee ordinance or resolution, pursuant to Government Code section 66498.1 or (ii) has entered into an agreement with a SPONSOR that expressly excludes the assessment of additional fees.

10. Credits.

A developer may receive credit against fees for the dedication of land for right-of-way and/or construction of improvements for specific 2006 STMP projects, where such right-of-way or construction is beyond that which would otherwise be required for approval of the proposed development. The calculation of the amount of credit against fees for 2006 STMP dedications or improvements shall be based upon a determination by SPONSOR that such credits are, in fact, exclusive of the dedications, setbacks, improvements, and/or traffic mitigation measures which are required by local ordinance, standards, or other practice. In addition, the credit shall be calculated based upon the actual cost of construction

of improvements or, in the case of land dedication, on an independent appraisal approved by the SPONSOR.

#### D. LIST OF PROJECTS

1. Richmond Intermodal Station. Public improvements including, but not limited to: the parking garage, station building, transit center, east side improvements, lighting and real-time transit information.
2. Interchanges on I-80 at San Pablo Dam Road and Central Avenue; and on Highway 4 at Willow Avenue. Upgrade and improve the interchange at I-80/San Pablo Dam Road, including provisions for bicyclists and pedestrians; enhance operations and vehicular, bicycle, pedestrian safety in the vicinity of the interchange. Modify and realign the interchange and ramp at I-80/Central Avenue and/or other improvements to improve access to I-80 and I-580 from Central Avenue. Relocate and realign ramps at Willow Avenue to meet current standards for improved local access and freeway movements.
3. Capitol Corridor Improvements. Parking, station platform, signage and plazas, rail improvements, etc., at the Hercules Passenger Rail Station and/or track improvements, drainage, fencing, safety improvements and/or other improvements along the Capitol Corridor line in West Contra Costa County.
4. Ferry Service to San Francisco from Richmond and/or Hercules/Rodeo. New ferry service utilizing high-speed vessels and funds for capital improvements such as terminals, landside improvements, parking, lighting, transit feeder service, signage, etc.
5. BART Access and/or Parking Improvements. Parking, aesthetic, and/or access improvements, station capacity improvements, sidewalks, lighting/restroom renovations, bicycle storage, expanded automatic fare collection equipment, etc. at the El Cerrito Plaza, El Cerrito Del Norte, and/or Richmond BART stations.
6. Bay Trail Gap Closure. Close gaps in the Bay Trail in West Contra Costa County, including, but not limited to the following: (1) the one-mile gap along the Richmond Parkway between Pennsylvania and Gertrude Avenues; (2) the 1.8 mile gap north of Freethy Boulevard to Payne Drive in Richmond; (3) the two-mile gap from Payne Drive to Cypress Avenue in Richmond; (4) the one-mile gap from Pinole Shores to Railroad Avenue in Pinole; and (5) the 1.8 mile gap from Railroad Avenue to Parker Avenue in Hercules.
7. San Pablo Dam Road Improvements in Downtown El Sobrante. Traffic calming, additional signals, pedestrian improvements, turn lanes, etc. that are identified in the Downtown El Sobrante Transportation and Land Use Plan (and subsequent documents).

8. San Pablo Avenue Corridor Improvements. Infrastructure improvements on San Pablo Avenue through West Contra Costa County within a half-mile radius of San Pablo Avenue in either direction and/or San Pablo Avenue SMART Corridor improvements.
9. North Richmond Road Connection Project. Extend Seventh Street northward to connect to an eastward extension of Pittsburg Avenue in North Richmond.
10. Hercules Transit Center. Relocate and expand the Hercules Transit Center on the east side of Highway 4.
11. Del Norte Area Transit Oriented Development Project Public Improvements. Parking facilities; bicycle, pedestrian, and/or bus transit access improvements; signage; lighting; improvements to station access or station waiting areas; improvements required under the Americans with Disabilities Act; improvements to adjacent streets, street crossings, or signals; and/or Ohlone Greenway improvements.

**E. FUNDING COMMITMENTS AND ELIGIBLE COSTS**

1. Use of Fees.

Fee revenues shall be available for Project costs through completion of construction. Costs include, but are not limited to, environmental clearance, conceptual planning and engineering, traffic studies, design, right-of-way acquisition, utility relocation, and costs of construction. Funding amounts are in 2005 dollars and actual funding commitments will depend upon the 2006 STMP fee revenues collected by the SPONSORS. Eligible Project costs will be determined by WCCTAC based on the cost criteria listed above and other factors consistent with applicable law, in WCCTAC's sole discretion. Project costs will be reimbursed pursuant to procedures determined by WCCTAC. Projects will be funded in accordance with Project readiness and other factors as determined pursuant to and as reflected in a Strategic Plan to be prepared in accordance with Section F below.

2. STMP Projects and Funding.

<i>Project Name</i>	<i>STMP Funding</i>
Richmond Intermodal Station	\$15,000,000
I-80 Interchanges at San Pablo Dam Road and Central Avenue; Interchange at Highway 4/Willow	\$14,280,000
Capitol Corridor Improvements	\$13,255,000
Ferry Service from Richmond and/or Hercules/Rodeo	\$12,650,000
BART access and/or parking improvements	\$25,330,000
Bay Trail Gap Closure	\$1,510,000
San Pablo Dam Road Improvements in Downtown EI	\$1,900,000



Sobrante	
San Pablo Avenue Corridor Improvements	\$1,650,000
North Richmond Road Connection Project	\$4,000,000
Hercules Transit Center Relocation	\$1,650,000
Del Norte Area Transit Oriented Development	\$6,875,000

**F. PROJECT IMPLEMENTATION SCHEDULE**

Subject to environmental clearance, right of way acquisition and dedication, utility relocation, and other factors (the timing of which may be beyond the control of AUTHORITY, SPONSORS, and/or WCCTAC), and subject to the availability of regional fee and other funding sources as may be required, the following implementation guidelines shall apply to projects in the 2006 STMP:

1. No later than nine months following the date of this Agreement, WCCTAC shall adopt a Strategic Plan that determines the full Project scope and description, prioritization, and implementation of the 2006 STMP Projects.
2. The Strategic Plan shall take into account the following: Project readiness; the availability of full funding, including funds from sources other than STMP fees; the status of pre-construction activities (planning, design, engineering, environmental); right-of-way clearance; community support for the Project; Project need; etc.

**G. ADMINISTRATIVE OVERSIGHT AND COST RECOVERY**

1. The following parties shall be entitled to recover the following costs and expenses:
  - i. City of San Pablo. The City of San Pablo is entitled to recovery of reasonable administrative costs and expenses actually incurred, not to exceed 1% of the STMP fee revenues disbursed under this Agreement during each quarterly period, to provide 2006 STMP financial and accounting services, including but not limited to serving as the repository of the STMP fee revenues and other funds collected under this Agreement and preparation of quarterly reports with the amount of fee revenues collected and the distribution of fees to the Projects.
  - ii. WCCTAC. WCCTAC is entitled to recovery of reasonable administrative costs and expenses actually incurred, not to exceed 2% of the STMP fees disbursed under this Agreement during each quarterly period to provide the 2006 STMP services relating to or incurred in the performance of the following duties: coordination, administration and oversight of Project expenditures; determination of the priority of fee disbursements; provision of general management of the Projects; and preparation of the Strategic Plan for the 2006 STMP.

- iii. Project Sponsors. For each Project over which a Project Sponsor has responsibility for administrative oversight, a Project Sponsor is entitled to recovery of reasonable administrative costs and expenses actually incurred, not to exceed 2% of the STMP fees disbursed under this Agreement during each quarterly period to provide the 2006 STMP services relating to or incurred in the performance of the following duties: provision of Project oversight and contract management.

## H. TERM

The term of this Agreement shall commence on \_\_\_\_\_, 2006, (the "Effective Date") and shall terminate on December 31, 2036, unless terminated earlier in accordance with the terms of this Agreement.

## I. TERMINATION

This Agreement will remain in effect until the termination date stated in Section H. above, unless terminated earlier by written agreement of the Parties. However, in no event shall the Parties to this Agreement terminate this Agreement if such a termination would conflict with, cause a default under or otherwise violate the terms or conditions of any revenue bonds.

## J. INDEMNIFICATION

1. AUTHORITY shall defend, indemnify, save and hold harmless WCCTAC; the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo; and the County of Contra Costa and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with any act or failure to act under this Agreement, or breach of any term of this Agreement, by AUTHORITY, except to the extent such claims, costs or liability arise from the negligence of WCCTAC, El Cerrito, Hercules, Pinole, Richmond, San Pablo, Contra Costa County or their officers, agents or employees.
2. WCCTAC shall defend, indemnify, save and hold harmless AUTHORITY; the Cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo; and the County of Contra Costa and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with an act or failure to act under this Agreement, or breach of any term of this Agreement, by WCCTAC, except to the extent such claims, costs or liability arise from the negligence of AUTHORITY, El Cerrito, Hercules, Pinole, Richmond, San Pablo, Contra Costa County or their officers, agents or employees.
3. El Cerrito shall defend, indemnify, save and hold harmless AUTHORITY; WCCTAC; the cities of Hercules, Pinole, Richmond and San Pablo; and the County of Contra Costa; and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with any act or failure to act under this Agreement, or breach of any term of this Agreement, by El Cerrito, except to the extent such claims, costs or liability arise from the negligence of

AUTHORITY, WCCTAC, Hercules, Pinole, Richmond, San Pablo, Contra Costa County or their officers, agents or employees.

4. Hercules shall defend, indemnify, save and hold harmless AUTHORITY, WCCTAC; the cities of El Cerrito, Pinole, Richmond and San Pablo; and the County of Contra Costa and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with any act or failure to act under this Agreement, or breach of any term of this Agreement, by Hercules, except to the extent such claims, costs or liability arise from the negligence of AUTHORITY, WCCTAC, El Cerrito, Pinole, Richmond, San Pablo, Contra Costa County or their officers, agents or employees.
5. Pinole shall defend, indemnify, save and hold harmless AUTHORITY; WCCTAC; the cities of El Cerrito, Hercules, Richmond and San Pablo; and the County of Contra Costa and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with any act or failure to act under this Agreement, or breach of any term of this Agreement, by Pinole, except to the extent such claims, costs or liability arise from the negligence of AUTHORITY, WCCTAC, El Cerrito, Hercules, Richmond, San Pablo, Contra Costa County or their officers, agents or employees.
6. Richmond shall defend, indemnify, save and hold harmless AUTHORITY; WCCTAC; the cities of El Cerrito, Hercules, Pinole and San Pablo; and the County of Contra Costa and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with any act or failure to act under this Agreement, or breach of any term of this Agreement, by Richmond, except to the extent such claims, costs or liability arise from the negligence of AUTHORITY, WCCTAC, El Cerrito, Hercules, Pinole, San Pablo, Contra Costa County or their officers, agents or employees.
7. San Pablo shall defend, indemnify, save and hold harmless AUTHORITY; WCCTAC; the cities of El Cerrito, Hercules, Pinole and Richmond; and the County of Contra Costa and their officers, agents and employees from any and all claims, costs and liability arising out of or in connection with any act or failure to act under this Agreement, or breach of any term of this Agreement, by San Pablo, except to the extent such claims, costs or liability arise from the negligence of AUTHORITY, WCCTAC, El Cerrito, Hercules, Pinole, Richmond, Contra Costa County or their officers, agents or employees.
8. Contra Costa County shall defend, indemnify, save and hold harmless AUTHORITY; WCCTAC; the cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo and their officers, agents or employees from any and all claims costs and liability arising out of or in connection with any act or failure to act under this Agreement, or breach of any term of this Agreement, by Contra Costa County, except to the extent such claims, costs or liability arise from the negligence of AUTHORITY, WCCTAC, El Cerrito, Hercules, Pinole, Richmond, San Pablo, or their officers, agents or employees.

9. WCCTAC agrees to the fullest extent legally permitted to defend, indemnify and hold harmless the Parties from any liability, loss, costs, and claims related to the adoption or implementation of the 2006 STMP. WCCTAC will pay any and all legal costs incurred by any SPONSOR in any legal proceeding brought to collect a fee, where the defense of such lawsuit raises the issue of the constitutionality or legality of the fee.

#### **K. PRIMACY OF THE DOCUMENTS**

If a dispute arises, the terms of this Agreement shall take precedence over the WCCTAC Joint Exercise of Powers Agreement (“JEPA”) and /or the model Ordinance Establishing the West Contra Costa Subregional Transportation Mitigation Program (“Ordinance”).

#### **L. ALTERNATIVE DISPUTE RESOLUTION**

1. In General. This Paragraph L. establishes the exclusive process by which disputes between or among the Parties to this Agreement concerning or relating to this Agreement shall be resolved. The dispute resolution process established herein shall apply to disputes related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement. Disputes that are not alleged to relate to the interpretation of, or compliance with, this Agreement are not subject to this dispute resolution process.
2. Informal Conferral. If a dispute arises as described above in Paragraph L.1., the parties to the dispute (the “Disputing Parties”) will first attempt to resolve it through informal discussions, which may include designated representatives of the staff of WCCTAC, AUTHORITY and SPONSORS, at their discretion. Disputing Parties will advise the other Parties of the existence of a dispute and coordinate the date, time and location of informal conferral.
3. Mediation. In the event a dispute cannot be resolved through informal conferral within twenty-one (21) calendar days, the aggrieved Disputing Party, acting through its governing body, shall give written notice to all other Parties to this Agreement, setting forth the nature of and basis for the dispute and facts demonstrating that such Disputing Party is materially and adversely affected thereby. The Disputing Parties, acting through their designated representatives, including counsel, shall endeavor to settle the dispute by mediation. The Disputing Parties shall select a neutral third party with expertise in land use matters to mediate the dispute. The other Parties may, but are not required to, participate in the mediation.
4. Judicial Review. The dispute resolution process described above shall be undertaken in good faith and exhausted prior to resort to judicial review; provided, however, that by agreeing to this dispute resolution process, no Party hereby loses or waives its right to sue under any applicable statute of limitations or loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. In the event that an applicable statute of

limitations would run during the pendency of the dispute resolution process described above, the Disputing Parties shall agree in writing to toll such statute of limitations for such period as may reasonably be necessary to complete the dispute resolution process, but in no event shall such statute of limitations be tolled for more than ninety (90) calendar days.

5. **Conduct of Judicial Review.** Should any Party to this Agreement ultimately seek judicial review of a dispute concerning or relating to the implementation, interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement, all Parties will submit to the jurisdiction of a court of competent jurisdiction; provided, however, that the Parties shall cooperate in seeking the appointment of a neutral Judge as defined in California Code of Civil Procedure section 394 to sit in Contra Costa County Superior Court, to preside over any such dispute.
6. **Equitable Relief.** Because the amount of damages in the event of a breach of this Agreement may be difficult or impossible to determine, the obligations of the Parties to this Agreement shall be enforceable by specific performance or other equitable relief, in addition to any other available remedy.

**M. NOTICES**

Any notices which may be required under this Agreement shall be in writing, shall be effective upon receipt, and shall be given by personal service, by certified or registered mail, or by U.S. mail, to the City Clerks of the cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo; to the Board Clerk for the County of Contra Costa; and to the Executive Director of the AUTHORITY, and to the individuals and addresses set forth below, or to such other addresses which may be specified in writing to the Parties.

**To WCCTAC:**  
13831 San Pablo Avenue  
San Pablo, CA 94806  
Attn: Managing Director

**To City of El Cerrito:**  
10890 San Pablo Avenue  
El Cerrito, CA 94530  
Attn: City Clerk

**To City of Hercules:**  
111 Civic Drive  
Hercules, CA 94574  
Attn: City Clerk

**To City of Pinole:**  
2131 Pear Street  
Pinole, CA 94564  
Attn: City Clerk

**To City of Richmond:**  
1401 Marina Way South  
Richmond, CA 94804  
Attn: City Clerk

**To City of San Pablo:**  
13831 San Pablo Avenue  
San Pablo, CA 94806  
Attn: City Clerk

To **County of Contra Costa**:  
651 Pine Street, 1<sup>st</sup> Floor  
Martinez, CA 94553  
Attn: Clerk of the Board of Supervisors

To the **AUTHORITY**:  
3478 Buskirk Avenue, Suite 100  
Pleasant Hill, CA 94523  
Attn: Executive Director

**N. 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.

**O. INTEGRATION**

Except with respect to matters provided for in the JEPAs and/or the Ordinance and subject to the primacy of this Agreement as provided in Paragraph K hereto, this Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. No representation, 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.

**P. AMENDMENT**

This Agreement may not be changed, modified, or rescinded except in a written instrument signed by all of the Parties. Any attempt at oral modification of this Agreement shall be void and of no effect.

**Q. INDEPENDENT AGENCIES**

1. None of the agents or employees of the City of San Pablo shall be considered agents or employees of the AUTHORITY, or the other SPONSORS.
2. None of the other SPONSORS' agents or employees shall be considered agents or employees of the City of San Pablo.
3. None of the AUTHORITY's agents or employees shall be considered agents or employees of the City of San Pablo.

**R. ASSIGNMENT**

The Agreement, and the rights, duties, and obligations of a Party hereunder, may not be assigned, transferred, hypothecated, or pledged by any Party without the express written consent of the other parties.

**S. BINDING ON SUCCESSORS, ETC.**

The Agreement shall be binding upon the successor(s), assignee(s), or transferee(s) of the AUTHORITY, the SPONSORS, or WCCTAC 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.

**T. SEVERABILITY**

Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of any 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.

**U. HEADINGS; RECITALS**

The headings of sections, paragraphs and subparagraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction. The recitals are intended to be, and shall be deemed to constitute, part of this Agreement.

**V. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed and attested by their respective officers, duly authorized so to act, as of the date set forth in the first paragraph of this Agreement.

**City of Pinole**

**City of San Pablo**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney


\_\_\_\_\_  
City Attorney

**County of Contra Costa**

By:   
Chair, Board of Supervisors

*June 13, 2006*

ATTEST: John Cullen, Clerk of the Board of Supervisors and County Administrator

By:   
Deputy

APPROVED AS TO FORM:  
Silvano B. Marchesi  
County Counsel

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

**Contra Costa Transportation Authority**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Authority Legal Counsel

**City of Hercules**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**West Contra Costa Transportation Advisory Committee**

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Legal Counsel

**City of El Cerrito**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**City of Richmond**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



APPROVED AS TO FORM:

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City Attorney

APPROVED AS TO FORM:

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City Attorney

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