

**MEASURE A
PROJECT COOPERATIVE AGREEMENT
For Projects Awarded to City of Lompoc in Cycle 3 of the Measure A North County Safe Routes to
School Bicycle and Pedestrian Program**

This Cooperative Agreement ("Agreement") is entered into by and between the CITY OF LOMPOC ("Sponsor") and the SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS, acting as the Santa Barbara County Local Transportation Authority ("Authority" or "SBCAG").

RECITALS

WHEREAS, Authority and Sponsor desire to enter into a Cooperative Agreement to coordinate the funding of transportation improvements in Santa Barbara County pursuant to the authority provided by the Road Repair, Traffic Relief and Transportation Safety Measure ("Measure A"), which was approved by the voters of Santa Barbara County on November 4, 2008; and

WHEREAS, Sponsor has proposed that Authority provide funding from the Measure A North County Safe Routes to School Bicycle and Pedestrian Program specified herein ("Program") to Sponsor's projects for the particular transportation improvement project work specified herein ("Project"); and

WHEREAS, Authority has determined that the Project is eligible as approved by the SBCAG Board on May 21, 2020 for Measure A funds; and

WHEREAS, Authority is authorized to issue Measure A funds to Sponsor for eligible projects; and

WHEREAS, Authority and Sponsor desire to have this Agreement serve as the Agreement for Authority to provide Measure A funding to Sponsor for eligible projects proposed by Sponsor, provided that such funding has been authorized by the Board of the Authority.

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:

**SECTION I
Covenants of Sponsor**

Sponsor shall:

- 1.1 **Project Description.** The Project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will supplement Measure A funds, and the anticipated timing for release of Measure A funds are specified in Exhibit A attached to this Agreement and incorporated herein by reference. Sponsor shall be solely responsible for implementing and carrying out the Project.

- 1.2 Change In Project Description. Any substantial change in the Project Description shall not be eligible for funding by Authority unless approved in writing by Authority. Any portion of the Project implemented by Sponsor prior to Authority's written approval shall not be eligible for reimbursement unless subsequently approved by Authority in writing, and in no event will any change in scope result in Authority reimbursing more than the amount awarded for the Project.
- 1.3 Eligible Reimbursement Costs. Eligible project costs are specified in Exhibit A or as may be approved from time to time by Authority pursuant to Section 1.2. In no event shall expenses incurred prior to the execution of this Agreement be considered eligible reimbursement costs.
- 1.4 Measure A Percentage Share Defined. Measure A funding is being provided by Authority to Sponsor for the Projects in Exhibit A. The percentage share of Measure A funding shall be the Measure A Percentage shown in a project's respective exhibits, and shall not exceed the total Measure A amount shown in the same exhibit. Each invoice submitted by Sponsor shall be reimbursed by Authority at this percentage up to the not to exceed total Measure A amount shown in the exhibit. Sponsor matching funds shall be used to pay for the remainder of Project costs.
- 1.5 Invoices and Progress Reports. Sponsor shall submit semi-annual progress reports and invoices for work completed consistent with the Program guidelines as adopted by the SBCAG Board on November 21, 2019. These documents shall include the following specified information:
 - 1.5.a Invoices. Sponsor shall provide Authority with one (1) copy of all invoices submitted to Sponsor by every contractor, subcontractor, consultant, or subconsultant as appropriate and any other backup documentation required to support direct and indirect costs for which a Sponsor submits an invoice.
 - 1.5.b Progress Reports. Progress reports shall include a brief description of the status of the Project including the work completed to date. This summary may be included on the invoices submitted to Authority or be attached to those invoices.
- 1.6 Use of Funds. Sponsor shall use existing Measure A funds consistent with the project description in Exhibit A to this Agreement or as approved by Authority pursuant to Section 1.2.
- 1.7 Submittal of Documents. Sponsor shall provide copies to Authority of all executed contracts that relate to the Project scope as described in Exhibit A to this Agreement and Section 1.3 or approved by Authority pursuant to Section 1.2. Sponsor shall retain records pertaining to the Project for a five (5) year period following completion of the Project.
- 1.8 Completion of Project. Sponsor shall be responsible for meeting the timely use of funds deadlines in corresponding Exhibit A. Unused funds programmed to the Project will be forfeited and be made available by Authority for programming to other projects in a special or subsequent funding cycle. Sponsor shall provide management of any consultant and

contractor activities, including responsibility for schedule, timely use of funds, budget and oversight of the services, consistent with the scope of work. This provision shall apply in all instances, including situations where a change in scope has been approved by Authority pursuant to Section 1.2.

1.8.a Project Completion Report. Within 6 months of Project completion, Sponsor shall provide a project completion report to Authority that includes final cost, revenues, and schedule of completed and future activities. For construction projects, pictures of the completed project must accompany the report. Whenever possible, pictures of the “before” project conditions should also be submitted. This Report shall accompany the final invoice for payment from Sponsor to provide notice of Agreement account closing by Authority. The Report shall meet all requirements set forth in Authority’s Program Guidelines.

1.8.b Timely Use of Funds Extension. In accordance with Authority’s Cycle 3 Program Guidelines Timely Use of Funds policy, Sponsor may request one extension of up to 12 months for plans and studies, up to 6 months for preliminary engineering, environmental, and design projects, and up to 18 months for construction projects. Extension requests will be presented to the North County Subregional Committee which will make recommendations to the SBCAG Board.

Authority may extend the deadline for timely use of funds no more than one time and only if it finds that an unforeseen and extraordinary circumstance beyond the control of Sponsor has occurred that justifies the extension. The extension will not exceed the period of delay directly attributed to the extraordinary circumstances and will in no event be for more than the duration described in the above paragraph and in Authority’s Cycle 3 Program Guidelines.

1.9 Public Outreach. Sponsor is responsible for development and administration of a public outreach effort to ensure public awareness and involvement in the Project development and delivery process. Sponsor shall provide a copy of the public outreach plan and all materials documenting the public outreach activities, including public notices, press releases, flyers, etc. to Authority. The public outreach plan must accompany the first invoice for payment from Sponsor. The materials documenting the public outreach activities must accompany the final invoice for payment from Sponsor.

1.10 Provision of Signs. Sponsor shall install signs consistent with Authority’s Project Signs Guidelines and Specifications as adopted by the SBCAG Board on August 18, 2011, or as appropriate.

1.11 Cost Savings and Excess Costs

1.11.a Cost Savings. After the Project has been accepted by Sponsor and Authority as complete, any positive difference between the cost, as listed in Exhibit A to this Agreement or approved by Authority pursuant to Section 1.2, and the total amount invoiced to Authority shall revert to the Measure A program for re-programming by Authority on other eligible projects.

- 1.11.b Excess Costs. In the event the actual Project cost exceeds the estimate shown in Exhibit A to this Agreement, this amount will be considered an excess cost. Sponsor is solely responsible for all costs over the amount identified in Section 1.3 or as approved pursuant to Section 1.2.
- 1.11.c Reconciliation of Excess Costs. Excess project costs to complete a project are not eligible for reimbursement unless approved pursuant to Section 1.2. The amount of Measure A funds as identified in Section 1.3 are the maximum funds available for reimbursement to Sponsor and cannot be increased unless agreed to by Authority pursuant to Section 1.2. Sponsor shall request an amendment if needed for this purpose in writing to Authority. Such amended agreement shall be effective only if signed and approved by the duly authorized representatives of both Authority and Sponsor.
- 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 insureds and sureties suspected of any acts, errors, or omissions committed during business activities that economically or legally damage the project.
- 1.13 Division of Labor and Materials. Sponsor agrees to furnish or cause to be furnished all labor, materials, equipment, required licenses, permits, fees, and other appropriate legal authorization from all applicable federal, state, and local jurisdictions necessary to perform and complete, per schedule, in a professional manner, the obligations described herein.
- 1.14 Implementation of Project. Sponsor may implement projects herein through private organizations and nonprofit entities as designated on the Exhibit A.

SECTION II

Covenants of Authority

Authority shall:

- 2.1 Reimbursement Payments. Authority shall make reimbursement payments to Sponsor or implementing party designated pursuant to Paragraph 1.14 for eligible project costs within 45 days of receipt of an invoice as specified in the Exhibit A to this Agreement, except where payment is subject to provisions of Paragraphs 2.1.a through 2.1.b.4.
- 2.1.a Ineligible Costs. Authority reserves the right to adjust current or future reimbursement payments to Sponsor if an invoice includes ineligible costs.
- 2.1.b Suspension of Reimbursement. If Authority determines that any costs in an invoice are not allowable, or lack supporting progress reports, 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

dispute 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.b.1 Meeting. Once a dispute has occurred, Authority shall arrange a meeting between Authority and Sponsor staff to discuss and attempt to resolve the dispute.

2.1.b.2 Subregional Committee. If an agreement cannot be reached at the meeting, then Sponsor or Authority shall have the option to take the dispute to Authority's North County Subregional Committee, as appropriate. In this case reimbursement for the disputed cost item(s) will be delayed until a resolution of the matter is reached.

2.1.b.3 Authority's Board Decision. If Sponsor or Authority disagrees with the resolution by the Subregional Committee then the dispute shall be submitted to Authority's Board for resolution. If the Board determines that the disputed cost item(s) is ineligible, Authority shall not provide reimbursement payment to Sponsor for the disputed item(s). If the Board determines that the disputed cost item(s) is eligible, then Authority shall provide reimbursement payment to Sponsor for the disputed cost.

2.1.b.4 Reservation of Rights. By utilizing the above procedures, Sponsor does not surrender any rights to pursue available legal remedies if Sponsor disagrees with the Board decision.

2.2 Authority's Payment shall not constitute Waiver. Authority's failure to discover or object to any ineligible project cost or billing prior to payment shall not constitute a waiver of Authority's right to require Sponsor to correct such work or billing or seek any other legal remedy.

2.3 Right to Conduct Audit; Record Keeping. Authority shall have the right to conduct an audit of all Sponsors' records pertaining to the Agreement at any time during the course of construction and up to a five (5) year period after completion of the Agreement.

2.4 Records. Sponsor shall keep and provide to Authority or its agents, upon request, accurate financial records (including invoices and published price lists on which this Agreement was based) necessary to enable Authority to review Sponsor's performance of this Agreement. These records shall demonstrate the funding has been used as described in the Project Description. Sponsor shall maintain all such records for at least five years after completion of the project.

SECTION III
General Covenants

- 3.1 Term. Sponsor shall commence performance in accordance the Cycle 3 Guidelines and the delivery schedule set forth in Exhibit A. The Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.14, unless otherwise directed by SBCAG or unless earlier terminated.
- 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 Projects. 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 Projects as certified by Authority.
- 3.3 Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Sponsor:
- 3.3.a Sponsor shall defend, indemnify and save harmless Authority, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof by Sponsor or any of its officers, agents, contractors or employees; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of Authority or any of its officers, agents, contractors or employees.
- 3.3.b Authority shall defend, indemnify and save harmless Sponsor, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof by Sponsor or any of its officer, agents, contractors or employees; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of Sponsor or any of its officers, agents, contractors or employees.
- 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:

<p>AUTHORITY Santa Barbara County Association of Governments 260 North San Antonio Road, Suite B Santa Barbara, CA 93110</p>	<p>SPONSOR City of Lompoc 100 Civic Center Plaza Lompoc, CA 93436</p>
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Either party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.5. All other notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

- 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. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.
- 3.8 Non-Partnership. This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein. Sponsor and Sponsor’s subcontractors shall perform all services under this Agreement as independent parties and not as employees, officers or agents of Authority.
- 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 Authority or as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.
- 3.11 Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force

and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

- 3.12 Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.13 Survival. The following provisions in this Agreement shall survive discharge:
- 3.13.a Sponsor. As to Sponsor, the following sections shall survive discharge: Section 1.6 (obligation to apply funds to the Project), Section 1.7 (obligation to provide copies and retain records), Section 1.8 (obligation to continue to manage the Project).
- 3.13.b Authority. As to Authority, the following section shall survive discharge: Section 2.3 (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 Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure A. If for any reason 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 Authority's ability to fund the Project, 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. Maintenance of records, right to audit, and indemnification shall survive. 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 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.
- 3.16 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.
- 3.17 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. As applicable, the Cycle 3 Guidelines are incorporated herein by reference.
- 3.18 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.

- 3.19 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.
- 3.20 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.
- 3.21 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.

ATTEST:

SBCAG, acting as the SANTA BARBARA COUNTY
LOCAL TRANSPORTATION AUTHORITY:

By: _____
Marjie Kirn, Executive Director

By: _____
Gregg Hart, Chair

APPROVED AS TO ADMINISTRATION:

CITY OF LOMPOC

By: _____
James Throop, City Manager

By: _____
Jenelle Osborne, Mayor

APPROVED AS TO FORM:
Jeff Malawy
City Attorney

APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel

By: _____

By: _____
Deputy County Counsel

Exhibits:

Exhibit A – Project Scope, Cost, Schedule and Funding Plan for Cypress Avenue & A Street Sidewalk Infill & Pedestrian RR Crossing Project



EXHIBIT A

PROJECT SCOPE, COST, SCHEDULE AND FUNDING PLAN



Project Sponsor(s): City of Lompoc

Measure A Project ID #: MSA-3-2

Contract Administrator: City of Lompoc

Project Implemented by: City of Lompoc

Project Name: Cypress Avenue & A Street Sidewalk Infill & Pedestrian Railroad Crossing Project

Project Scope: The Cypress Avenue & A Street Sidewalk Infill & Pedestrian Railroad Crossing Project includes design and construction of sidewalk and pedestrian railroad crossing at the SW corner of A St and Cypress Avenue. This project will eliminate the only sidewalk gap along Cypress Avenue between Lompoc Valley Middle School and Hapgood Elementary, and will improve safety for students traversing around the railroad drainage structure and onto the street while walking to and from school.

Project Location: In Lompoc

Project Contact: Christos Stoyos, City of Lompoc

Project Payment: Payment made from SBCAG to City of Lompoc upon approval of invoice and submittal to SBCAG.

Funding Program: North County Safe Routes to School/Bike Ped Program Cycle 3

Project Phase	Description	Project Cost Estimate	Measure A Amount	Measure A %	Sponsor funding amount	Sponsor funding %	Project Schedule		Timely Use of Funds Deadline
							Start	Finish	
DESIGN & CON	Design and Construction	\$55,000	\$45,000	82%	\$10,000	18%	May 2021	August 2021	6/30/2023
Total		\$55,000	\$45,000		\$10,000				