

TAM AGREEMENT #2007-003

**FUNDING AGREEMENT
BETWEEN
TRANSPORTATION AUTHORITY OF MARIN
AND
COMMUNITY DEVELOPMENT AGENCY
FOR THE
COUNTY OF MARIN**

This AGREEMENT is made this _____ day of _____, 2007, by and between the Transportation Authority of Marin, hereinafter referred to as "TAM", a local public agency, and the Community Development Agency for the County of Marin, hereinafter referred to as "RECIPIENT", a local public agency.

SECTION 1. RECITALS

1. The voters of Marin County approved the authorization of Measure A at the General Election held on November 2, 2004, thereby authorizing that TAM be given the responsibility to administer the proceeds from a one-half cent transaction and use tax.
2. The duration of the tax will be 20 years from the initial year of collection, which began April 1, 2005, with said tax to terminate on March 31, 2025.
3. The tax proceeds will be used to pay for the programs and projects outlined in the Measure A Expenditure Plan.
4. TAM has developed a Strategic Plan, updated every two years, to provide guidance on implementing the Measure A Expenditure Plan.
5. The Strategic Plan, developed to provide guidance on implementing the Measure A Expenditure Plan, programs Measure A funds over a 20 year period to the four strategies listed in the Expenditure Plan, including Strategy 2 for the Highway 101 High Occupancy Vehicle (HOV) Gap Closure Project.
6. The Puerto Suello Bicycle/Pedestrian Path Project is an eligible component of the Highway 101 HOV Gap Closure Project.
7. TAM programmed County Transportation for Livable Communities (TLC) funds to the County of Marin in the amount of \$198,906 to improve traffic, pedestrian and bicycle safety in the vicinity of the Fireside Apartments at 115 Shoreline Highway.
8. TAM authorized the equal exchange of federal TE funds with MTC for Measure A funds in the amount of \$2,432,000, allowing MTC to program Marin County's share of TE funds (\$2,432,000) to the Puerto Suello Bicycle/Pedestrian Path Project with the commitment from TAM to allocate equal amount of Measure A funds to local projects that would have been funded with TE, TLC, and Housing Incentive Program (HIP) funds.

9 In exchange for the TE funds programmed for the Puerto Suello Bicycle/Pedestrian Path Project, the County of Marin would receive an allocation of \$198,906 in Measure A funds to complete the Fireside Apartment Traffic Safety Project.

SECTION 2. PURPOSE OF FUNDING AGREEMENT

This AGREEMENT is entered into by and between TAM and RECIPIENT to document the funding conditions necessary for the RECIPIENT to comply with applicable law and TAM policies. This AGREEMENT consists of additional documents stated in these sections as being attached hereto and incorporated in the AGREEMENT by reference.

SECTION 3. PROJECT DEFINITION AND SCOPE

This AGREEMENT, approved through Resolution 2006-13 of TAM, in accordance with the requirements of TAM's Measure A Expenditure Plan and Strategic Plan, is made for the following purposes identified in the RECIPIENT's Measure A Sales Tax Program Allocation Request Form (Attached):

Fireside Apartment Traffic Safety Project

Additional information on project scope is included in the Measure A Sales Tax Program Allocation Request Form.

SECTION 4. GRANT

TAM hereby grants to the RECIPIENT the sum of \$198,906 as designated in Resolution No. 2006-13, approved July 27, 2006, which is included in this AGREEMENT by reference.

SECTION 5. COST ELIGIBILITY

Cost eligibility shall be determined by TAM's Strategic Plan policies. All costs incurred by RECIPIENT prior to the date of execution of this AGREEMENT shall be ineligible for reimbursement by TAM, except projects identified in the Strategic Plan as ongoing operating needs. Such projects, which rely on ongoing annual funding, may incur costs either at the date of the authorizing Board resolution or the start of the fiscal year, whichever comes later.

While these costs shall be eligible for reimbursement in the situations cited above, the timing and amount of reimbursement will be subject to a TAM allocation, based on available revenues, other anticipated project requests, and project category and subcategory limits established in the Strategic Plan and Expenditure Plan. Any waiver of cost eligibility policies must be included in the Measure A Sales Tax Program Allocation Request Form as approved by TAM.

SECTION 6. BUDGET AND SCOPE

RECIPIENT shall maintain a project or program budget. RECIPIENT shall carry out the project and shall incur obligations against and make disbursements of the grant in conformity with TAM's requirements and the budget. The project or program budget may be revised from time to time through the submission of a revised budget to TAM.

RECIPIENT may not make any changes to the scope of the project without prior written approval of TAM. Approval by TAM of a change of scope shall not constitute an increase in the grant amount unless additional funds are specifically provided.

SECTION 7. PROJECT MANAGEMENT

RECIPIENT shall be responsible for the project and provide management of consultant and contractor activities for which RECIPIENT contracts, including responsibility for schedule, scope, and budget, consistent with TAM's resolution allocating the grant unless otherwise agreed upon in writing.

SECTION 8. PROJECT OVERSIGHT

RECIPIENT shall cooperate with TAM's project management team and shall provide any requested project information.

SECTION 9. ATTRIBUTION AND SIGNAGE

If any portion of grant funds is used for production of reports, acknowledgment of the TAM's role shall be included in the documents. If any portion of grant funds is used for construction, RECIPIENT shall, upon initiation of field work or at the earliest feasible time thereafter, install and maintain a sign at the construction site identifying Measure A Local Transportation Sales Tax Funds and TAM (e.g., TAM and RECIPIENT's logos – "Your Measure A Sales Tax Dollars at Work"). For non-construction capital purchases funded by any portion of grant funds, RECIPIENT shall affix permanent signage identifying TAM and the Sales Tax Funds as a funding source. RECIPIENT shall demonstrate compliance with attribution and signage requirements as an indispensable condition for authorization of Measure A reimbursement for project expenses.

SECTION 10. PRESS RELEASES

RECIPIENT shall notify TAM in advance of any press releases about project and program activities, particularly groundbreakings and ribbon cuttings, in connection with grant funds expended pursuant to this AGREEMENT.

SECTION 11. COMPLIANCE WITH LAW

In the performance of its obligations pursuant to this AGREEMENT, RECIPIENT shall keep itself fully informed of the federal, state and local laws, ordinances and regulations in any manner affecting the performance of this Agreement, and must at all times comply with such laws, ordinances, and regulations as they may be amended from time to time.

SECTION 12. ENVIRONMENTAL COMPLIANCE

RECIPIENT shall undertake all environmental mitigation measures that may be identified as commitments in applicable documents (such as environmental assessments, environmental impact statements and reports, and memoranda of agreement) and comply with any conditions imposed as a part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in this AGREEMENT by reference. Recipient shall be responsible for obtaining all necessary environmental permits for performance of work.

SECTION 13. FINANCES

All costs charged to the project shall be supported by properly prepared and documented time records, invoices, or vouchers evidencing in detail the nature and propriety of the charges and the basis for the percentage charged to TAM.

SECTION 14. RECORDS

All checks, payrolls, invoices, contracts, vouchers, journal entries, work orders, or other accounting documents pertaining in whole or in part to the project shall be maintained by RECIPIENT for a period of three (3) years after the later of project closeout or termination of grant. Such project documents shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other similar documents not pertaining to the project.

SECTION 15. REIMBURSEMENTS

Payment shall be made by TAM for costs reimbursable under the terms of this AGREEMENT and incurred prior to the termination date of this AGREEMENT. Payment to RECIPIENT of the grant shall be upon written approval by TAM, upon submittal by RECIPIENT of appropriate support documentation and identification of expenses incurred.

Reimbursements shall not exceed the schedule shown in the Measure A Sales Tax Program Allocation Request Form - Fiscal Year Cash Flow Availability. RECIPIENT may make a request for exceptions in writing. Exceptions may be made at the sole discretion of TAM. Reimbursement requests, with appropriate documentation, may be submitted on a regular basis but no more frequently than monthly.

Each reimbursement request shall include RECIPIENT'S certification that the amounts sought are only for project elements included in the Allocation Request Form, and that RECIPIENT is in compliance with TAM's requirements mentioned in this AGREEMENT.

SECTION 16. ELIGIBLE EXPENSES

RECIPIENT shall expend funds only on eligible expenses as follows: operating costs, direct staff time (salary and benefits), consultants; right of way engineering and acquisition costs (including permitting), and competitively bid construction contracts. Indirect costs (as defined by OMB Circular A-87) will not be considered an eligible expense. Funds shall also be expended according to the applicable provisions of the Expenditure Plan, Short Range Transit Plan (SRTP), and of the Public Utilities Code Section 180000 et seq.

SECTION 17. AUDITS

TAM reserves the right at any time to conduct or require a financial or performance audit of the RECIPIENT'S compliance with this AGREEMENT. TAM will give advance notice of the requirement. RECIPIENT shall permit TAM, or any of its duly authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records, and accounts of the RECIPIENT and its contractors with regard to the project.

SECTION 18. THIRD PARTY CONTRACT AUDITS

TAM reserves the right to request an audit of other third party contracts for any reason. If RECIPIENT is subject to third party financial audit requirements imposed by another funding source, copies of audits performed in fulfillment of such requirements shall be provided to the TAM.

SECTION 19. CLOSEOUT PROCEDURES AND ANNUAL REPORT

Project closeout occurs either when TAM notifies RECIPIENT or forwards the final grant payment, or when the RECIPIENT'S remittance of the proper refund has been acknowledged by TAM. Within ninety (90) days of the project completion date or termination by TAM, whichever comes first RECIPIENT shall submit a certified financial statement identifying all excess funds or ineligible expenditures, which the RECIPIENT shall be required to refund, as well as third party audit reports, as applicable, or provide a schedule and justification for an alternate closeout date. Project closeout shall not terminate any continuing obligations imposed on the RECIPIENT by this AGREEMENT. Final reimbursement will be in accordance with TAM policies and procedures.

RECIPIENT shall provide to TAM an Annual Report as shown in Exhibit B. This report shall include the total expenditures for the approved scope, revenues from all funding sources applied for the approved scope of work. RECIPIENT shall provide supporting documentation for expenditures and revenues from its accounting and financial management system. RECIPIENT shall certify that the amounts sought are only for project elements included in the Measure A Sales Tax Program Allocation Request Form

SECTION 20. REPAYMENT OF INELIGIBLE COSTS

TAM reserves the right to offset RECIPIENT payback of ineligible costs against future grant approvals for this project or other projects in the Expenditure Plan for which RECIPIENT is the sponsoring agency.

SECTION 21. RIGHT TO WITHHOLD

If the above items are not provided to TAM by the annual due date and/or such items are found not to be in compliance with this AGREEMENT, Public Utilities Code Section 180000 et seq., the ballot measure or the Strategic Plan, TAM may withhold FUNDS from RECIPIENT until RECIPIENT has corrected any noted deficiencies to TAM's satisfaction. While FUNDS are being so withheld all interest on withheld FUNDS shall be retained by TAM as an administrative fee.

SECTION 22. RESCISSION OF AUTHORIZATION OF FUNDS

TAM reserves the right to rescind its authorization of unneeded grant funds prior to, or at the time of, PROJECT closeout. Funds are determined to be unneeded if they are uncommitted at time of project closeout.

SECTION 23. TERMINATION FOR CAUSE

RECIPIENT agrees that, upon ten (10) working days written notice, TAM may suspend or terminate all or part of the financial assistance provided herein for failure to correct a breach of

this AGREEMENT. Any failure to make reasonable progress, inconsistency with the Expenditure Plan or Measure A Sales Tax Program Allocation Request Form, unauthorized use of grant funds as specified in this AGREEMENT, or other violation of the AGREEMENT that significantly endangers substantial performance of the project shall be deemed to be a breach of this AGREEMENT and cause for termination. Upon mutual consent, RECIPIENT will repay TAM any unexpended funds already distributed.

SECTION 24. CORRECTION OF BREACH

With respect to any breach, which is reasonably capable of being cured, RECIPIENT shall have thirty (30) days from the date of notice of breach to initiate steps to cure. If RECIPIENT diligently pursues cure, such RECIPIENT shall be allowed a reasonable time to cure or by a time established in writing by TAM.

SECTION 25. LIABILITY

Neither TAM nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT under or in connection with any work, authority, or jurisdiction delegated to RECIPIENT under this AGREEMENT. It is also understood and agreed that pursuant to Government Code Section 895.4, RECIPIENT shall fully defend, indemnify and hold TAM 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 RECIPIENT under or in connection with any work, authority, or jurisdiction delegated to RECIPIENT under this AGREEMENT.

Neither RECIPIENT nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by TAM under in connection with any work, authority, or jurisdiction delegated to TAM under this AGREEMENT. It is also understood and agreed that pursuant to Government Code Section 895.4, TAM shall fully defend, indemnify and hold RECIPIENT harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring in by reason of anything done or omitted to be done by TAM under or in connection with any work, authority, or jurisdiction delegated to TAM under this AGREEMENT.

In the event of concurrent negligence of RECIPIENT and TAM, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter modified

SECTION 26. OBLIGATIONS

In general, termination of financial assistance under this AGREEMENT will not invalidate obligations properly incurred by RECIPIENT before the termination date; to the extent those obligations cannot be canceled.

SECTION 27. INTEGRATION

This AGREEMENT represents the entire AGREEMENT of the parties with respect to the subject matter thereof. 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.

SECTION 28. AMENDMENT

Except as otherwise provided herein, 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.

SECTION 29. INDEPENDENT AGENCY

RECIPIENT performs the terms and conditions of this AGREEMENT as an entity independent of TAM. None of RECIPIENT'S agents or employees shall be agents or employees of TAM.

SECTION 30. ASSIGNMENT

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

SECTION 31. BINDING ON SUCCESSORS, ASSIGNEES OR TRANSFEREES

This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of TAM or RECIPIENT as may be the case. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

SECTION 32. EXPENSES

Each party shall be solely responsible for and shall bear all of its own respective legal expenses in connection with any dispute arising out of this AGREEMENT and the transactions hereby contemplated. RECIPIENT may not use GRANT funds, or other TAM programmed funds, for the aforementioned purpose.

SECTION 33. SEVERABILITY

Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions 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.

SECTION 34. EXHIBITS

The following Exhibits are hereby made part of this AGREEMENT.

1. EXHIBIT A: Allocation Request Form
2. EXHIBIT B: TAM Board Resolution 2006-13

SECTION 35. ACCEPTANCE OF GRANT

RECIPIENT does hereby declare that all written statements, representations, covenants, and materials submitted as a condition of this AGREEMENT are true and correct and does hereby accept TAM's grant and agrees to all of the terms and conditions of this AGREEMENT. The parties have executed this AGREEMENT as of the date first written above.

**Marin County Community Development
Agency:**

Transportation Authority of Marin (TAM):

By: _____


By: _____
Dianne Steinhauser, Executive Director

Print Name

Print Title

Approved as to form:

By:  _____
Attorney



Print Name

Exhibit A

Transportation Authority of Marin Measure A – Transportation Sales Tax

Allocation Request Form

Fiscal Year of Allocation: 2006/07

Expenditure Plan: Strategy 2 – Highway 101 HOV Gap Closure (Swap Projects)

Project Name: Fireside Pedestrian and Traffic Safety Improvements

Implementing Agency: County of Marin Co-Sponsored with Citizen's Housing Corporation

Scope of Work: The project will enhance pedestrian and vehicle safety in the vicinity of the Fireside Apartments at 115 Shoreline Highway in unincorporated Mill Valley and provide a critical linkage to the nearby Manzanita Transit Center. The project includes installation of a traffic light-guided crosswalk with actuated pedestrian signal heads, curb ramps, and sidewalks along the south side of Route 1 (Shoreline Highway) from Route 101 SB Ramp intersection to the Manzanita Transit Center. Three existing driveways will be closed and a new, two-way left turn lane into a new shared driveway to the Fountain Motel and Fireside Apartments. New landscaping and street lighting and striping of a two-way left turn lane from Route 101 SB Ramp to the driveway at 150-160 Shoreline Highway will be installed.

Project Delivery Schedule:

	<u>Quarter and Calendar Year</u>
Start Environmental Studies	Complete
Draft Environmental Document	Complete
Final Environmental Document	Complete
Begin Design Engineering	Complete
Plans, Specifications, and Cost Estimates	Complete
Start Right of Way Acquisition	Complete
Right of Way Certification	Complete
Ready to Advertise	Complete
Award Construction	Complete
Project Completion (open for use)	November 2007

Environmental Clearance: CEQA – Neg. Dec.

Project Budget:

FY 2006/07	Measure A	TFCA Funds	Total Cost
Design	\$0	\$48,906	\$48,906
Construction	\$198,906	\$151,094	\$350,000
Total	\$198,906	\$200,000	\$398,906

Strategic Plan Programmed and Requested Amounts:

Strategy 2 – Highway 101 HOV Gap Closure	
STIP- TE Funds - Measure A Swap (Resolution 2006-02, approved 1/26/06)	\$2,432,000
Previous Projects Approved for Swap Programming	\$10,000
Swap Programming Amount Available	\$2,422,000
Current Requested Amount	\$198,906
Swap Programming Balance	\$2,223,094

Cashflow Availability: FY 2006/07 – 100%

Funding Agreement Expiration Date: May 31, 2008

TAM RESOLUTION NO. 2006-13

RESOLUTION OF THE TRANSPORTATION AUTHORITY OF MARIN (TAM) FOR THE ALLOCATION OF \$198,906 IN MEASURE A, STRATEGY 2 FUNDS TO THE COUNTY OF MARIN FOR THE FIRESIDE APARTMENT TRAFFIC SAFETY PROJECT

WHEREAS, The voters of Marin County approved the authorization of Measure A at the General Election held on November 2, 2004, thereby authorizing that TAM be given the responsibility to administer the proceeds from a one-half cent transaction and use tax; and

WHEREAS, The duration of the tax will be 20 years from the initial year of collection, which began April 1, 2005, with said tax to terminate on March 31, 2025; and

WHEREAS, The tax proceeds will be used to pay for the programs and projects outlined in TAM's Expenditure Plan; and

WHEREAS, TAM has developed a Strategic Plan, that will be updated every two years, to provide guidance on implementing the Expenditure Plan; and

WHEREAS, The Strategic Plan programs Measure A funds over a 20 year period to the four strategies listed in the Expenditure Plan, including Strategy 2 for the Highway 101 High Occupancy Vehicle (HOV) Gap Closure Project; and

WHEREAS, The Puerto Suello Bicycle/Pedestrian Path Project is an eligible component of the Highway 101 HOV Gap Closure Project; and

WHEREAS, In December 2005, TAM programmed County Transportation for Livable Communities (TLC) funds to the County of Marin in the amount of \$198,906 to improve traffic safety in the vicinity of the Fireside Apartments at 115 Shoreline Highway; and

WHEREAS, The source of the TLC funds programmed for the Fireside Apartment Traffic Safety Project is Transportation Enhancement (TE) funds; and

WHEREAS, In December 2005, TAM authorized (Resolution 2006-02) the equal exchange of federal TE funds with MTC for Measure A funds in the amount of \$2,432,000; and

WHEREAS, This arrangement would allow MTC to program Marin County's share of TE funds (\$2,432,000) to the Puerto Suello Bicycle/Pedestrian Path Project with the commitment from TAM to allocate equal amount of Measure A funds to local projects that would have been funded with TE, TLC, and Housing Incentive Program (HIP) funds; and

WHEREAS, The purpose of the fund swap is to allow TAM to pool federal funds for use on the already-federally funded Highway 101 HOV Gap Closure project and provide relief to local TLC project sponsors on the administrative burden associated with using federal funds for smaller, local projects; and

WHEREAS, In exchange for the TE funds programmed for the Puerto Suello Bicycle/Pedestrian Path Project, the County of Marin would receive an allocation of \$198,906 in Measure A funds to complete the Fireside Apartment Traffic Safety Project; and

WHEREAS, This allocation is consistent with the 2006 Measure A Strategic Plan; and

WHEREAS, There are sufficient funds in the Strategy 2 line item of the TAM's approved Fiscal Year 2006/07 budget to cover the proposed action; and

WHEREAS, After reviewing the request in coordination with project sponsors, TAM staff recommended allocating \$198,906 in Measure A funds as requested; now, therefore, be it

RESOLVED, That the Transportation Authority of Marin hereby allocates \$198,906 in Measure A funds to Marin County for the Fireside Apartment Traffic Safety Improvements Project from Strategy 2 of the Measure A Strategic Plan; and be it further

RESOLVED, That the Transportation Authority of Marin finds the allocation of these funds to be in conformance with the priorities and funding levels established in the Measure A Expenditure Plan and the 2006 Measure A Strategic Plan; and be it further

RESOLVED, That the Transportation Authority of Marin hereby authorizes the actual expenditure (cash reimbursement) of funds for this activity to take place subject to the Fiscal Year Cash Flow Distribution Schedule detailed in the attached Allocation Request Forms; and be it further

RESOLVED, That as a condition of this authorization for expenditure, the Executive Director shall impose such terms and conditions as are necessary for the project sponsor to

comply with applicable law and adopted Authority policies and execute Funding Agreement with the project sponsor to that effect; and be it further

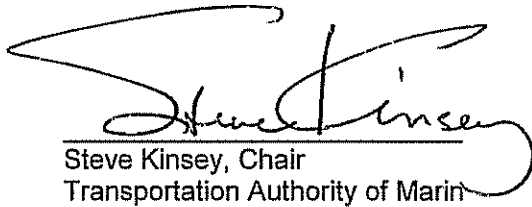
RESOLVED, That as a condition of this authorization for expenditure, the referenced project sponsor shall provide the Authority with any other information it may request regarding the use of the funds hereby authorized.

PASSED AND ADOPTED at a regular meeting of the Transportation Authority of Marin held on the 27th day of July 2006, by the following vote:

AYES:

NOTES:

ABSENT:


Steve Kinsey, Chair
Transportation Authority of Marin

ATTEST:


Dianne Steinhauser
Executive Director