

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: June 24, 2014

SUBJECT: APPROVE THE PROPOSED TRANSPAC JOINT EXERCISE OF POWERS AGREEMENT IN SUBSTANTIALLY THE FORM PRESENTED, AND AUTHORIZE THE MAYOR TO SIGN THE AGREEMENT WITH THE STIPULATION THAT THE AGREEMENT WILL BE REVISED TO (1) DESIGNATE ONE OF THE PARTIES AS THE TRANSPAC TREASURER AND AUDITOR; AND (2) INCLUDE ANY NON-SUBSTANTIVE BUT NECESSARY CHANGES

Report in Brief

At the April 24, 2014 TRANSPAC meeting, TRANSPAC considered and unanimously approved the establishment of a TRANSPAC Joint Powers Authority (JPA). This action was taken in response to a CalPERS audit affecting 511 Contra Costa employees. As a member of TRANSPAC, the City of Concord was recently requested to present the formation of the JPA to the City Council for consideration and approval.

The proposed Joint Exercise of Powers Agreement in its present form (or as recommended by TRANSPAC) does not designate one of the parties as the TRANSPAC Treasurer and Auditor. Contra Costa County recently indicated that this function should be designated to one of the JPA parties and expressed interest in serving as the TRANSPAC Treasurer and Auditor. Accordingly, the County has requested that the JPA agreement be approved by the individual parties (cities) in substantially the form presented with the knowledge that necessary changes will be made to the agreement to designate one of the parties as the TRANSPAC Treasurer and Auditor.

Staff recommends that the City Council approve the proposed TRANSPAC Joint Exercise of Powers Agreement in substantially the form presented, and authorize the Mayor to sign the agreement with the stipulation that the agreement will be revised to (1) designate one of the parties as the TRANSPAC Treasurer and Auditor; and (2) include any non-substantive but necessary changes.

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Background

TRANSPAC (Transportation Partnership and Cooperation) is the Regional Transportation Planning Committee (RTPC) for Central Contra Costa County (Central County). It is composed of elected representatives, planning commissioners and technical staff from the six Central County jurisdictions including the Cities of Clayton, Concord, Martinez, Pleasant Hill, Walnut Creek and the unincorporated area of Central County. TRANSPAC is responsible for the development of transportation plans, projects and programs for the Central County areas as well as the appointment of two representatives to the Contra Costa Transportation Authority (CCTA) serving alternating two-year terms.

Since the passage of the Measure C half-cent sales tax in Contra Costa County in 1988 and its extension in 2004 (Measure J), TRANSPAC has met the Growth Management Program requirements of these measures as the Central County RTPC. Measures C/J required the promotion of alternatives to commuting in single occupant vehicles. In Central County, a Transportation Demand Management (TDM) Program was established in 1992 to assist Central County jurisdictions in meeting this requirement.

The City of Pleasant Hill offered to hire the staff necessary to provide these services and to house the staff at the Pleasant Hill City Hall. The other Central County jurisdictions, including the City of Concord, concurred in this action. The TDM staff were recruited and hired by the City of Pleasant Hill, subject to that City's employment requirements, salary structure and benefits, including enrollment in CalPERS. Since its inception, the TDM Program has been fully funded using outside grant funds as well as Measure C/J funds. No general funds have been used by the City of Pleasant Hill or any other Central County jurisdictions to support the operation of this program.

The TDM Program, now known as the 511 Contra Costa TDM Program, has evolved over the years from primarily an employer-based vehicle trip reduction program to include a broader range of services including youth trip reduction programs and community based programs aimed at reducing Vehicle Miles Traveled (VMT) and greenhouse gas emissions. The City of Pleasant Hill continued to be the base of operations for the TDM Program as the program matured and expanded its scope over the years to include fulfilling Growth Management Program TDM requirements for Eastern Contra Costa County jurisdictions.

In the fall of 2013, the City of Pleasant Hill was selected for a CalPERS audit. The State's audit finding was that the 511 Contra Costa employees, some employed by the City of Pleasant Hill since 1992, were designated "erroneously" as Pleasant Hill employees and were not eligible to receive the PERS retirement benefits established by that City. Affected employees included current and former

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employees, as well as those who have retired from 511 and the City of Pleasant Hill. When advised of this development, designated TRANSPAC elected officials in concert with City of Pleasant Hill executive staff established a working group to address how the situation might be rectified in a manner that complied with PERS and respected the commitments made to the 511 employees—past and present.

A few months of deliberations by this working group identified a solution that addressed the CalPERS problem by proposing the establishment of a TRANSPAC JPA. This action allows moving the 511 Contra Costa employees from employment with the City of Pleasant Hill to employment with the TRANSPAC JPA. TRANSPAC has employed the services of the Best, Best & Krieger law firm to assist in establishment of the JPA and transition of the 511 Contra Costa employees to TRANSPAC JPA employment.

The six member jurisdictions of TRANSPAC (including the City of Concord) are permitted under Government Code Section 6500 et seq. to form a JPA, as the law permits two or more public agencies by agreement to exercise jointly powers common to the contracting parties.

Discussion

Currently, TRANSPAC exists under a “Partnership Agreement” to cooperate in the establishment of regional transportation planning policies and actions in Central County to more effectively respond to the requirements of Measures C and J.

A review of the formation of a JPA was recently conducted by TRANSPAC in response to the CalPERS audit affecting 511 Contra Costa employees, as outlined above. Based on this review, it was determined that the execution of a Joint Exercise of Powers Agreement that establishes TRANSPAC as a separate legal entity is an appropriate method to address the CalPERS problem and will also enable TRANSPAC to more effectively respond to transportation issues affecting Central County.

As a member of TRANSPAC, the City of Concord was recently requested to present the formation of the proposed JPA to the City Council for consideration and approval. The formal request by TRANSPAC to the City of Concord to join the JPA (including the proposed TRANSPAC Joint Exercise of Powers Agreement) is included in Attachment 1.

The intent of the proposed TRANSPAC Joint Exercise of Powers Agreement is to express cooperation between the parties and to establish policies which will protect and advance the interests of the Central County communities with respect to transportation needs and the utilization of Measure J funds. The TRANSPAC (Central County) boundaries are illustrated in Attachment 2 in relationship to the other RTPCs in Contra Costa County. By forming a JPA, TRANSPAC will be able to function as a

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governing body and exercise its objectives without the need for prior authorization from the CCTA Board, including but not limited to, performing the following activities:

- Conduct, authorize, review and accept studies and reports;
- Periodically review transportation plans and recommend changes as deemed appropriate;
- Develop regional strategies to meet Measure J requirements, or replacement or augmentation thereof;
- Address transportation issues that specifically affect the Central County communities;
- Assess Central County transportation needs, including transit services and coordination with County Connection;
- Work with Central County jurisdictions to formulate transportation policy statements;
- Sponsor educational forums, workshops and discussions on transportation matters;
- Advocate the interest of TRANSPAC agencies concerning transportation funding issues;
- Provide comprehensive, accurate, reliable and useful multimodal travel information to meet the needs of Central County travelers; and
- Gather information necessary to accomplish the foregoing purposes.

JPA Powers

Under the proposed Joint Exercise of Powers Agreement, the powers of TRANSPAC will include, but are not limited to, the following:

- Make and enter into contracts;
- Apply for and accept grants, advances and contributions;
- Employ and contract for services of agents, employees, consultants, engineers, attorneys, and other such persons or firms as deemed necessary to carry out the objectives of the JPA;
- Incur debts, liabilities, or obligations, subject to certain limitations;
- Receive and use contributions and advances from another agency as provided in Government Code section 6504, including contributions or advances of personnel, equipment or property;
- Provide a program of benefits for employees, including, but not limited to, contracting for retirement benefits with an existing retirement system; and
- Exercise other reasonable and necessary powers in furtherance or support of any purpose of the CCTA Authority or the bylaws of the Authority.

There are no significant disadvantages to the City of Concord by joining the proposed JPA. Conversely, there are numerous advantages to supporting a more active role for TRANSPAC in the region through the enactment of JPA powers (as noted above). Concord's abilities to promote and obtain funding for a variety of transportation improvements to improve overall quality of life for City

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residents will be enhanced through the formation of a TRANSPAC JPA. For example, the JPA will elevate TRANSPAC to a governing-body status in Central County and will enable the City to more effectively advocate for long-term capacity improvements on State Route 4 in the Concord area to keep freeway traffic on the freeway and prevent cut-through traffic on City arterials and local residential streets.

Furthermore, the City will be able to capitalize on the increased authority of TRANSPAC to influence expenditure policies of a possible Measure J replacement or augmentation in 2016 to focus more on pavement rehabilitation projects, as well as other street maintenance and improvement projects in Concord.

The basic TRANSPAC organization and operating structure as a JPA will not change significantly from the current Partnership arrangement. However, the operating expenses will probably increase to pay for additional contract services to run the treasury and other services for the TRANSPAC Board—these services had previously been provided by the TRANSPAC member jurisdictions including the City of Concord. The additional cost will be distributed among all six member jurisdictions according to the current formula of 50% on an equal (1/6th) share basis and the remaining 50% based on the percentage of Measure J return-to-source funding received by each party from CCTA.

Designation of TRANSPAC Treasurer and Auditor

The proposed Joint Exercise of Powers Agreement in its present form (or as recommended by TRANSPAC) does not designate one of the parties as the TRANSPAC Treasurer and Auditor. Contra Costa County recently indicated that this function should be designated to one of the JPA parties and expressed interest in serving as the TRANSPAC Treasurer and Auditor. Accordingly, the County has requested that the JPA agreement be approved by the individual parties in substantially the form presented with the knowledge that necessary changes will be made to the agreement to designate one of the parties as the TRANSPAC Treasurer and Auditor; such an approval will avoid the need to go back to each member jurisdiction if the agreement is revised to include the County as the Treasurer and Auditor.

JPA Formation Process

The JPA is formed once the TRANSPAC Joint Exercise of Powers Agreement is signed by all parties. There is a formality to file the agreement with the California Secretary of State, but there is no time requirement before the JPA can actually be formed.

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Admission into CalPERS

There is no guarantee that CalPERS will accept the JPA into PERS. Once TRANSPAC is established as a JPA, it then needs to go through a new applicant eligibility process with CalPERS. It is through such a process that CalPERS will determine whether TRANSPAC as a JPA is or is not eligible to join CalPERS. If approved into CalPERS, it would take about six to nine months to establish the contract but it would be retroactive to the application date. If CalPERS rejects the TRANSPAC JPA, the JPA would likely appeal and that process could take at least a year, if not longer.

Conclusion

Staff recommends that the City of Concord join the proposed TRANSPAC JPA to maintain regional transportation planning and cooperation with the other jurisdictions in Central County and to continue to be eligible to receive Measure J return-to-source funding for local street maintenance and improvement projects. Furthermore, the formation of a TRANSPAC JPA will be advantageous to the City of Concord as noted above, despite the uncertainty of the CalPERS eligibility findings after the JPA is formed.

City Attorney Review

The City Attorney has reviewed the proposed TRANSPAC Joint Exercise of Powers Agreement and has no concerns regarding the City entering into this agreement. Furthermore, the City Attorney has confirmed that there would not be any additional CalPERS liability implications for the City of Concord by joining the JPA than exist for the City currently under the Partnership.

Fiscal Impact

The TRANSPAC JPA will likely result in increased annual costs to the City of Concord (as well as to other Central County jurisdictions) to support the enhanced TRANSPAC organization. However, staff anticipates the increased cost will be minor and that there are long-term benefits to the City from joining the JPA. Furthermore, it is imperative that the City join the proposed JPA to continue to be eligible to receive Measure J return-to-source funding for local street maintenance and improvement projects. Measure J is a major revenue source for the City and may increase in the near future with a possible passage of a replacement or augmentation measure by Contra Costa voters in 2016.

Public Contact

Posting of the Council Agenda provides public notice.

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Recommendation for Action

Staff recommends that the City Council approve the proposed TRANSPAC Joint Exercise of Powers Agreement in substantially the form presented, and authorize the Mayor to sign the agreement with the stipulation that the agreement will be revised to (1) designate one of the parties as the TRANSPAC Treasurer and Auditor; and (2) include any non-substantive but necessary changes.



Valerie J. Barone
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Reviewed by: Victoria Walker
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Attachments:

Attachment 1 – TRANSPAC Letter with Proposed Joint Exercise of Powers Agreement
Attachment 2 – Contra Costa County RTPC Map

TRANSPAC Transportation Partnership and Cooperation
Clayton, Concord, Martinez, Pleasant Hill, Walnut Creek and Contra Costa County
2300 Contra Costa Boulevard, Suite 110
Pleasant Hill, CA 94523
(925) 969-0841

May 1, 2014

Ron Leone
Vice Mayor
City of Concord
1878 Lynnwood Drive
Concord, CA 94519

Re: TRANSPAC Joint Powers Authority (JPA)

Dear Vice Mayor Leone:

At the April 24, 2014 TRANSPAC meeting, TRANSPAC considered and unanimously approved the establishment of a TRANSPAC Joint Powers Agency (JPA). As described in the attached staff report, this action was taken in response to a CalPERS audit affecting 511 Contra Costa employees.

As a representative to TRANSPAC, you are requested to present the formation of the JPA to your Council/Board for consideration and approval. Please note that a report on the need for this action is included with this letter as are the minutes of the action taken April 24, 2014 TRANSPAC meeting.

Sincerely,

Handwritten signature of Barbara Neustadter in blue ink, with the initials 'als' written below the name.

Barbara Neustadter
TRANSPAC Manager

Attachments:

1. Report on the Recommendation to Establish a TRANSPAC Joint Powers Authority (JPA)
2. Minutes Excerpt (JPA) from April 24, 2014 Special TRANSPAC Meeting
3. TRANSPAC Joint Exercise of Powers Agreement

CC: City Manager Valerie Barone

TRANSPAC Transportation Partnership and Cooperation
Clayton, Concord, Martinez, Pleasant Hill, Walnut Creek and Contra Costa County

Report on the Recommendation to Establish a
TRANSPAC Joint Powers Authority (JPA)

Since the passage of Measure C in 1988 and its extension, Measure J in 2004, TRANSPAC has met the Growth Management Program requirements of these measures as the Central County Regional Transportation Planning Committee (RTPC). Since its inception, TRANSPAC has operated as a voluntary association of Central County jurisdictions.

Each sales tax Measure required the promotion of alternatives to commuting in single occupant vehicles. In Central County in 1992, a Transportation Demand Management Program (TDM) was established to assist Central County jurisdictions in meeting this requirement.

At the same time, the City of Pleasant Hill offered to hire the staff necessary to provide these services and to house the staff at the then new Pleasant Hill City Hall. The other Central County jurisdictions concurred in this action. The TDM staff were recruited and hired by the City of Pleasant Hill, subject as employees to the City's employment requirements, salary structure and benefits, including enrollment in CalPERS. Please note that the TDM Program has always been self-funded and relies on grant funds for its operation. No funds for its operation have been sought from Central County jurisdictions.

The TDM program, now labeled as the 511 Contra Costa TDM program has evolved over the years from primarily an employer-based vehicle trip reduction program to include a broader range of services including youth transportation reduction programs and community based programs aimed at reducing Vehicle Miles Traveled (VMT) and transportation related greenhouse gas emissions reductions programs. The City of Pleasant Hill continued to be the base of operations for the TDM program as the program matured and expanded its operations when requested to include fulfilling Growth Management Program TDM requirements for Eastern Contra Costa jurisdictions.

As happens in the course of time, the City of Pleasant Hill, in the fall of 2013 was chosen for a CalPERS audit. The State's audit finding was that the 511 Contra Costa employees, some employed by the City since 1992, were designated as "erroneous" employees and not eligible to receive the retirement benefits established by the City. Affected employees included current and former employees, as well as those who have retired from the City of Pleasant Hill.

When advised of this development, designated TRANSPAC elected officials in concert with the City of Pleasant Hill City Manager and City and TRANSPAC staff established a working group to address how the situation might be rectified.

A few months of deliberations by this working group identified a solution that addressed the CalPERS problem by proposing the establishment of a TRANSPAC Joint Powers Authority (JPA). This action allows moving the 511 Contra Costa employees from employment with the City of Pleasant Hill to employment with the TRANSPAC JPA. TRANSPAC has employed the services of the Best, Best & Krieger law firm to assist in establishment of the JPA and transition of the 511 Contra Costa employees to TRANSPAC employment. Please note that 511 Contra Costa is fully funded by grants and there are no costs required of TRANSPAC jurisdictions to maintain 511 Contra Costa operations.

TRANSPAC Special Meeting Summary Minutes

SPECIAL MEETING DATE: April 24, 2014

ELECTED OFFICIALS PRESENT: Mark Ross, Martinez (Chair); Julie Pierce, Clayton, CCTA Representative; David Durant, Pleasant Hill, CCTA Representative; Ron Leone, Concord; and Karen Mitchoff, Contra Costa County

PLANNING COMMISSIONERS PRESENT: Keith Haydon, Clayton; Bob Pickett, Walnut Creek; and Diana Vavrek, Pleasant Hill

STAFF PRESENT: Deidre Heitmen, BART; Ray Kuzbari, Concord; Jeremy Lochirco, Walnut Creek; Robert Sarmiento, Contra Costa County; Tim Tucker, Martinez; Corinne Dutra-Roberts, 511 Contra Costa; and Barbara Neustadter, TRANSPAC Manager

GUESTS/PRESENTERS: Brad Beck, Senior Transportation Planner, Contra Costa Transportation Authority (CCTA); Chris Lau, Senior Civil Transportation Engineer, Contra Costa County; Angela Viller, Transportation Department, Contra Costa County

MINUTES PREPARED BY: Anita Tucci-Smith

1. Convene Meeting/Pledge of Allegiance/Self Introductions

The meeting was convened at 9:05 A.M. by Chair Mark Ross, the Pledge of Allegiance was observed, and self introductions followed.

2. Public Comment

There were no comments from the public.

CONSENT AGENDA**3. Approval of March 13, 2014 TRANSPAC Minutes**

On motion by Director Leone, seconded by Director Pickett, the minutes of the March 13, 2014 TRANSPAC meeting were approved by the following vote:

Ayes: Durant, Haydon, Leone, Mitchoff, Pickett, Pierce, Ross, Vavrek
Noes: None
Abstain: None
Absent: Haskew, Mercurio, Stewart

END OF CONSENT AGENDA

4. **At the February 2014 TRANSPAC Meeting, TRANSPAC Chair Durant Reviewed the Issues Raised by CalPERS Regarding the Status of 511 Contra Costa Employees.** He suggested, and TRANSPAC supported, the use of TRANSPAC funds to engage Best Best & Krieger (BB&K) to provide legal services to establish a TRANSPAC Joint Powers Authority (JPA). This action will establish employee status for current and future 511 Contra Costa employees. This approach also was supported by the TRANSPAC Board at the February 2014 TRANSPAC meeting to be reviewed and considered at the April 10, 2014 TRANSPAC meeting (later scheduled for a special meeting on April 24, 2014), when the draft JPA document would be available for review and action. TRANSPAC is requested to review the attached Proposed Joint Powers Agreement (JPA) document, suggest revisions, and consider adoption of a TRANSPAC JPA.

TRANSPAC Manager Barbara Neustadter advised that Director Durant, who was TRANSPAC Chair at the time, had raised the issues relative to CalPERS and the status of 511 Contra Costa employees, and had suggested moving forward with the creation of a Joint Powers Authority (JPA). She reported that documents were now available to allow that to be done.

Director Durant highlighted the Draft JPA Agreement that had been provided in the TRANSPAC packet and reported that some time had been spent on issues related to CalPERS' new rules that non-elected officials could not actually serve on the Board, which was a concern of his and Director Pierce given that they valued the input of the Planning Commission representatives who served on TRANSPAC. As such, there had been an attempt to create an ex-officio status for Planning Commission representatives. He stated that the other points in the JPA Agreement were agreeable where there would be one elected member from each jurisdiction and one member from Contra Costa County. With approval from the Board, staff would proceed to secure a CalPERS concurrence that 511 Contra Costa employees would be covered and allow TRANSPAC to be in a position to secure bonds as a separate entity.

Director Pierce stated that one of the other pluses with a formal JPA was the efficiencies that might be possible by amalgamating contracts which might be beneficial to all and scheduling them throughout the year which was something that could not be done right now.

Director Durant noted that the JPA documents required a unanimous vote to adopt the budget; he sought a 5/6 or 4/6 vote as more appropriate.

Director Pierce explained the intent to ensure that no one was done unto by the rest, although she expected they had gone beyond those days.

On the discussion of the vote required to adopt a budget, by consensus the Board agreed that two thirds of the membership, or four votes, would be appropriate, and amended the Agreement in Section 5, TRANSPAC Organization, (d) Vote, as follows:

- (ii) TRANSPAC Business. Four votes of the voting members present shall be required to take action with respect to the budget. A majority vote of the voting members present will be required to take action on all other matters.

In response to Keith Haydon, Director Pierce explained that there was no current JPA agreement; there was a voluntary cooperative agreement with no legal standing and the JPA would change that and TRANSPAC would become a legal entity.

With respect to the budget and cost, Director Pierce explained that the cost to each jurisdiction was based 50 percent on population and 50 percent on the proportional share of return to source funds.

Director Durant noted that the JPA would allow TRANSPAC to draft rules and procedures and he suggested the adoption of the rules that had been used under the cooperative agreement. He added that the TRANSPAC Manager would draft a budget and the Board would vote on it and then proceed.

Ms. Neustadter concurred that the budget would be 50 percent divided by six, and 50 percent the return to source as a percentage of the budget which took into account the varying sizes of the jurisdictions involved.

Bob Pickett asked if there had been a determination of incremental additional cost of creating another entity and asked if it would cost more if there was no JPA, to which Director Durant stated the expectation was that there would be no additional cost.

In further response to Mr. Pickett, Director Pierce explained that neither the TRANSPAC name nor the number of meetings should change under the JPA.

Diana Vavrek referred to Section 9 of the agreement related to withdrawal from the JPA and asked if that was enforceable, to which Director Pierce advised that it was enforceable because it had been written into the statute of Measure J, and had been tested in East County when the City of Pittsburg had withdrawn from TRANSPLAN. After some time that issue had now been resolved and the City of Pittsburg had now received its return to source monies in arrears.

Director Durant stated that TRANSPAC would be asked to agree that it was interested in pursuing the agreement and each member would have to take the agreement to the respective body to get approval. Once each jurisdiction had signed on, the new cooperative venture in compliance with Measure J would have been formed. He noted that any jurisdiction that did not participate in TRANSPAC would not participate in the cooperative and would therefore not be eligible for return to source funds.

Director Pierce referred to Item 1, Definitions, bullet (f) related to Measure J, and requested the following addition given that it was unknown whether there would be a replacement tax, an augmentation, or an extension beyond Measure J:

- (f) "Measure J" shall refer to the extended half-cent local transportation sales tax first established by Measure C or replacement and augmentation thereof.

Director Mitchoff moved to establish the agreement and send it out for everyone to sign and to return as soon as possible.

Ms. Neustadter reported that Mala Subramanian would be provided the notes from the meeting, make the requested changes, and send the agreement to the elected officials and seek approval from the applicable jurisdictions. She expected that Ms. Subramanian would then identify the next steps.

On motion by Director Mitchoff, seconded by Director Durant to approve the establishment of a TRANSPAC Joint Powers Agreement, with the amendments to Section 1 (f) and 5 (d) (ii), as shown, carried by the following vote:

Ayes: Durant, Haydon, Leone, Mitchoff, Pickett, Pierce, Ross, Vavrek
Noes: None
Abstain: None
Absent: Haskew, Mercurio, Stewart

TRANSPAC

JOINT EXERCISE OF POWERS AGREEMENT

This Joint Powers Agreement (“Agreement”) is entered into on this ____ day of _____, 2014, by and between the cities of Clayton, Concord, Martinez, Pleasant Hill, and Walnut Creek, all municipal corporations, and Contra Costa County, a state political subdivision. Each public agency which is a party to this Agreement is hereby referred to individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, the Parties entered into the Central Contra Costa Transportation/Land Use Partnership (“TRANSPAC”) Agreement dated November 29, 1990 and superseded by the First Amendment to the Central Contra Costa Transportation/Land Use Partnership Agreement dated February 22, 1993 (“Partnership Agreement”) to cooperate in the establishment of policies and action to more effectively respond to the requirements of Measure C; and

WHEREAS, Section 12 of the Partnership Agreement provides that TRANSPAC shall conduct an annual review of the implementation of the Partnership Agreement to determine whether the execution of a Joint Exercise of Powers Agreement that establishes TRANSPAC as a separate legal entity is a more suitable alternative to the Partnership Agreement; and

WHEREAS, Government Code Section 6500 et seq. permits two or more public agencies by agreement to exercise jointly powers common to the contracting parties; and

WHEREAS, the Parties have determined that establishing TRANSPAC as a separate legal entity enables the Parties to more effectively respond to transportation issues and is a more suitable alternative to the Partnership Agreement.

NOW, THEREFORE, THE PARTIES TO THIS AGREEMENT DO AGREE AS FOLLOWS:

1. DEFINITIONS

The following words as used in this Agreement are defined as follows:

- (a) “Agency” shall mean each city and county which is a Party to this Agreement.
- (b) “Board” or “TRANSPAC Board” shall mean the board designated herein to administer this Agreement.
- (c) “Joint Transportation Planning Program” shall mean a transportation planning program undertaken by the Agencies.
- (d) “Managing Director” shall mean the person selected by the Board to manage the day-to-day activities of TRANSPAC.

(e) “Measure C” shall refer to half-cent local transportation sales tax established in 1988.

(f) “Measure J” shall refer to the extended half-cent local transportation sales tax first established by Measure C or replacement and augmentation thereof.

(g) “TRANSPAC” shall mean the public and separate entity created by this Agreement.

(h) “TRANSPAC TAC” shall mean a technical advisory committee to TRANSPAC.

2. OBJECTIVES

The intent of this Agreement is to express cooperation between the Parties and to establish policies which will protect and advance the interest of the Central Contra Costa County communities, which include the TRANSPAC boundaries as shown in Appendix A attached hereto and incorporated herein, with respect to transportation issues in general and the utilization of Measure J funds in particular. More specifically, TRANSPAC is hereby authorized to do all acts necessary for the exercise of its objectives, including but not limited to, the following:

- (a) Conduct, authorize, review and accept studies and reports;
- (b) Periodically review transportation plans and recommend changes thereto;
- (c) Hold and conduct meetings pursuant to this Agreement;
- (d) Develop regional strategies to meet Measure J requirements;
- (e) Address transportation issues that affect the Central Contra Costa County communities;
- (f) Assess Central Contra Costa County transportation needs, including transit services;
- (g) Coordinate with County Connection regarding transit services;
- (h) Advise the Agencies on transportation issues that impact the Agencies and the region;
- (i) Coordinate with Agencies on the responses and actions concerning transportation issues;
- (j) Work with Central Contra Costa jurisdictions to formulate transportation policy statements;
- (k) Sponsor educational forums, workshops and discussions on transportation matters;

(l) Advocate the interest of Agencies concerning transportation management and funding issues to local, state and federal officials;

(m) To provide comprehensive, accurate, reliable and useful multimodal travel information to meet the needs of Central Contra Costa travelers; and

(n) Gather information necessary to accomplish the foregoing purposes.

3. POWERS

The powers of TRANSPAC include, but are not limited to, the following:

(a) To make and enter into contracts;

(b) To apply for and accept grants, advances and contributions;

(c) To employ and contract for services of agents, employees, consultants, engineers, attorneys, and other such persons or firms as it deems necessary to carry out the objectives of this Agreement;

(d) To conduct studies;

(e) To incur debts, liabilities, or obligations, subject to the limitations set forth herein;

(f) To receive and use contributions and advances from an Agency as provided in Government Code section 6504, including contributions or advances of personnel, equipment or property;

(g) To provide a program of benefits for employees, including, but not limited to, contracting for retirement benefits with an existing retirement system; and

(h) To exercise other reasonable and necessary powers in furtherance or support of any purpose of the Authority or the bylaws of the Authority.

4. ORGANIZATIONAL STRUCTURE

The TRANSPAC Board shall provide overall policy direction for the operations and activities of the Joint Transportation Planning Program. TRANSPAC TAC shall provide administrative guidance, technical review, and decision making for the ongoing operational activities of the Joint Transportation Planning Program. Any staff or consultants hired by TRANSPAC shall report directly to the TRANSPAC Board or its designee.

5. TRANSPAC ORGANIZATION

TRANSPAC Board. TRANSPAC shall be governed by the TRANSPAC Board. The TRANSPAC Board is empowered to establish its own procedures for operation and may revise these periodically as deemed necessary.

(a) Members.

The Board shall consist of 6 members (one member from each Agency), which shall be determined as follows:

(i) For the City Agencies, one councilmember shall be appointed by the respective City Council.

(ii) For the County Agency, one Supervisor shall be appointed by the County Board of Supervisors.

Upon execution of this Agreement, the governing body of each Agency shall appoint its member to serve as a member of the Board and an alternate member of the Board to serve in the absence of its regular member, both shall be elected officials. Each member and alternate shall serve at the pleasure of the appointing governing board without compensation.

The Board shall also consist of 6 ex-officio members (one member from each Agency), which shall be determined as follows:

(i) For the City Agencies, one planning commissioner shall be appointed by the respective City Council.

(ii) For the County Agency, one planning commissioner shall be appointed by the County Board of Supervisors.

Upon execution of this Agreement, the governing body of each Agency shall appoint its ex-officio member to serve as an ex-officio member of the Board and an alternate ex-officio member to serve in the absence of its regular ex-officio member, both shall be planning commissioners. Each ex-officio member and alternate shall serve at the pleasure of the appointing governing board without compensation. Ex-officio members shall not be entitled to vote and shall not be counted towards the quorum.

(b) Officers.

TRANSPAC shall select a Chair and a Vice Chair who shall be elected officials and shall hold office for a period of one year, commencing February. However, the first Chair and Vice Chair shall hold office from the date of appointment to the following February. If any Agency removes a Board member who is also an officer, the Board shall appoint a member from the newly constituted Board to fill the vacant office for the remainder of that term.

(i) Chair

The Chair shall preside over Board meetings, call them to order and adjourn them, announce the business and order to be acted upon, recognize people entitled to the floor, put to vote all questions moved and seconded, announce voting results, maintain rules of order, and carry out other duties as set forth in the bylaws.

(ii) Vice Chair

The Vice Chair shall serve as chair in the absence of the regularly elected chair.

(iii) Secretary

The Board shall designate someone to serve as the Secretary and shall prepare, distribute, and maintain minutes of the meeting of the TRANSPAC Board, TRANSPAC TAC and any committees of TRANSPAC or shall contract for such services. The Secretary shall also maintain the official records of TRANSPAC and shall file notices as required by this Agreement.

(iv) Treasurer

TRANSPAC shall employ, appoint, or contract for the services of a Treasurer who shall:

(1) Receive and provide for the receipt of all funds of TRANSPAC and place them in the treasury to the credit and for the account of TRANSPAC.

(2) Be responsible, upon an official bond, for the safekeeping and disbursement of all TRANSPAC funds.

(3) Pay, when due, out of TRANSPAC funds, the indebtedness of TRANSPAC and any other sum duly authorized for payment from TRANSPAC funds.

(4) Verify and report, in writing, in July, October, January, and April of each year to the Board and to the Parties to this Agreement the amount of funds held for TRANSPAC, the amount of receipts and amount paid out since the last report.

(5) Invest TRANSPAC's funds in the manner provided by law and collect interest thereon for the account of TRANSPAC.

(6) If deemed necessary by the Board, an independent audit shall be made by a certified public accountant to ensure that the Treasurer is complying with the aforementioned requirements and Government Code section 6505 regarding strict accountability of all funds.

(c) Board Meetings.

(i) Regular Meetings. The Board should attempt to hold at least one regular meeting a month.

(ii) Special Meetings. Special meetings of the Board may be called as provided in accordance with the Ralph M. Brown Act (Gov. Code sections 54950 et seq.) ("Brown Act").

(iii) Notices of Meetings. All meetings of the Board shall be held in accordance with the Brown Act and other applicable laws.

(iv) Minutes. The Board shall keep written minutes of all meetings. As soon as possible after each meeting, the Board shall cause a copy of the minutes to be distributed to members of the Board and to the Agencies.

(v) **Quorum.** A majority of the members of the Board shall constitute a quorum, except that less than a quorum may adjourn from time-to-time.

(d) **Vote.**

(i) **Authorized Voting Members.** Each voting member or designated alternate when taking the place of the member shall be authorized to vote.

(ii) **TRANSPAC Business.** Four votes of the voting members present shall be required to take action with respect to the budget. A majority vote of the voting members present will be required to take action on all other matters.

(iii) **Appointments of Representatives to the Contra Costa Transportation Authority (“CCTA”).** A majority of the members present shall be required to appoint or recall a representative to the CCTA consistent with the requirements of CCTA’s Administrative Code. The TRANSPAC representatives and his or her alternate to the CCTA shall be a Board Member of TRANSPAC.

(e) **TRANSPAC Staff.**

TRANSPAC shall have staff to carry out the objectives of the Agreement. In addition, independent consultants may be engaged as needed. The Managing Director shall report to the TRANSPAC Board. Additional staff may be added with Board approval within the constraints of the then current fiscal year budget.

(f) **TRANSPAC TAC.**

The TRANSPAC TAC shall serve as the technical advisory committee for Transpac. It shall be made up of at least one staff member from each Agency selected by each Agency. TRANSPAC TAC shall study and discuss issues pertaining to TRANSPAC and shall make recommendations to TRANSPAC concerning those issues.

6. TRANSPAC BUDGET, WORK PROGRAM AND AGENCY PAYMENTS

TRANSPAC shall adopt a budget by an annual resolution. The budget shall set forth all operational expenses of TRANSPAC. It shall also set forth the proportional amount each Agency will be required to pay.

(a) Within 120 days of the effective date of this Agreement the Board shall formulate a budget for the first fiscal year of TRANSPAC’s operation. In doing so, the Board shall assign each agency a proportionate share of required funding to meet the budget agreed upon. Absent formal Board action extending this deadline, failure to agree upon a budget within the 120 days’ time frame shall cause this Agreement to terminate.

(b) After the first year, the annual budget and work program shall be prepared by April 1 and shall then be submitted to the Board for its review and consideration to be adopted on or after July 1.

(c) All bills and invoices for expenses incurred pursuant to said budget shall be routed to the Treasurer, who shall pay such expenses from the budget. The Treasurer has the authority to set forth the method and timing of payment of such invoices. The Treasurer shall also calculate the amount owed by each Party under the formula set forth in Section 7, and shall bill each Party accordingly. Each Party shall pay its billing by TRANSPAC within 30 days of receipt thereof. Bills shall be prepared for each calendar quarter in which activity occurs and shall be payable by the Parties upon demand.

7. PAYMENT OBLIGATIONS

Each Party shall pay, upon demand, its proportionate share of expenses. The funding allocation of each Party is as follows: each Party shall contribute 50% of TRANSPAC funding on an equal (1/6th) share basis. The remaining 50% TRANSPAC subsidy is based on the percentage of Measure J return-to-source funding received by each Party from Contra Costa Transportation Authority. This funding allocation shall be reviewed annually and, if necessary may be altered by written amendment to this Agreement.

8. DISPOSITION OF TRANSPAC FUNDS UPON TERMINATION

In the event this Agreement is terminated, TRANSPAC funds, together with interest accrued thereon, which remain after payment of all outstanding TRANSPAC debts, shall be distributed to the Parties in the same proportion as the Parties have paid into TRANSPAC.

9. WITHDRAWAL

Any Party may, upon 60 days' written notice to the Chair of TRANSPAC, withdraw from this Agreement. However, a withdrawing Party shall be liable for its proportionate share of TRANSPAC expenses incurred up to the date notice of termination became effective, which exceeds the withdrawing Agency's contribution under Section 7, and provided further, that in no event shall a withdrawing Party be entitled to a refund of all or any part of its contribution made under Section 7. A withdrawing Party may no longer be eligible to receive Measure J return-to-source funding.

10. TERMINATION

This Agreement shall remain in effect indefinitely, unless amended or terminated as provided hereunder. This Agreement may be terminated by the affirmative vote of the governing bodies of not less than two-thirds of the Parties.

11. AMENDMENTS

The TRANSPAC Board shall first consider any and all amendments to this Agreement. A majority vote of the TRANSPAC Board shall be required before any recommended amendment to this agreement is forwarded to the Parties for consideration and adoption. The Agreement may be amended by an affirmative vote of the governing bodies of not less than two-thirds of the Parties.

12. NOTICES

All notices shall be deemed to have been given when mailed to the governing body of each Party. Notices to TRANSPAC shall be sent to:

TRANSPAC

13. LIMITED LIABILITY OF THE AUTHORITY

Consistent with Government Code section 6508.1, the debts, liabilities, and obligations of TRANSPAC shall be limited to the assets of TRANSPAC and shall under no circumstances be the debts, liabilities, and obligations of any of the Parties. A Party may, but has no obligations to, separately contract for or assume responsibility in writing for specific debts, liabilities, or obligations of the Authority. In furtherance of this Section, TRANSPAC shall indemnify the Parties as provided in Section 14 below.

14. INDEMNIFICATION

TRANSPAC shall defend, indemnify and hold harmless each Party and each Party's officers, officials, agents, and employees from any and all liability, including, but not limited to, claims, losses, suits, injuries, damages, costs and expenses, including attorneys' fees and consequential damages, of every kind, nature and description (collectively, "Losses") directly or indirectly arising from or as a result of any act of the Authority or its agents, servants, employees or officers in the observation or performance of any of its responsibilities under this Agreement, or any failure by the Authority to perform any such responsibilities; and/or any actions or inactions of Parties taken as a result of their membership in TRANSPAC. Notwithstanding the foregoing, TRANSPAC shall not be required to indemnify any Party against any Losses that are caused by the negligence or willful misconduct of such Party seeking indemnification or any of their respective officers, agents, or employees.

15. EFFECTIVE DATE

This Agreement shall take effect upon receipt of executed copies of the Agreement from not less than two-thirds of the Parties.

[SIGNATURES ON THE FOLLOWING PAGES]

CITY OF CLAYTON

Executed on _____, 2014.

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

CITY OF CONCORD

Executed on _____, 2014.

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

CITY OF MARTINEZ

Executed on _____, 2014.

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

CITY OF PLEASANT HILL

Executed on _____, 2014.

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

CITY OF WALNUT CREEK

Executed on _____, 2014.

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

CONTRA COSTA COUNTY

Executed on _____, 2014.

Chair

Attest:

Clerk of the Board

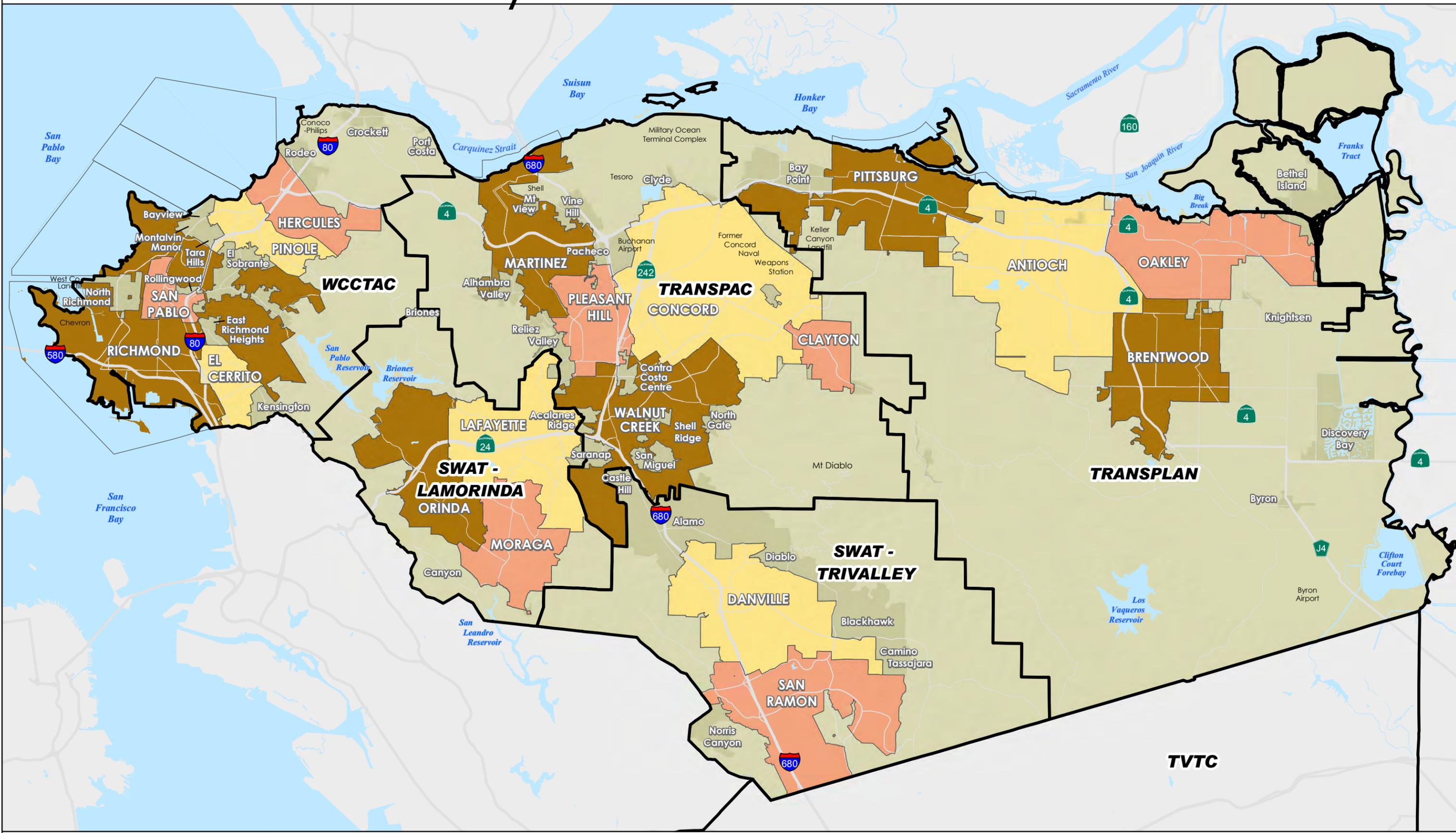
Approved as to form:

County Counsel

APPENDIX A

[INSERT BEHIND THIS PAGE]

Contra Costa County



Revised 03/07/2013 with updated city limits
Contra Costa County Department of Conservation & Development
651 Pine Street, 4th Floor - N. Wing, Martinez, CA 94553-0095
37:59:48.455N 122:06:35.384W

