### Administration and Projects Committee STAFF REPORT

**Meeting Date:** June 4, 2015

<table>
<thead>
<tr>
<th>Subject</th>
<th>Caldecott Tunnel Fourth Bore (Project 1001) – Authorization to Execute and Restate Amended Cooperative Agreement No. 01CS.01 with Alameda County Transportation Commission (Alameda CTC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary of Issues</td>
<td>With the Caldecott Tunnel Fourth Bore open to the public and the project in the close-out phase, the Authority approved in June 2014 spending remaining Regional Measure 2 (RM2) funds on the fourth bore construction contract and funding the ancillary Caldecott projects with Measure J funds. Consistent with Authority’s practice to use other funds first, this action allows for the close-out of the RM2 funds on the project. To reflect the changes in the fund source, staff is requesting the approval of the amended and restated Cooperative Agreement No. 01CS.01 with the Alameda CTC.</td>
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<tr>
<td>Recommendations</td>
<td>Staff seeks authorization for the Chair to execute and restate amended Cooperative Agreement No. 01CS.01 with the Alameda CTC, and authorize the Executive Director to make non-substantive changes as needed.</td>
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<td>Financial Implications</td>
<td>In total, $6.35 million ($5.966 million in Measure J and $0.383 million in RM2 funds) will be utilized for the completion of the ancillary Caldecott projects in Oakland and Berkeley.</td>
</tr>
<tr>
<td>Options</td>
<td>The Authority could propose other terms and conditions.</td>
</tr>
<tr>
<td>Attachments</td>
<td>A. Amended and Restated Cooperative Agreement No. 01CS.01</td>
</tr>
<tr>
<td>Changes from Committee</td>
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</tbody>
</table>
Background

The fourth bore of the Caldecott Tunnel was opened to traffic on November 16, 2013. The project is now in the close-out phase; however, there are numerous ongoing ancillary projects that are in mitigation for the fourth bore. These projects are partially funded with RM2 money, and are not ready for construction. In order to spend RM2 money first and spend Measure J money last, the Authority approved moving $1.966 million in Measure J funds from the fourth bore construction project to the ancillary projects, and replacing these funds with the same amount of RM2 funds.

Cooperative Agreement No. 01CS.01 with the Alameda CTC was executed in January 2010 and defined a framework for the Authority to provide up to $4 million in Measure J funds for enhancement projects in the City of Oakland and $2 million in RM2 funds for enhancement projects in the City of Berkeley. The Measure J funds were in exchange for an identical amount in Alameda’s State Transportation Improvement Program (STIP) funds programmed to the Caldecott fourth bore and landscaping contracts.

Rather than funding another study in the corridor, Caltrans and the Fourth Bore Coalition agreed in October 2014 to augment funding the ancillary projects in the Cities of Oakland and Berkeley by an identical amount of $250,000. In addition, it was agreed to task the City of Oakland to complete enhancements to FROG Park at a cost of $100,000. These improvements were planned to be funded by RM2 funds and are now proposed to be funded by Measure J. In total, $6.35 million ($5.966 million in Measure J and $0.383 million in RM2 funds) will be utilized for the completion of the ancillary Caldecott projects in the Cities of Oakland and Berkeley.

Staff is requesting the approval of the amended and restated Cooperative Agreement No. 01CS.01 with the Alameda CTC to reflect the fund source change.
This Amended and Restated Cooperative Agreement ("Agreement") is made and entered into on ______________, 2015 by and between the Alameda County Transportation Commission ("Alameda CTC"), successor to the Alameda County Congestion Management Agency ("ACCMA"), and the Contra Costa Transportation Authority ("CCTA").

RECITALS

1. The Caldecott Fourth Bore Improvement Project ("PROJECT") is being jointly managed by Alameda CTC, CCTA and the California Department of Transportation ("CALTRANS"). The PROJECT limits extend from the Route 24/Route 13 interchange in Alameda County to the Route 24/Gateway Boulevard/Wilder Road interchange in Contra Costa County.

2. CALTRANS, ACCMA and CCTA signed a Memorandum of Understanding on November 3, 2004, agreeing to be partner agencies working collaboratively to deliver the PROJECT.

3. Following certification of the Environmental Impact Report (EIR) for the PROJECT, which was prepared by CALTRANS as the lead agency under the California Environmental Quality Act (CEQA), CALTRANS entered into separate settlement agreements with the City of Oakland and the Fourth Bore Coalition resolving legal challenges to the EIR.

4. One aspect of the settlement agreements provided for funding certain enhancement projects in the general vicinity of the PROJECT. Budgets for the enhancement projects that are addressed in this Agreement are $8.30 million relative to the settlement agreement with the City of Oakland, and $2.05 million relative to the settlement agreement with the Fourth Bore Coalition.

5. The enhancement projects, which are eligible for funding under the terms of the settlement agreements are listed in EXHIBIT A (City of Oakland), and EXHIBIT B (Fourth Bore Coalition) and are to be further amended based on the additional funding made available for use by the cities of Oakland and Berkeley by the amendment to Settlement Agreement between Caldecott Fourth Bore Coalition v. California Department of Transportation dated January 23, 2009.

6. The projects listed in EXHIBITS A and B are hereinafter referred to collectively as "ENHANCEMENTS."

7. Alameda CTC has included $8 million in its 25-year Countywide Transportation Plan for ENHANCEMENTS along and in the vicinity of the Route 24 corridor in Oakland.

8. ACCMA adopted Resolution 08-006 Revised at its July 31, 2008 meeting which approved an overall commitment of $8 million in Alameda County funds for ENHANCEMENTS described in EXHIBIT A (those related to the City of Oakland settlement agreement).
9. **Alameda CTC** has programmed $6 million of STIP funds for PROJECT and endeavors to program the balance of $2 million for ENHANCEMENTS in the 2016 STIP.

10. Recognizing that the initial programming of $4 million STIP-RIP funds by Alameda CTC in the 2008 and 2010 STIPs was for construction costs associated with PROJECT, and not directly for ENHANCEMENTS, CCTA agreed to make available, in the near term, $4 million of Measure J transportation sales tax funds as an “exchange” to fund those ENHANCEMENTS described in EXHIBIT A.

11. CCTA is the implementing agency for $50 million in Regional Measure 2 (RM-2) funds programmed for the PROJECT by the Metropolitan Transportation Commission (“MTC”).

12. MTC has allocated $383,466 in RM-2 funds to CCTA for ENHANCEMENTS described in EXHIBIT B (those related to the Fourth Bore Coalition settlement agreement).

13. ACCMA and CCTA entered into a Cooperative Agreement dated January 6, 2010 (“**Prior Agreement**”) to define a framework whereby CCTA could advance Measure J transportation sales tax funds and RM-2 funds for ENHANCEMENTS.

14. As of the close of business on February 29, 2012, ACCMA has been terminated and Alameda CTC designated as its successor entity. In conjunction with such termination, the Prior Agreement and all other ACCMA contracts have been assigned to, and accepted by Alameda CTC.

15. Alameda CTC and CCTA desire to amend and restate the Prior Agreement to reflect agreed-upon changes in funding allocations which have occurred subsequent to the date of the Prior Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, Alameda CTC and CCTA agree that the Prior Agreement is amended and restated in its entirety as follows:

**SECTION I**

**Alameda CTC AGREES:**

1. To the extent permitted by the STIP fund estimate adopted by CTC, to program $2 million in Alameda STIP-RIP funds for ENHANCEMENTS in the 2016 STIP.

2. To enter into separate agreements with the cities of Berkeley and Oakland to select specific projects drawn from ENHANCEMENTS listed in EXHIBITS A and B, to authorize CCTA to audit the projects selected from the ENHANCEMENTS and, where necessary, to assist with approvals, permits, and other Caltrans issues and procedures.

3. To provide oversight to ensure compliance with state and federal standards and/or regulations that may apply to ENHANCEMENTS selected from EXHIBITS A and B, including coordination with CALTRANS for its review and approval of plans, specifications, and estimates.
4. Regarding ENHANCEMENTS selected by agreements entered into by Alameda CTC with the cities of Oakland and Berkeley:

   a. To review all invoices from the cities of Oakland and Berkeley, confirm that work has been completed consistent with the invoice, and approve for reimbursement if invoice is reasonable, and satisfactory progress is being made in implementing the selected ENHANCEMENTS.

   b. To submit periodic requests to CCTA for electronic (wire) transfers for costs related to the selected ENHANCEMENTS, including costs invoiced to Alameda CTC by the cities of Oakland and Berkeley, and project or oversight costs incurred by Alameda CTC as stipulated in the agreements between the City of Oakland and Alameda CTC and between the City of Berkeley and Alameda CTC. Each request package shall include copies of any invoices submitted by the applicable city(ies) to Alameda CTC certified as eligible for payment and a summary of any Alameda CTC oversight or project-related costs eligible for payment.

   c. To pay the cities of Oakland and Berkeley on a reimbursement basis, within 10 days after receipt of the requested funds via electronic (wire) transfer from CCTA.

   d. To provide CCTA, within 10 days after the date of payment to the cities of Oakland and Berkeley, a package of documentation supporting the entire amount of the electronic (wire) transfer received from CCTA, including all supporting details consistent with EXHIBIT C, confirmation of the date and amount of the payment to the cities of Oakland and Berkeley, and a certification that the invoice is accurate and not the subject of a prior billing.

   e. To coordinate with the cities of Oakland and Berkeley and provide progress reports and the summary of expenditures to date to CCTA.

5. To allow CCTA to audit all expenditures relating to ENHANCEMENTS funded through this agreement. For four (4) years following (i) completion of the projects selected as ENHANCEMENTS or (ii) earlier discharge of the agreement, Alameda CTC through its separate agreements with cities of Oakland and Berkeley, will make available to CCTA all records relating to expenses incurred implementing ENHANCEMENTS.

SECTION II

CCTA AGREES:

1. To make available a total amount of $6.35 million, including $5,966,534 in Measure J transportation sales tax funds to Alameda CTC and $383,466 in RM2 funds directly to the City of Berkeley, on a reimbursement basis, to defray the costs of ENHANCEMENTS selected by agreements between Alameda CTC and the cities of Oakland and Berkeley.

2. Regarding the ENHANCEMENTS selected by agreement with the City of Oakland:

   a. To pay Alameda CTC by electronic (wire) transfer within ten (10) days of receiving a complete request package from Alameda CTC for costs related to
ENHANCEMENTS, including costs invoiced to Alameda CTC by the City of Oakland and Alameda CTC oversight or project related costs stipulated in an agreement between the City of Oakland and Alameda CTC; provided, however, the sum of such payments will not exceed $4.3 million.

3. Regarding the ENHANCEMENTS selected by agreement with the City of Berkeley listed in EXHIBIT B:

   a. To pay Alameda CTC by electronic (wire) transfer within ten (10) days of receiving a complete request package from Alameda CTC for costs related to ENHANCEMENTS, including costs invoiced to Alameda CTC by the City of Berkeley; provided, however, the sum of such payments will not exceed $2.05 million.

   b. To invoice MTC for reimbursement of funds paid to the City of Berkeley in the amount not to exceed $383,466.

SECTION III

IT IS MUTUALLY AGREED:

1. Term: This Agreement will remain in effect until discharged as provided in Paragraph 2 below or as a result of Paragraph 5 below.

2. Discharge: This Agreement shall be subject to discharge as follows:

   a. Either party may terminate this Agreement at any time for cause pursuant to a power created by the Agreement or by law, other than for breach, by giving written notice of termination to the other party which shall specify both the cause and the effective date of termination. Notice of termination under this provision shall be given at least ninety (90) days before the effective date of such termination.

   b. This Agreement may be canceled by a party for breach of any obligation, covenant or condition hereof by the other party, upon notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching party shall have thirty (30) days from the date of the notice to initiate steps to cure. If the breaching party diligently pursues cure, such party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. On cancellation, the non-breaching party retains the same rights as a party exercising its right to terminate under the provisions of Paragraph 2(a), except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

   c. By mutual consent of both parties, this Agreement may be terminated at any time.

3. Indemnity: It is mutually understood and agreed, relative to the reciprocal indemnification of CCTA and Alameda CTC:

   a. That neither CCTA, nor any officer or employee thereof, shall be responsible for, and Alameda CTC shall fully indemnify and hold harmless CCTA against any damage or liability occurring by reason of anything done or omitted to be done by CCTA under or in connection with
any work, authority or jurisdiction delegated to Alameda CTC under the Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, Alameda CTC shall fully indemnify and hold CCTA 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 Alameda CTC under this Agreement or in connection with any work, authority, or jurisdiction delegated to Alameda CTC under this Agreement.

b. That neither Alameda CTC, nor any officer or employee thereof, shall be responsible for, and CCTA shall fully indemnify and hold harmless Alameda CTC against any damage or liability occurring by reason of anything done or omitted to be done by CCTA under or in connection with any work, authority or jurisdiction delegated to CCTA under the Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, CCTA shall fully indemnify and hold the Alameda CTC 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 CCTA under this Agreement or in connection with any work, authority, or jurisdiction delegated to CCTA under this Agreement.

4. Notices: Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such addresses which may be specified in writing to the parties hereto:

Arthur L. Dao
Executive Director
Alameda County Transportation Commission
1111 Broadway, Suite 800
Oakland, CA 94607

Randell H. Iwasaki
Executive Director
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597

5. Amendment: The parties agree to amend EXHIBITS A and B to this Agreement if additional ENHANCEMENT projects are approved consistent with the terms of the settlement agreements referenced in Recital 4. However, 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.

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

7. Binding on Successors, Etc.: This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of CCTA or Alameda CTC 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.

8. 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.

9. Limitation: All obligations of CCTA under the terms of this Agreement are expressly subject to CCTA’s continued authorization to collect and expend the sales tax proceeds provided by Measure J. If for any reason CCTA’s right to collect or expend such sales tax proceeds is terminated or suspended or otherwise impaired in whole or part, CCTA shall promptly notify Alameda CTC, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent; provided, that any obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of CCTA to expend sales tax proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of CCTA under all outstanding contracts, agreements to other obligations of CCTA, of funds for such purposes.

10. Survival: Section III, Paragraph 3 (Indemnity) shall survive discharge or other termination of this Agreement.

**ALAMEDA COUNTY TRANSPORTATION COMMISSION**

By: ____________________________  By: ___________________________

Arthur L. Dao
Executive Director

Julie K. Pierce
Chair

Reviewed as to Budget/Financial Controls

By: ____________________________  By: ___________________________

Patricia Reavey
Director of Finance

Randell H. Iwasaki
Executive Director

APPROVED as to form:

By: ____________________________  By: ___________________________

Wendel, Rosen, Black & Dean LLP
Alameda CTC Legal Counsel

Malathy Subramanian, General Counsel
EXHIBIT A

to
AMENDED AND RESTATED COOPERATIVE AGREEMENT NO. 01CS.01
between
Contra Costa Transportation Authority
and
Alameda County Transportation Commission
(as successor to the Alameda County Congestion Management Agency)

CALDECOTT IMPROVEMENT PROJECT
CITY OF OAKLAND/CALTRANS SETTLEMENT AGREEMENT (as amended)

Potential Enhancement Projects
EXHIBIT B

to
AMENDED AND RESTATED
COOPERATIVE AGREEMENT NO. 01CS.01
between
Contra Costa Transportation Authority
and
Alameda County Transportation Commission
(as successor to the Alameda County Congestion Management Agency)

CALDECOTT IMPROVEMENT PROJECT
CALDECOTT FOURTH BORE COALITION/CALTRANS SETTLEMENT AGREEMENT
(as amended)

Potential Enhancement Projects
EXHIBIT C

to

AMENDED AND RESTATED
COOPERATIVE AGREEMENT NO. 01CS.01
between
Contra Costa Transportation Authority
and
Alameda County Transportation Commission
(as successor to the Alameda County Congestion Management Agency)

Proponent’s Name
Project: XXXX
Project Description

Invoice Number: XXXX

Coop. Agreement: 01CS.01

Proponent Expenditures - Direct Expenses

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<th>Vendor</th>
<th>Description</th>
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<td>The Blueprint Shop</td>
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<td>Services</td>
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Total Direct Expenses

Certification

We hereby certify that the funds requested by ___________ are to reimburse for project costs already incurred and have not been included in a previous invoice request.