

**IMPLEMENTATION AGREEMENT
AUTHORIZING THE MERCED COUNTY ASSOCIATION OF GOVERNMENTS
TO MANAGE AND ADMINISTER THE REGIONAL TRANSPORTATION
IMPACT FEE PROGRAM**

This Agreement ["Agreement"] is made this day of 3/1/2005, pursuant to Government Code section 6500, et seq., and the Merced County Association of Governments Joint Powers Agreement ["Joint Powers Agreement"] dated November 28, 1967, as amended, by and between Merced County Association of Governments, a California Joint Powers Authority ["MCAG"], and the following seven public entities, all of which are members of MCAG [referred to herein individually as "Party" or collectively as the "Parties"]:

County of Merced
City of Atwater
City of Dos Palos
City of Gustine
City of Livingston
City of Los Banos
City of Merced

RECITALS

A. Each of the Parties to this Agreement is a governmental entity. The purpose of this Agreement is to authorize MCAG, pursuant to the Joint Powers Agreement, to manage and administer the Regional Transportation Impact Fee ["RTIF"] Program.

B. The Parties find that future development within the County of Merced to the year 2030 will result in traffic volumes in excess of capacity on a regional system of streets, arterials and highways.

C. The Parties find that failure to expand the capacity of the existing circulation system will cause unacceptable levels of congestion on the streets, arterials and highways of the regional system.

D. The Parties find that existing and future sources of revenue are inadequate to fund substantial portions of the regional transportation system improvements needed to avoid unacceptable levels of congestion and related adverse impacts.

E. The Parties find and declare that the MCAG RTIF Study, as amended (May 2005), has determined the extent to which new development of land will generate traffic volumes impacting the roadway system to the year 2030 and have determined that the RTIF Ordinance (Exhibit A) establishes a fair and equitable method to fund costs of transportation improvements necessary to accommodate the traffic volumes generated by future development of land within each city and Merced County.

F. The Parties find and determine that current impact fees from new development will construct only a portion of local and regional facilities and that adoption of the RTIF

Ordinance is necessary to secure additional revenues needed to construct improvements and accommodate traffic generated by land development.

G. The Parties have determined that it is in their best interest to join together to administer the funds provided by the RTIF and to authorize the MCAG to manage and administer the RTIF funds and improvements along with any other funds that are made available for regional streets and highways in Merced County.

H. The Parties find that in order to serve the purposes described herein, additional funding, other than that received from the above described fee, must be obtained. Each Party has agreed to cooperate in obtaining additional financing.

I. The Parties anticipate that MCAG shall administer the funds and the program generated for regional streets and highways in Merced County by exercising the powers granted herein for the life of this Agreement twenty-five (25) years, through 2030.

ARTICLE 1 PURPOSE AND POWERS

1.1 Purpose of the Agreement.

Each Party to this Agreement has the common power to plan for, acquire, construct, maintain, repair, manage, operate, impose fees for and incur indebtedness for and control over facilities for the purpose of planning and constructing transportation facilities.

The purpose of this Agreement is to jointly exercise the foregoing common powers to oversee and implement the RTIF, manage the funds generated from such fees and any other funds designated for planning, funding, designing and, constructing regional streets and highways in Merced County in accordance with the laws of the State of California.

1.2 Powers.

MCAG, through its Governing Board; is hereby authorized to perform all necessary functions to fulfill the purposes of this Agreement. MCAG shall have the power in its own name to do any of the following:

- A. Exercise jointly the common powers of its members in studying and planning ways and means to provide for planning, designing, financing and constructing transportation facilities throughout Merced County;
- B. Make and enter into contracts;
- C. Contract for the services of engineers, attorneys, planners, financial consultants and such other persons as it deems necessary;
- D. Incur debts, obligations, issue bonds, and invest and reinvest, or sell or exchange securities;

- E. Adopt rules, regulations, policies, bylaws and procedures governing the operation of MCAG in accordance with the enumerated purposes contained herein;
- F. Apply for appropriate grants under any federal, state, or local programs for assistance in developing the transportation program;
- G. Receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and governmental entities;
- H. Acquire, hold, and dispose of property by lease, lease purchase or sale;
- I. Acquire property by eminent domain subject to conditions as set forth in Section 1.3 of this Agreement;
- J. Lease, acquire, construct, manage, maintain, and operate any buildings, works, of improvements;
- K. Sue and be sued in its own name;
- L. Determine project priorities, set design standards for projects, and coordinate with the Parties to oversee construction of improvements;
- M. Annually update the 5-year Capital Improvement Plan and set or adjust the appropriate standards for determining the amount of the RTIF; and
- N. To the extent not herein specifically provided for, to exercise any powers in furtherance of the purpose of this Agreement in the manner of and according to the methods provided under applicable law.

1.3 Power of Eminent Domain.

For the purpose of exercising eminent domain, to acquire property in furtherance of the purposes of this Agreement, the "legislative body" of MCAG shall be the Governing Board of MCAG ["Governing Board"]. Resolutions of Necessity may be adopted by a two-thirds (2/3) vote of the Governing Board with each member agency having one (1) vote. The power of eminent domain as authorized herein is subject to veto by the jurisdiction within whose boundaries eminent domain is being exercised. A jurisdiction must exercise its veto by resolution, within sixty (60) days from the date of receipt of notification of the intent to exercise eminent domain within its boundaries.

ARTICLE 2
ADMINISTRATION OF REGIONAL TRANSPORTATION IMPACT FEE FUND

2.1 Imposition of Regional Transportation Impact Fee.

On or before the effective date of this Agreement (or in the case of a new party, on or before that party becomes signatory to this Agreement), it is anticipated that each Party will adopt a RTIF in an amount equal to or more than the fee as recommended pursuant to the MCAG RTIF study, as amended, requiring the payment of a mitigation fee as a condition of discretionary project approval, or other permit process, for the purposes of defraying a portion of the actual or estimated cost of constructing regional transportation improvements. Adoption of a RTIF is not required in order to be a Party to this Agreement.

2.2 Annual Review of Fees.

The Governing Board of MCAG shall annually review and, if necessary, recommend amending the amount of the mitigation fee to insure that it is a fair and equitable method of distributing the costs of the improvements necessary to accommodate traffic volumes generated by future growth.

The legislative body of each Party shall annually undertake review of the mitigation fee and shall, if necessary, modify the fee to be imposed to insure that it is a fair and equitable method of distributing the costs of the improvements necessary to accommodate traffic volumes generated by future growth. The revised fee shall be imposed within one hundred and twenty (120) days.

2.3 Collection of Fees.

Each party to this Agreement agrees to collect the fee pursuant to its RTIF Ordinance or Resolution and quarterly remit the collected fees and any interest thereon to MCAG to be placed in the MCAG Transportation Mitigation Trust Fund ("Trust Fund").

2.4 Holding of Fees.

The Governing Board shall deposit, invest, account for and expend the fees in accordance with Government Code section 66006.

The Governing Board shall make annual findings for any funds remaining in the account longer than five years: and refund any uncommitted funds plus interest pursuant to Government Code section 66001.

2.5 Annual Budget.

The Governing Board shall adopt an annual budget for the fiscal year.

2.6 Disbursements.

The MCAG Executive Director shall request warrants from the Merced County Treasurer in accordance with budgets approved by the Governing Board. The Treasurer shall pay such claims or disbursements and such requisition for payment in accordance with rules, regulations, policies, procedures and bylaws adopted by the Governing Board.

2.7 Accounts.

All funds of the Trust Fund shall be placed in a separate account or accounts. The receipt, transfer, or disbursement of such funds, during the term of this Agreement, shall be accounted for in accordance with generally accepted accounting principles applicable to governmental entities and pursuant to Government Code section 6505, et seq., and any other applicable laws of the State of California. All revenues and expenditures shall be reported monthly to the Governing Board.

2.8 Expenditures Within Approved Annual Budget.

All expenditures shall be made within the approved annual budget. No expenditures in excess of those budgeted shall be made without the approval of the Governing Board.

2.9 Audit of Trust Fund.

The records and accounts of the Trust Fund shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the Merced County Auditor, State Controller and each Party to MCAG no later than fifteen (15) days after receipt of said audit by the Governing Board.

2.10 Audit of Imposition and Collection of Fees.

The records and accounts, with respect to fee imposition and collection, of any Party who imposes a mitigation fee shall be audited once within any six (6) month period at the request of the Governing Board of MCAG or a majority of Parties to this implementation agreement. Said audit shall be conducted by an independent certified public accountant and copies of such audit report shall be filed with each party to MCAG no later than fifteen (15) days after receipt of said audit by the Governing Board.

ARTICLE 3

ADMISSION AND WITHDRAWAL OF PARTIES

3.1 Admission of New Parties.

Public entities, other than the original Parties, may wish to participate in this Agreement. Additional Merced County public entities may become parties to this Implementation Agreement upon such terms and conditions as provided by the Governing Board and with the consent of two-thirds (2/3) of the existing Parties to this Implementation Agreement, evidenced by the execution of a written addendum to this Agreement, and signed by all of the Parties including the additional party.

3.2 Withdrawal.

The Parties anticipate that they will participate in this Agreement until its purposes are accomplished. The withdrawal of any Party, unless otherwise provided by the Governing Board, shall be conditioned as follows:

(a) Following a properly noticed public hearing, written notice of withdrawal shall be given to MCAG, within 1 year and 90 days prior to the effective date of withdrawal;

(b) Withdrawal shall not relieve the Party of its proportionate share of any debts or other liabilities incurred by the Mitigation Trust Fund prior to the date of the party's notice of withdrawal;

(c) Withdrawal shall result in the forfeiture of that Party's rights and claims relating to distribution of property and funds upon termination of this Agreement, as set forth in Section 4 below;

(d) Withdrawal from this Agreement shall not be deemed withdrawal from membership in MCAG.

3.3 Re-admission of Party.

Public entities that withdraw from this Agreement may be re-admitted upon such terms and conditions as provided by the Governing Board.

ARTICLE 4 TERMINATION AND DISPOSITION OF ASSETS

4.1 Termination.

MCAG shall continue to exercise the joint powers herein until the termination of this Agreement, pursuant to its terms, any extension thereof, or until the Parties shall have mutually rescinded this Agreement; provided, however, that this Agreement shall continue to exist for the purposes of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the RTIF.

Termination shall be accomplished by written consent of all of the Parties, or shall occur upon the withdrawal from the Agreement of a sufficient number of the agencies enumerated herein so as to leave less than five of the enumerated Parties as remaining Parties to this Agreement.

4.2 Distribution of Property and Funds.

Upon termination, any property interest remaining in the Trust Fund following the discharge of all obligations shall be disposed of as the Governing Board shall determine. The Governing Board shall consider, to the extent legally possible, the objective of returning to each Party a proportionate return on the contributions made to such properties by such Parties, less previous returns, if any, and provided that said property interests shall be utilized to construct major arterial transportation facilities which accomplish the purposes of this Agreement.

ARTICLE 5
MISCELLANEOUS

5.1 Effective Date.

This Agreement shall be effective and MCAG shall be authorized to proceed under this Agreement when this Agreement has been executed by the Merced County Board of Supervisors and each of the six member City Councils, but not sooner than April 1, 2005.

5.2 Partial Invalidity.

If any one or more of the terms or provisions of this Agreement shall be adjudged invalid, unenforceable, void or voidable by a court of competent jurisdiction, each and all of the remaining terms and provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

5.3 Amendments.

The Parties to this Agreement may amend it by two-thirds (2/3) vote, except any amendment with respect to the veto power over eminent domain (Section 1.3) must be unanimous.

5.4 Execution.

The Board of Supervisors of the County of Merced and the City Councils of the cities enumerated herein have each authorized execution of this Agreement as evidence by the authorized signatures below.

5.5 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

PARTY

BOARD OF SUPERVISORS,
COUNTY OF MERCED

By:

[Signature]
Chair

Attest:

[Signature]
Clerk of the Board

CITY COUNCIL, CITY OF ATWATER

By:

[Signature]
Mayor

Attest:

[Signature]
City Clerk

CITY COUNCIL, CITY OF DOS PALOS

By:

[Signature]
Mayor

Attest:

[Signature]
City Clerk

DATE OF APPROVAL

8/10/05
Date

**APPROVED AS TO LEGAL FORM
RUBEN B. CASTILLO
MERCED COUNTY COUNSEL**

[Signature]
BY: _____

8/1/05
Date

8/3/05
Date

CITY COUNCIL, CITY OF GUSTINE

By:

James J. Bonta
Mayor

Attest:

Dale Hill
City Clerk

8/16/05
Date

CITY COUNCIL, CITY OF LIVINGSTON

By:

[Signature]
Mayor

Attest:

Martha Waters
City Clerk

8/5/05
Date

CITY COUNCIL, CITY OF LOS BANOS

By:

[Signature]
Mayor

Attest:

Lucia L. Mauer
City Clerk

8/14/05
Date

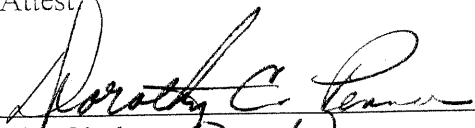
CITY COUNCIL, CITY OF MERCED

By:

[Signature]
Mayor

8/4/05
Date

Attest:


City Clerk (Deputy)