

SECOND AMENDED AND RESTATED JOINT POWERS AGREEMENT OF
TRANSIT JOINT POWERS AUTHORITY FOR MERCED COUNTY

This Second Amended and Restated Joint Powers Agreement is made this 18th day of July, 2013, by and between the County of Merced, the City of Merced, the City of Los Banos, the City of Atwater, the City of Livingston, the City of Dos Palos, and the City of Gustine. This Agreement supersedes the Transit Services Consolidation Agreement dated January 24, 1995, as modified by Resolution 2002/03/21/2 affirming the separate existence of the Authority, the Amended and Restated Joint Powers Agreement dated November 24, 2009, and the First Amendment thereto dated December 13, 2012. Terms beginning with capital letters are defined in Exhibit A. The County and cities are collectively referred to as the Agencies. The Authority shall continue pursuant to the Act.

RECITALS

1. The Agencies regulate the provision of transportation/Transit Services in areas under their jurisdiction and have heretofore operated such services under contract with and through the Merced County Department of Public Works and an independent Transit Services provider ("Franchisee").
2. The Agencies find it in their mutual economic interests to address the operation and provision of Transit Services on a regional level so that the costs for planning and implementing transit programs are based on a fair and equitable allocation system that considers all relevant factors.
3. Each of the Agencies has been a member of the Transit Joint Powers Authority for Merced County, has enjoyed the benefits of such membership, and has directed that Transit Services be provided by and through the Authority.
4. The Agencies desire to possess common ownership of the equipment and facilities which are used in the provision of Transit Services to the public.
5. Each Agency has the individual power to plan, manage, operate and

control equipment and facilities for Transit Services within their jurisdictional boundaries, as well as to create and issue Franchise Agreements for such activities.

6. The California Joint Exercise of Powers Law (Government Code §§6500, et seq.) permits two or more public agencies to exercise jointly any power that the Agencies could exercise separately and also grants certain additional powers to a joint powers authority.

7. The Agencies desire to establish and confer upon a separate legal entity, the Transit Joint Powers Authority for Merced County, the powers necessary to enable them to expand and operate Transit Services for the benefit of all the Agencies.

8. The Agencies intend for the Authority to possess the ability to issue revenue bonds, certificates of participation and other methods of financing to pay for the operation and development of Transit Services and to participate in federal and state programs and receive federal and state funds for the development, operation and provision of Transit Services.

WHEREFORE, the Agencies do continue the joint powers authority now known as the Transit Joint Powers Authority for Merced County for the purpose of owning, financing, administering and operating transit equipment and facilities and for administering rates for transit programs and do agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit A, which is attached hereto and incorporated herein by this reference.

ARTICLE 2. PURPOSE

2.1 This Agreement is made pursuant to the Act to provide for the joint exercise of certain powers common to the Agencies and the additional powers granted under the Act. The purpose of this Agreement is to provide for the joint

planning, adoption, financing, administration and operation of transit equipment and facilities and for the joint monitoring, enforcement and reporting of Transit Service activities in the service area. By entering into this Agreement, the Agencies earn economic benefits not realized when using alternate means to provide Transit Services.

ARTICLE 3. CONTINUATION OF AUTHORITY

3.1 Continuation. Pursuant to the Act, the Agencies continue the public entity known as the Transit Joint Powers Authority for Merced County.

3.2 Separate Entity. The Authority shall be a public entity separate from the Agencies.

3.3 Assets, Rights and Liabilities. The assets, rights, debts, liabilities, and obligations of the Authority shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies. However, nothing in this Agreement shall prevent any Agency from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of the Authority, provided that both the Board and that Agency approve such contract or assumption.

ARTICLE 4. TERM

4.1 Effective Date. This Agreement shall be dated as of the date it is approved by the Board and shall become effective upon approval of three (3) or more Members consisting of the County of Merced and two or more City Members with the majority of population

4.2 Term. This Agreement shall continue until terminated or dissolved by a vote taken in accordance with Article 10 of this Agreement, or for ten (10) years from the effective date, whichever shall first occur. However, in no event shall the Members vote to terminate or dissolve the Transit Joint Powers Authority for Merced County if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation

by or on behalf of the Authority, including, without limitation, indentures, resolutions and letter of credit agreements.

ARTICLE 5. BOUNDARIES

5.1 Service Area. The Authority shall exercise its powers within its Service Area. If an Agency withdraws from the Authority, the area served by the Authority may be modified to exclude the area of the withdrawing Agency.

ARTICLE 6. FUNCTIONS/POWERS

6.1 Authority Functions. The Authority will function to:

- a. Plan, direct, oversee and administer delivery of Transit Services within the service area.
- b. Accept and expend state and federal transit funds.
- c. Perform any functions directed by the Board in furtherance of the foregoing or other programs as determined by the Board.
- d. Involve public officials and citizens as members of committees to advise the Authority on a non-binding basis.

6.2 Powers. The Authority is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations, subject only to such restrictions upon the manner and exercise of such power as are imposed upon the County of Merced in the exercise of similar powers:

- a. Acquire, repair, rehabilitate, finance, refinance, operate, regulate and maintain equipment and facilities for the provision of Transit Services.
- b. Acquire, improve, hold, lease and dispose of real and personal property of all types.
- c. Enter into a Franchise Agreement for the day-to-day provision of Transit Services and an Operations Agreement for maintenance of transit

equipment and facilities.

d. Plan, study and recommend proper and appropriate transit service management practices.

e. Resolve disputes between the public and any entities providing Transit Services or services ancillary thereto.

f. Plan, design, and implement programs that address fare box revenue requirements.

g. Educate the public as to Transit Services and related matters.

h. Provide for or enter into agreements to provide for financial, engineering, legal, audit and any other professional services supporting any of the Authority's programs, including, but not limited to, Transit Services. Such agreements can be made with any person, including any Member.

i. Accept gifts, donations, advances and contributions and act as regional lead jurisdiction/applicant and grant administrator for grants, including grants in the name of Members/regional participants.

j. Hire agents and employees.

k. Sue and be sued in its own name.

l. Incur and discharge debts, liabilities and obligations.

m. Issue bonds or notes and incur other forms of indebtedness, and make associated covenants, for designated purposes, subject to the provisions and limitations of the California Constitution and the Government Code.

n. Establish rates/fares and routes for Transit Services in the Service Area.

o. Adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.

p. By majority vote of the Board, add new Member Agencies.

q. Any additional power granted to joint exercise of powers

agencies under the Act.

- r. All powers necessary to the exercise of the enumerated powers.

ARTICLE 7. ORGANIZATION

7.1 The Board. The Authority shall be governed by the Board, which shall exercise or oversee the exercise of all powers and authority on its behalf. The Board shall meet not less than once yearly and all meetings shall be called, noticed and conducted subject to the Brown Act. Under this Agreement, the Board is expressly charged with carrying out the foregoing provisions through its actions, through contracts, or through staff hired by the Authority.

7.2 Directors.

(a) The Board shall consist of each of the five Merced County Supervisors and one elected legislative official from each of the other Member Agencies. As of the date hereof, there are 11 voting Members. No Person shall be eligible for appointment to the Board unless he or she is serving in an elective position. Each of the city Agencies may appoint one elective Person as an alternate to serve in the absence of an appointed director. Directors and alternate Directors who have been duly appointed and are serving at the time of the restatement of this Agreement may continue to serve in that capacity without any further action of the Member Agency.

(b) Each Director, so long as a public official, shall hold office from the first meeting of the Board after appointment by the Member Agency until his or her successor is selected by such Member Agency.

7.3 Principal Place of Business. The principal place of business of the Authority shall be located at 369 W. 18th Street, Merced, California, 95340.

7.4 Officers.

(a) The Board shall select a Chair and a Vice Chair from among the Directors who shall hold office for a period of one year commencing July 1st. The

Chair and Vice Chair shall alternate between a Member of the Merced County Board of Supervisors and a city Agency representative. The positions shall rotate and there shall be no consecutive terms.

(b) Executive Director. The Authority Board shall utilize an Executive Director who shall be the Chief Executive Officer of the Authority. In lieu of special appointment, the Executive Director shall be the Executive Director of the Merced County Association of Governments. The Executive Director shall plan, organize and direct the administration and operations of the Authority and shall manage any operating agreement between the County and/or a franchisee operator and the Authority. The Executive Director or his or her designee shall review and approve all warrants.

(c) Secretary. The Authority Board shall utilize the services of a Secretary who in lieu of special appointment shall be the Secretary of the Merced County Association of Governments.

(d) General Counsel. In the absence of special appointment by the Authority Board, the General Counsel of Merced County Association of Governments shall serve as General Counsel to the Authority.

7.5 Designation of Law. As required by section 6509 of the Act, and in the absence of conflicting procedural rules, ordinances and resolutions adopted by the Authority Board, the procedural rules, ordinances and resolutions of the County of Merced are the governing law for the Authority.

ARTICLE 8. FINANCIAL MATTERS

8.1 Financial Matters.

(a) Budget. The Executive Director shall prepare and submit to the Board a budget and work plan for adoption prior to July 1 of each year for the ensuing Fiscal Year (July 1 to June 30).

(b) Treasurer. The Chief Financial Officer of Merced County

Association of Governments shall be the Treasurer of the Authority pursuant to Government Code section 6505.6.

(c) Auditor. The Chief Financial Officer of Merced County Association of Governments shall be the Auditor of the Authority pursuant to Government Code section 6505.6.

(d) Duties of Treasurer and Auditor. The Treasurer and/or Auditor, as appropriate, shall do all of the following:

(1) Provide for the transfer of funds held by the Authority.

(2) Receive and receipt for all money of the Authority and place it in the treasury of the Treasurer so designated to the credit of the Authority.

(3) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Authority money so held by him or her.

(4) Pay, when due, all sums payable with respect to outstanding indebtedness of the Authority.

(5) Pay any other sums due from the Authority only upon warrants of the public officer performing the functions of auditor or controller who has been designated by this Agreement.

(6) By or through the Executive Director make or contract to make an annual audit of the accounts and records of the Authority. The minimum standards of the audit shall be those prescribed by the Controller for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing practices. A report of the audit shall be filed as public record with each of the Agencies within 12 months of the end of the Fiscal Year under examination. Any costs in making an audit in accordance with this Agreement shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

(7) Draw warrants to pay demands against the Authority

when the demands have been approved by any Person authorized to so approve in this Agreement.

(8) File an official bond or policy of insurance in an agreed amount pursuant to Government Code Section 6505.1 of the Act.

(9) Perform any and all other functions necessary to effectuate this Agreement.

(10) The investment policy shall be the investment policy of Merced County Association of Governments.

(e) Revenue Bonds. The Authority may issue revenue bonds, but the revenue bonds shall not constitute a debt, liability, or obligation of a Member Agency.

(f) Insurance.

(1) The Authority shall maintain general liability insurance relating to its enumerated functions and shall indemnify, protect, defend and hold harmless all of the Member Agencies. This indemnity shall include Environmental Laws as herein defined.

(2) Notwithstanding Government Code section 895, et seq., liability imposed on the Authority or any Member relating to Authority functions, shall be apportioned proportionately among all Member Agencies based upon population.

ARTICLE 9. WITHDRAWAL FROM THE AGENCY

9.1 Withdrawal Conditions. A Member may not withdraw from the Authority unless and until that Member:

(a) Liquidates in full its proportion of any and all existing debts, obligations and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including, but not limited to, certificates of participation, notes, revenue bonds and other indebtedness, if any, as determined by the Board. The liabilities

of a withdrawing Member shall specifically include those resulting from acts or omissions when the withdrawing Member was a participating Member of the Authority.

(b) Has provided written notice of intent to withdraw at least six (6) months prior to the beginning of the Fiscal Year in which it intends to withdraw, specifying the date on which the Member intends to withdraw.

ARTICLE 10. TERMINATION

10.1 Termination Requirements. This Agreement may only be terminated by consent of all Members, and upon full and complete liquidation of all liabilities, including, but not limited to, certificates of participation, notes, revenue bonds and other indebtedness, if any. Upon the date of termination ("Termination Date"), payment of any and all obligations and division of any and all assets of the Authority shall be conducted subject to the then applicable requirements of the law (currently Section 6511, et seq., of the Act) as follows:

(a) In the event of termination of the Authority where there is a successor public entity that will conduct all of the activities and assume all of its obligations, any and all Authority assets and liabilities remaining upon termination shall be transferred to the successor public agency.

(b) If there is no successor public agency that would conduct the Authority's activities, all assets and liabilities, including surplus money, shall be apportioned to each Member in proportion to population.

(c) If there is a successor public agency that would conduct some of the Authority's activities, then the Board shall allocate Authority assets and liabilities, including surplus money, between the successor public agency and the Members. In such case the Member's portion of the allocation shall be based on subparagraph (b) above.

(d) By unanimous agreement of the Members, assets and liabilities

may be disposed of, divided or distributed on a basis different from that established in this Article.

ARTICLE 11. BYLAWS

11.1 Bylaws. Bylaws may be adopted by the Board pursuant to which meetings of the Board shall be called. The Bylaws shall contain appropriate provisions for the transaction of business and describe the duties and powers of the Chair and Vice Chair and such other officers as may be appointed. The Bylaws may be amended from time to time by majority vote of the Board after notice in accordance with the Bylaws.

ARTICLE 12. AMENDMENTS

12.1 This Agreement may only be amended by the affirmative vote of two-thirds of the Members of the Board of Directors, except that Article 10 may not be amended without the agreement of all the Members. Furthermore, no amendment may add to the duties or obligations of a Member without the agreement of such Member.

ARTICLE 13. MISCELLANEOUS

13.1 Filing with the Secretary of State. All notices required by Government Code §§6503.5 and 53051 shall be filed by the Authority with the California Secretary of State.

13.2 Immunity. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation, and other benefits which would apply to the activity of officers, agents, or employees of any such Member Agency, when performing their respective functions within the territorial limits of the respective Member Agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties under this agreement outside the territorial limits of their Agencies.

13.2 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of each Member. Notwithstanding the foregoing, no Member may assign any right or obligation hereunder without the written consent of all other Members.

13.3 Severability. If any provision of this Agreement or its application to any circumstance is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other circumstances shall not be affected.

13.4 Headings. All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

13.5 Conflict of Interest Code. The Authority has adopted a conflict of interest code.

13.6 Arbitration. The Members desire to avoid the expense and delay associated with litigation, and therefore agree to submit any and all disputes which cannot be resolved by a good-faith effort to meet and confer to binding arbitration pursuant to the following terms. Despite the fact that such binding arbitration is pursuant to contract, it shall be conducted based on local (Merced County) and state rules of judicial arbitration. There shall be one arbitrator. He or she shall be chosen from the then active list of arbitrators maintained by the Merced County Superior Court Arbitration Administrator. The party seeking arbitration shall commence the case with a letter request which shall set forth, in clear and concise terms, the nature of the dispute and shall further list three names from the above-mentioned list of arbitrators agreeable to the requesting party. Within five days the other party shall select one of the listed attorneys, or submit a list of three names to the requesting party, who may within five days select one of the other parties' listed attorneys. If the parties cannot agree on the arbitrator, they shall submit the

issue of appointment to the Presiding Judge of the Merced County Superior Court as though it is an ex parte hearing. None of the previously listed attorneys may be selected as an arbitrator. The arbitrator shall set the matter for hearing within sixty (60) days of his or her appointment. After submission of the matter the arbitrator shall issue a decision within ten (10) days. The decision of the arbitrator shall be final and binding, and may be enforced as a judgment in the Merced County Superior Court.

IN WITNESS WHEREOF, the Members have caused this Agreement to be duly executed and attested by the Board Chair as of the date set forth below.

Date: July 18, 2013

TRANSIT JOINT POWERS AUTHORITY
FOR MERCED COUNTY

By: _____
Jerry O'Banion, Chair

EXHIBIT A

DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified below.

Act

“Act” means the California Joint Exercise of Powers Law (California Government Code Section 6500 et seq.)

Agency/Agencies

“Agency/Agencies” means the public entities which are or have been Members of the Authority.

Agreement

“Agreement” means this Amended and Restated Joint Exercise of Powers Agreement, as it may be amended from time to time.

Auditor

“Auditor” means the Chief Financial Officer of Merced County Association of Governments.

Authority

“Authority” means the Transit Joint Powers Authority for Merced County.

Board

“Board” means the governing Board of Directors of the Authority, currently consisting of the five Members of the Merced County Board of Supervisors and one Mayor or Council person from each of the six incorporated municipal Agencies, for a total of 11 Directors as more fully described in Article 7 of this Agreement.

Chair

“Chair” means the Chair of the Authority Board, as described in Article 7 of this Agreement and the Bylaws.

Director

“Director” means the Agency representatives who serve on the governing Board of Directors.

Effective Date

“Effective Date” means the effective date of this Agreement, which is defined herein.

Environmental Laws

“Environmental Laws” means all federal and state statutes; and all county, local, and Agency ordinances concerning public health, safety, and the environment including, by way of example and not limitations, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601, et seq.; the Resource Conservation and Recovery Act, 42 USC §6902, et seq.; the Federal Clean Water Act, 33 USC §1251, et seq.; the Toxic Substances Control Act, 15 USC §1601, et seq.; the Occupational Safety and Health Act, 29 USC §651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100, et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5, et seq.; the California Integrated Waste Management Act, California Public Resources Code §40000, et seq., as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

Equipment and Facilities

“Equipment and Facilities” means the personal and real property used by the Authority and the operator or the Franchisee for the provision of Transit Services.

Fiscal Year

“Fiscal Year” means the period commencing on each July 1 and ending on the following June 30.

Franchise Agreement

“Franchise Agreement” means the agreement with an independent contractor

for the day-to-day provision of Transit Services. Such agreement shall be between the Authority and such independent contractor.

Legislation

“Legislation” means any code, ordinance, resolution, or any other forms or enactment of the Agencies or any Member which now exists or which may hereafter be adopted which constitutes law or regulation.

Member

“Member” means any one of the public entities listed in Exhibit B and any public entity that becomes a new member in accordance with this Agreement.

Operations Agreement

“Operations Agreement” means any agreement with the County of Merced or other person for administrative, maintenance or related activities.

Person

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, special purpose district, town, city, county, state, or the United States.

Service Area

“Service Area” means all territory covered by the Annual Service Plan and/or Short Range Transit Plan.

Term

“Term” means the period of time specified in Article 4 of this Agreement.

Transit Services

“Transit Services” means transportation services for the general public within the Service Area, including, but not limited to, fixed route service, both rural and urban, and a demand response system, carless commute and other Transit Services approved by the Board.

Treasurer

“Treasurer” means the Chief Financial Officer of Merced County Association of Governments (“MCAG”).

EXHIBIT B

MEMBERS

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