

MEASURE V REGIONAL PROJECT FUNDING AGREEMENT

between

MERCED COUNTY ASSOCIATION OF GOVERNMENTS

and the

CITY OF MERCED

This Measure V Regional Project Funding Agreement (“AGREEMENT”), effective _____, 2020, is entered into by and between Merced County Association of Governments, a joint powers authority pursuant to California Government Code Section 6500 et seq. (MCAG), and the City of Merced, (“RECIPIENT”) for the **Highway 59 Widening Phase 1** (“PROJECT”).

RECITALS

- A. On November 8, 2016, the voters of Merced County, pursuant to the provisions of the Local Transportation Authority and Improvement Act, California Public Utilities Code Section 180000 et seq. (“Act”), approved Measure V, thereby authorizing MCAG to administer the proceeds from the one-half cent transaction and use tax (“Measure V”).
- B. The duration of the Measure V transportation sales tax will be 30 years from the initial year of collection, which began April 1, 2017, with said tax to terminate/expire on March 31, 2047. The tax proceeds will be used to pay for the programs and projects outlined in Merced County’s 2016 – ½ Cent Transportation Sales Tax Measure Expenditure Plan (“Expenditure Plan”), as it may be amended in accordance with State law.
- C. This AGREEMENT delineates the rights and responsibilities of the Parties hereto as they relate to the Regional Projects funds that are allocated to the PROJECT by the MCAG Governing Board, as authorized by the Expenditure Plan.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

ARTICLE I: REGIONAL PROJECTS FUNDING ALLOCATION

This AGREEMENT authorizes MCAG to allocate Regional Projects funds derived from Measure V receipts to RECIPIENT in accordance with the voter-approved Expenditure Plan based on the PROJECT’s satisfaction of the following criteria:

- The PROJECT is of regional significance by being located on the State Highway System, the Regional Road System, in more than one jurisdiction, and/or directly benefiting more than one jurisdiction.
- The PROJECT is included in the applicable Regional Transportation Plan (RTP).
- The PROJECT was recommended by the appropriate Regional Projects Committee of authority based on the PROJECT location.
- The PROJECT was approved by the MCAG Governing Board.
- The PROJECT is included in the current Measure V Implementation Plan.

ARTICLE II: PROJECT SCOPE, COSTS, AND SCHEDULE

A. Project Scope

1. The PROJECT funding allocation was approved by the MCAG Governing Board for project study report, environmental, design, and construction.
2. The PROJECT will widen Highway 59 from 16th Street to Olive Avenue/Santa Fe Drive in Merced including the construction of new sidewalks.
3. In utilizing the Measure V funding allocation, the RECIPIENT shall only proceed with work authorized for the specific phase(s) with written "Authorization to Proceed." Within 5 days of the execution of this AGREEMENT or amendment thereof, MCAG shall provide a written "Authorization to Proceed" to the RECIPIENT.

B. Project Costs

1. The PROJECT has a total estimated project cost of \$5,944,580 as of the date of this AGREEMENT.
2. The PROJECT has been approved for an allocation from the Measure V East Side Regional Projects funding account in an amount not to exceed **\$5,944,580**.
3. The RECIPIENT is responsible for any PROJECT cost overruns. Requests for additional Measure V regional projects revenue beyond what is approved and programmed in the current Implementation Plan may be considered by MCAG through an amendment to the Implementation Plan. All Implementation Plan amendments must be approved by the Governing Board.
4. Regional funding allocated to RECIPIENT for the PROJECT that remains unspent at the completion of the PROJECT will remain in the appropriate Regional Projects funding account

ARTICLE III: FUNDING AND EXPENDITURES

A. MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG)

1. RECIPIENT shall be reimbursed no later than thirty (30) days following the submission of invoices to MCAG for allowed PROJECT costs, with the exception of costs associated with compliance with the requirements outlined in Article IV, Section A of this AGREEMENT.
2. MCAG shall provide the reimbursement forms and documentation requirements for the submission of invoices to RECIPIENT no later than thirty (30) days following the date of this AGREEMENT.
3. MCAG shall include Measure V Regional Projects funds distributed to the PROJECT in a quarterly report to the MCAG Governing Board.
4. Per the Expenditure Plan, MCAG shall provide for an independent annual audit of Measure V revenue and expenditures for all funding categories, including the PROJECT.
5. MCAG shall provide thirty (30) days notice to RECIPIENT prior to conducting an audit of Regional Project funds received by RECIPIENT for the PROJECT to determine whether the RECIPIENT's use of said funds is in compliance with this AGREEMENT and the Expenditure Plan.

B. RECIPIENT'S DUTIES AND OBLIGATIONS

1. RECIPIENT shall use all Regional Projects funds received for this PROJECT in compliance with the applicable guidelines and plan(s), as they may be adopted or amended by the MCAG Governing Board in accordance with applicable law.
2. RECIPIENT must account for Regional Projects funds separately – independent of Measure V Local Projects accounts. The accounting system shall provide adequate internal controls and audit trails to facilitate an annual compliance audit for each fund type and the respective usage and application of said funds. MCAG and its representatives and agents shall have the right at any reasonable time to inspect and copy any accounting records related to such funds, except to the extent specifically prohibited by applicable law.
3. RECIPIENT will utilize the Designated Reporting Tool to provide MCAG with the required information related to Regional Projects fund expenditures according to the following schedule:

<u>Reporting Period</u>	<u>Due Date</u>
July 1 to September 30	October 31
October 1 to December 31	January 31 of following calendar year
January 1 to March 31	April 30
April 1 to June 30	August 31 (60 days are provided for the 4th quarter of each fiscal year)

C. OTHER CONSIDERATIONS

1. PROJECT-Specific Allocation: RECIPIENT shall use all Regional Projects funds allocated to the PROJECT solely for the PROJECT. Any jurisdiction that violates this provision, as determined by the MCAG Governing Board or Measure V Citizens Oversight Committee, must fully reimburse all misspent funds, including all interest which would have been earned thereon. The interest rate shall not exceed the maximum allowed by law.
2. Staff Cost Limitations: Direct costs associated with the delivery of programs and projects associated with the PROJECT, including direct staff costs and consultant costs, are eligible uses of said funds. Indirect costs, including, but not limited to, overhead costs such as rent, utilities, and human resources staff, are not allowed.
3. CEQA: The PROJECT shall comply with the California Environmental Quality Act (CEQA) and other environmental reviews as required.
4. Promotion: At a minimum, RECIPIENT agrees to promote the PROJECT through branded signage and is encouraged to utilize additional means such as news releases, social media, events, or any other tools to communicate to the public that the project was funded by Measure V. RECIPIENT also agrees to provide MCAG with at least five (5) photographs of the project, either in progress, before and after completion, or some combination thereof. At least one photograph of the completed PROJECT is required.

ARTICLE IV: REPORTING REQUIREMENTS

A. REQUIREMENTS AND WITHOLDING

RECIPIENT shall comply with each of the reporting requirements set forth below. If RECIPIENT fails to comply with one or more of these requirements, MCAG may withhold reimbursement payment for the PROJECT until full compliance is achieved.

1. As a means to keep the public informed, the RECIPIENT, at a minimum, shall provide quarterly updates of current and accurate information on RECIPIENT's website (if applicable) and to MCAG for the Measure V website, related to the PROJECT's progress.
2. RECIPIENT shall, at least annually, publish an article highlighting the PROJECT, or provide information to MCAG regarding such project or program for publication.
3. RECIPIENT shall make its administrative officer or designated staff available upon request to render a report or answer any and all inquiries in regard to RECIPIENT's receipt, usage, and/or compliance with audit findings regarding the PROJECT before the Citizens Oversight Committee.
4. RECIPIENT agrees that MCAG may review and/or evaluate the PROJECT pursuant to this AGREEMENT. This may include visits by representatives, agents or nominees of MCAG to observe RECIPIENT's project or program operations, to review project or program data and financial records, and to discuss the project with RECIPIENT's staff or governing body.

ARTICLE V: OTHER PROVISIONS

A. INDEMNITY BY RECIPIENT

Neither MCAG nor its governing body, elected officials, officers, consultants, agents or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Regional Projects funds distributed to RECIPIENT for the PROJECT pursuant to this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, that RECIPIENT shall fully defend, indemnify and hold harmless MCAG, its governing body, elected officials, officers, agents and employees from any liability imposed on MCAG for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT for the PROJECT in connection with the Regional Projects funds distributed to RECIPIENT pursuant to this AGREEMENT.

B. INDEMNITY BY MCAG

Neither RECIPIENT nor its governing body, elected officials, officers, consultants, agents or employees shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by MCAG under or in connection with any work, authority or jurisdiction delegated to MCAG under this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, that MCAG shall fully defend, indemnify and hold harmless RECIPIENT, its governing body, elected officials, officers, agents and employees from any liability imposed on RECIPIENT for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by MCAG under or in connection with any work, authority or jurisdiction delegated to MCAG under this AGREEMENT.

C. JURISDICTION AND VENUE

The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims to which it relates. All legal actions arising out of this AGREEMENT shall be brought in a court of competent jurisdiction in Merced County, California.

D. ATTORNEY'S FEES

Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to recover reasonable expenses and attorney's fees from the other party.

E. TERM

The term of this AGREEMENT shall be from _____, 2020 to sixty (60) days following the completion of the scope of work as described in Article II, unless amended in writing or a new Measure V Regional Project Funding Agreement is executed between MCAG and RECIPIENT.

F. SEVERABILITY

If any provision of this AGREEMENT is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions of the AGREEMENT, but such unenforceable provisions shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this AGREEMENT.

G. ENTIRE AGREEMENT; MODIFICATION

This AGREEMENT, as well as the referenced Expenditure Plan, constitutes the entire AGREEMENT and supersedes all prior written or oral understandings regarding the Regional Projects funding for the PROJECT. This AGREEMENT may only be modified by a written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT by their duly authorized officers as of the date first written below.

CITY OF MERCED (RECIPIENT)

MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG)

By:

By:

Name _____ Date _____
Title _____

Stacie Guzman _____ Date _____
Executive Director

Approved as to Legal Form:

Reviewed as to Budget/Financial Controls:

By:  _____
Name Schneider Gumpel _____ Date 5/4/2020
Title Deputy City Attorney

By: _____
Nav Bagri _____ Date _____
Finance Director

Approved as to Legal Form:

By: _____
Emily Haden _____ Date _____
Legal Counsel to MCAG