

**AGREEMENT BETWEEN MERCED COUNTY ASSOCIATION OF GOVERNMENTS**

**AND THE CITY OF MERCED**

**FOR THE ADMINISTRATION OF THE MERCED COUNTY MULTIJURISDICTIONAL HOUSING ELEMENT**

**AND SB 244 TECHNICAL ANALYSIS CONTRACT**

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THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Merced County Association of Governments ("MCAG"), a joint powers authority pursuant to California Government Code Section 6500 et seq, and the City of Merced, and shall be retroactive to December 5, 2022.

**Recitals**

- I. The California Government Code requires that local agencies, including cities and counties, adopt general plans and individual housing elements and that they review and revise those housing elements contained in their general plans every eight years in compliance with Sections 65580 through 65589 of the Code.
- II. Merced County Association of Governments (MCAG) is a joint powers authority formed by the six incorporated cities in Merced County and the County of Merced (its "Members") and has been designated as the Metropolitan Planning Organization for Merced County (MPO).
- III. As the MPO serving the County of Merced, MCAG is the recipient of REAP 1.0 and 2.0 program funds, which are intended to accelerate housing production.
- IV. Despite being the recipient of REAP funding, MCAG does not typically participate in the preparation of, or have authority to adopt or approve, land use plans such as general plans or housing element updates of its Members.
- V. MCAG, at the request of the Members and pursuant to resolutions approved by the Board of Supervisors or the City Council of each Member, attached hereto as Exhibit A, agreed to hire a consultant to perform a coordinated, regional update to the housing element of each Member's general plan at no cost to MCAG, to administer the contract, and to assist with coordination.
- VI. Additionally, MCAG, at the request of the Members pursuant to resolutions approved by the Board of Supervisors or the City Council of each Member, attached hereto as Exhibit B, agreed to amend aforementioned consultant contract to include SB 244 technical analyses for participating Members. This task is also at no cost to MCAG.
- VII. Pursuant to the Resolutions adopted by each Member, each Member adopted the Merced County Multijurisdictional Housing Element Cost Sharing Agreement (this "Agreement") and agreed to reimburse MCAG for actual costs incurred.
- VIII. Additionally, pursuant to the Resolutions adopted by each participating Member, each participating Member adopted the SB 244 Technical Analysis Cost Sharing Agreement (NAME) and agreed to reimburse MCAG for actual costs incurred.
- IX. Due to time being of the essence, and to necessarily confirm each participating Member's commitment, the resolutions for both the Multijurisdictional Housing Element and SB 244 Technical Analysis were approved prior to the execution of this Agreement.

The Recitals set forth above are hereby incorporated into this Agreement as if set forth in full.

## **Section One – Roles and Responsibilities of MCAG**

- I. As agreed to by its Members, MCAG shall use REAP 1.0 funds it receives from the California Department of Housing and Community Development, which would normally be distributed to its Members, to retain a consultant to prepare a multijurisdictional housing element update.
- II. Additionally, at the request of the Members, MCAG has amended the aforementioned consultant contract to include a task to complete SB 244 Technical Analyses for each participating Member.
- III. MCAG's role in this effort to develop a multijurisdictional housing element and SB 244 Technical Analyses for each participating Member is limited to consultant procurement, contract administration, and assistance with coordination.
- IV. The MCAG Governing Board will not adopt the multijurisdictional housing element, the SB 244 Technical Analyses, or any subsequent planning documents that are the responsibility of the Members to prepare.
- V. MCAG shall not serve as the Lead Agency on any environmental documents to comply with the California Environmental Quality Act for the multijurisdictional housing element or any related or subsequent plans or studies, as MCAG does not have implementing authority over these planning documents.

## **Section Two – Roles and Responsibilities of City of Merced**

- I. Local jurisdictions, including the Members, are responsible for complying with state housing law and for preparing, adopting, and implementing their own housing elements and SB 244 Technical Analysis.
- II. Government Code Section 65588 requires cities and counties to review and revise the housing elements to their comprehensive general plans every eight years in compliance with Section 65580 through 65589, Chapter 1143, Article 10.6.
- III. Under SB 244 and pursuant to Government Code Section 65302.10.(a), cities and counties, on or before the next adoption of its housing element, are required to review and update the land use elements of their general plan, based on available data, including, but not limited to, the data and analysis developed pursuant to Section 56430, of unincorporated island, fringe, or legacy communities inside or near its boundaries.
- IV. Each Member shall have an active role in the development of the multijurisdictional housing element and provide the consultant or MCAG with any requested data in a timely manner in order to avoid unnecessary delays.
- V. Each Member agrees to reimburse MCAG for any and all costs associated with preparation of the Merced County Multijurisdictional Housing Element in accordance with the Cost Sharing Agreement attached hereto as Exhibit C, and the SB 244 Technical Analyses in accordance with the Cost Sharing Agreement attached hereto as Exhibit D.
- VI. Each Member shall submit adopted housing elements to MCAG no later than August 31, 2024, in order to comply with the REAP 1.0 reporting requirements.
- VII. Each Member is responsible for coordinating with the State on the review and approval of their housing element, submitting the housing element and SB 244 Technical Analysis to the State, and adopting their housing element and SB 244 Technical Analysis.

### **Section 3 -- Indemnification**

City of Merced shall indemnify and defend MCAG and hold it harmless from and against any and all claims, demands, or liability arising out of or in any way connected with the performance of this Agreement, adoption of the Member's housing element, programs contained within its housing element, SB 244 Technical Analysis and any subsequent planning documents that are the responsibility of the Member to prepare, including, but not limited to, environmental and CEQA related documents, updates to other elements of the City of Merced's general plan, or studies. Indemnity shall apply to any acts, omissions, willful misconduct, or negligent conduct, whether active or passive, unless liability is caused solely by the negligent or willful misconduct of MCAG. The City of Merced will, on request and at its own expense, defend any action, suit, or proceeding arising hereunder and shall reimburse and pay MCAG for any loss, cost, damage, or expense, including attorney's fees suffered by it hereunder. The Members shall be responsible for determining how any such costs shall be apportioned between them, and any failure to agree shall not impact this indemnification requirement.

This Indemnification provision supersedes the indemnification provision set forth in the 2<sup>nd</sup> Amended and Restated Joint Powers Agreement of Merced County Association of Governments, as restated, amended, or revised from time to time.

### **Section 4 – Negotiated Agreement**

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

### **Section 5 – Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of any successors or assigns.

### **Section 6 – Waiver**

No waiver by either party of any default, breach, or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach, or condition precedent shall be binding on any of the parties hereto. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent, or any other right hereunder.

### **Section 7 – Notices**

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

- |             |   |
|-------------|---|
| A. To MCAG: | Stacie Guzman<br>Merced County Association of Government<br>369 W. 18 <sup>th</sup> St.<br>Merced, CA 95340 |
|-------------|---|

B. To (Jurisdiction):

Scott McBride, Development Services Director  
City of Merced  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

Nothing hereinabove shall prevent either MCAG or City of Merced from personally delivering any such notices to the other.

**Section 8 – Integration**

This Agreement and the Exhibits hereto represent the entire understanding between MCAG and City of Merced as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein.

**Section 9 – Amendment**

This Agreement may not be modified or altered except in writing signed by MCAG and the City of Merced.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written.

Merced County Association of Governments:

City of Merced

By \_\_\_\_\_  
Stacie Guzman, Executive Director

By \_\_\_\_\_  
Matthew Serrato, Mayor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By \_\_\_\_\_  
General Counsel, Haden Law Office

By  \_\_\_\_\_  
Brian Doyle, City Attorney

**RESOLUTION NO. 2022- 72**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MERCED, CALIFORNIA,  
HEREBY AUTHORIZING PARTICIPATION  
IN THE MERCED COUNTY  
MULTIJURISDICTIONAL HOUSING  
ELEMENT AND COST SHARING  
AGREEMENT**

WHEREAS, Government Code Section 65588 requires local agencies to review and revise the housing elements to their comprehensive general plan in compliance with Section 65580 through 65589, Chapter 1143, Article 10.6;

WHEREAS, the Merced County Association of Governments (MCAG) is a Joint Powers agency created by the six incorporated cities in Merced County and the County of Merced, pursuant to Government Code Sections 6500 et. Seq.;

WHEREAS, the local government agencies in Merced County have requested MCAG to hire a consultant to perform a coordinated update to the housing element of each local agency's General Plan at no cost to MCAG;

WHEREAS, MCAG engaged the Regional Early Action Planning (REAP) Work Group consisting of the local member agencies to review the Request for Proposal, evaluate bids, select a consultant, develop a cost sharing arrangement and make a recommendation to the MCAG board to hire the consultant;

WHEREAS, the cost sharing arrangement includes the cost of the consultant and \$35,000 to cover MCAG administration;

WHEREAS, each participating member agency agrees to provide MCAG a deposit by December 30, 2022, in the amount specified in the cost sharing agreement to assist with cash flow;

WHEREAS, each participating member agency agrees to reimburse MCAG for the cost of the Merced County Multijurisdictional Housing Element in accordance with the cost sharing arrangement attached herein; and,

WHEREAS, time is of the essence and each participating member agency agrees to facilitate the flow of information to the consultant to provide a timely report.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED  
DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Merced adopts the Merced County Multijurisdictional Housing Element Cost Sharing Agreement and agrees to participate in the study and reimburse MCAG for actual cost incurred.

SECTION 2. The City Manager and the City Clerk, respectively, are hereby authorized to execute and attest said Agreement on behalf of the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced, at a regular meeting held on the 5th day of December 2022, by following called vote:

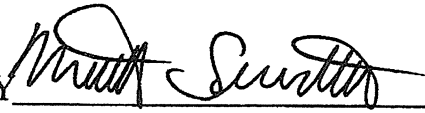
AYES: 7                      Council Members: BOYLE, DEANDA, ORNELAS, PEREZ,  
SERRATTO, SMITH, XIONG

NOES: 0                      Council Members: NONE


ABSTAIN: 0                      Council Members: NONE

ABSENT: 0                      Council Members: NONE

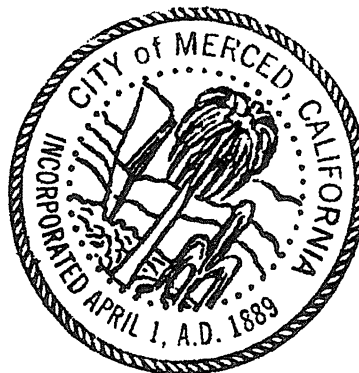
APPROVED

BY   
Mayor


ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY:   
Assistant/Deputy City Clerk

(SEAL)



APPROVED AS TO FORM

BY:                       11-15-22  
City Attorney                      Date



**RESOLUTION NO. 202\_ - \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AGREEING TO THE COST SHARE FOR THE  
SB244 ANALYSIS PORTION OF THE  
MULTIJURISDICTIONAL HOUSING ELEMENT**

**WHEREAS**, Government Code Section 65588 requires local agencies to review and revise the housing elements to their comprehensive general plan in compliance with Section 65580 through 65589, Chapter 1143, Article 10.6, and;

**WHEREAS**, the City is required to conduct an SB244 Analysis when updating an amendment to the City's Sphere of Influence (SOI), a comprehensive General Plan Update including the land use section, or a new Housing Element, and;

**WHEREAS**, the City will be moving forward with a General Plan update, which may include amendments to the SOI, and;

**WHEREAS**, the Merced County Association of Governments (MCAG) is a Joint Powers agency created by the six incorporated cities in Merced County and the County of Merced, pursuant to Government Code Sections 6500 et. seq., and;

**WHEREAS**, the local government agencies in Merced County have requested that MCAG hire a consultant to perform a coordinated update to the housing element of each local agency's General Plan at no cost to MCAG, and;

**WHEREAS**, MCAG engaged the Regional Early Action Planning (REAP) Work Group consisting of the local member agencies to review the Request for Proposals, evaluate bids, select a consultant, develop a cost sharing arrangement and make a recommendation to the MCAG board to hire the consultant, and;

**WHEREAS**, the cost sharing agreement for the Multijurisdictional Housing Element (MJHE) was approved by City Council on December 5, 2022, at a total cost of \$1,030,743 with the City's portion being \$132,267, and;

**WHEREAS**, the City Council agreed to an additional cost of \$22,000 to achieve a greater community outreach and reimburse MCAG for actual costs incurred for such outreach, and;

WHEREAS, The City desires to enter into this additional cost sharing agreement to complete a SB244 Analysis as part of the MJHE update at no cost to MCAG.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Merced agrees to share the cost of the \$40,000 SB244 Analysis with the member agencies of the MJHE.

SECTION 2. The City's portion is 30% of the total, which is \$12,000.

SECTION 3. The Finance Officer is hereby authorized to make any needed budget adjustments.

SECTION 4. The City Manager, or designee, and the City Clerk, respectively, are hereby authorized to execute and attest to the cost and scope of work on behalf of the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 202\_, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

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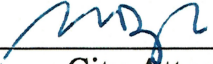
Mayor

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

 6-14-2023  
City Attorney      Date

**Sixth Cycle Multijurisdictional Housing Element Cost Sharing Agreement**  
**BASE COST + PRO RATA COST**

Jurisdiction	Consultant Contract	REAP 1 Contribution**	Consultant Cost Per Jurisdiction***		MCAG Admin ****	TOTAL JURISDICTION CONTRIBUTION*****	Cash Flow 20% Deposit
			Base Cost ***	Pro Rata Cost			
City of Dos Palos			\$38,000	\$5,695	\$5,000	\$48,695	\$9,739
City of Gustine			\$38,000	\$5,695	\$5,000	\$48,695	\$9,739
City of Livingston			\$38,000	\$14,522	\$5,000	\$57,522	\$11,504
City of Atwater			\$38,000	\$31,606	\$5,000	\$74,606	\$14,921
City of Los Banos			\$38,000	\$45,844	\$5,000	\$88,844	\$17,769
City of Merced			\$38,000	\$89,267	\$5,000	\$132,267	\$26,453
County of Merced			\$38,000	\$92,114	\$5,000	\$135,114	\$27,023
<b>Total</b>	<b>\$1,030,743</b>	<b>\$480,000</b>	<b>\$266,000</b>	<b>\$284,743</b>	<b>\$35,000</b>	<b>\$585,743</b>	<b>\$117,149</b>

\*\*The contribution from REAP 1 is anticipated to be \$480,000.

\*\*\*The consultant cost per jurisdictions for the \$1,030,743 contract will be \$550,743 (after the \$480,000 REAP contribution and before adding MCAG admin). The \$550,479 local contribution is split approximately 50/50 between a base cost (column D) and pro rata cost (column E) for each jurisdiction.

\*\*\*\*MCAG admin is distributed evenly amongst jurisdictions as the staff time to administer will be relatively even across all jurisdictions.

October 31, 2022

DRAFT COST SHARING AGREEMENT		
SB 244 Technical Analysis		
JURISDICTION	SHARE OF COST	COST
ATWATER	27%	\$ 10,800
DOS PALOS	2%	\$ 800
GUSTINE	2%	\$ 800
LOS BANOS	12%	\$ 4,800
MERCED	30%	\$ 12,000
UNINCORPORATED COUNTY	27%	\$ 10,800
TOTAL	100%	\$ 40,000

NOTE: Livingston excluded from calculation as they have confirmed they will not participate in the analysis.