

MEASURE V RECIPIENT FUNDING AGREEMENT

between

MERCED COUNTY ASSOCIATION OF GOVERNMENTS

and the

CITY OF MERCED

This Measure V Recipient Funding Agreement ("AGREEMENT"), effective the 1st day of July 2018, 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 a municipal corporation ("RECIPIENT").

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 requirements of the Local Projects funds that are directly allocated to local jurisdictions, as authorized by the Expenditure Plan.

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

ARTICLE I – LOCAL PROJECTS FUNDING ALLOCATIONS

This AGREEMENT authorizes MCAG to allocate the Local Projects funds derived from Measure V receipts in accordance with the voter-approved Expenditure Plan as follows:

- Each jurisdiction (each City and the County) shall be allocated an annual base amount of \$150,000 from the Local Projects funds. The total amount of this base amount will be subtracted from the 50% Local Projects funds before the remainder is allocated.
- The remaining Local Projects funds after the base amount allocation shall be allocated in accordance with the Expenditure Plan based on the average of the jurisdiction's share of the total countywide population and its share of the total countywide publicly maintained road miles. For example, if a jurisdiction has 35% of the population and 75% of the road miles it will be allocated 55% of the funds remaining after the base amounts are allocated.
- 20% of each jurisdiction's total allocation of Local Projects funds shall be used for Alternative Modes projects as outlined in the Expenditure Plan.

A. LOCAL PROJECTS

1. Fifty percent (50%) of the Measure V funds collected shall be allocated to Local Projects. The individual local elected city councils and the Merced County Board of Supervisors are the decision-making bodies for the use of their respective allocations of the Local Projects funds within their respective jurisdictions. Each city and the County of Merced shall receive their Local Projects funding allocation as described above consistent with the Expenditure Plan. The goal of the Local Projects funds is to improve the local transportation systems within each individual city and the County of Merced overall. At least twenty percent (20%) of the Local Projects funds each jurisdiction receives shall be used for Alternative Modes projects (see section B).
2. MCAG shall distribute the Local Projects funds pursuant to the formula described above and consistent with the Expenditure Plan. RECIPIENT allocations are subject to change based on variations of annual population figures and percent of road miles pursuant to Article II Paragraph A(2) herein.
3. The Expenditure Plan provides basic fund usage guidelines for RECIPIENT use of the Local Project funds received from the Measure V sales tax. Said guidelines are hereby incorporated into this AGREEMENT by reference.
4. RECIPIENT shall utilize the reporting tools designated by MCAG to maintain and provide a separate accounting of the Local Projects funds received and any and all expenditures from said funds to ensure that the funds are spent in accordance with the approved Expenditure Plan.

5. RECIPIENT may choose to advance funds for a project, either a project specified in the plan or a project for which they plan to use their Local Projects funds, and to receive reimbursement for that advancement in accordance with the plan. The fund advancement and reimbursement projections must be approved by a majority vote of the MCAG Governing Board per its Bylaws prior to the jurisdiction proceeding with the project. RECIPIENT may also accumulate funds from their Local Projects allocations over several years to fund higher-cost projects.
6. RECIPIENT shall provide a report to the Citizens Oversight Committee within 60 days of the fiscal year end delineating the Local Projects funds received and how they were spent. In addition, RECIPIENT shall provide documentation as to whether or not the Maintenance of Effort as described in Article II, Paragraph B(4) below, was met.

B. ALTERNATIVE MODES PROJECTS

1. At least twenty percent (20%) of the Local Projects funds received by RECIPIENT shall be used for Alternative Modes projects as required in the Expenditure Plan. RECIPIENT may use more than the twenty percent (20%) minimum but not less. The goal of this sub-category of projects is to provide safe alternatives to automobile travel, increase use of alternative modes, and improve air quality and the environment. RECIPIENT may also accumulate funds from their Local Projects allocations over several years to fund higher-cost Alternative Modes projects.
2. This sub-category may be used for projects and programs that provide alternatives to single-occupant vehicle use, increase use of alternative modes, and improve air quality and the environment, including but not limited to the following:
 - Sidewalks, crosswalks, safe routes to schools, ADA curb ramps and other pedestrian projects
 - Bicycle projects
 - Passenger rail
 - Railroad crossing safety improvements
 - Vanpools, carpools or other ridesharing programs or incentives
 - Roundabouts or other air quality improvements
 - Other alternative modes

ARTICLE II: PAYMENTS AND EXPENDITURES

A. MERCED COUNTY ASSOCIATION OF GOVERNMENTS (MCAG)

1. Within 5 business days of actual receipt of the Measure V sales tax revenues from the State Board of Equalization ("BOE"), MCAG shall pay to the RECIPIENT its allocated amount of available Local Projects funds provided that the RECIPIENT is current on expenditure reporting requirements as outlined in Article II, Paragraph B(3). With the payment, MCAG shall provide the RECIPIENT with an itemized breakdown of how the allocation payment was calculated. In the event of non-compliance, MCAG maintains the authority to hold Local Project fund allocations until reporting requirements are met.
2. MCAG shall annually update the Measure V revenue projections and the resulting fund allocation formulas to reflect the most current population using the California Department of Finance's annual population estimates (Report E-1 published annually in May) and the Maintained Miles by jurisdiction as published in the most current California Public Road Data. MCAG shall use the updated Local Projects allocation formulas in the allocations beginning July 1 of each new fiscal year, which is from July 1 to June 30. MCAG shall provide the RECIPIENT prompt notice of any update to the allocation formulas and MCAG's application of the updated formula to the RECIPIENT's allocation.
3. MCAG shall include Measure V Local Projects funds distributed to each RECIPIENT in a quarterly report to the Board of Directors.
4. MCAG shall provide for an independent annual audit of its financial statements including revenues and expenditures and of its calculation of the allocation formula for distributing Measure V revenues to RECIPIENT and the other jurisdictions.
5. MCAG shall provide reasonable notice to RECIPIENT prior to conducting an audit of Local Projects funds received by RECIPIENT 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 Local Projects funds received in compliance with the applicable guidelines and plan(s), as they may be adopted or amended by the Board of Directors for MCAG in accordance with applicable law.
2. RECIPIENT shall use and maintain the designated reporting tools to report on funds received and expended. RECIPIENT must account for Local Projects funds, including any interest

received or accrued, separately for each fund type. 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 absolute right at any reasonable time to inspect and copy any accounting records related to such funds, except to the extent specifically prohibited by application law.

3. RECIPIENT will utilize the designated reporting tools to provide MCAG with the required information related to Local Projects funds expenditures according to the following schedule:

Quarter	Reporting Period	Due Date
FY 18-19 Q1	July 1 to September 31	October 31, 2018
FY 18-19 Q2	October 1 to December 31	January 31, 2019
FY 18-19 Q3	January 1 to March 31	April 30, 2019
FY 18-19 Q4	April 1 to June 30	August 30, 2019*
FY 19-20 Q1	July 1 to September 31	October 31, 2019
FY 19-20 Q2	October 1 to December 31	January 31, 2020
FY 19-20 Q3	January 1 to March 31	April 30, 2020
FY 19-20 Q4	April 1 to June 30	August 31, 2020*

*60 days provided for the 4th quarter of each fiscal year.

4. RECIPIENT hereby agrees to the Maintenance of Effort. The enabling legislation in Public Utilities Code Section 180001(e) provides:

It is the intent of the Legislature that funds generated pursuant to this division be used to supplement and not replace existing local revenues used for transportation purposes.

If RECIPIENT receives revenues for Local Projects, it shall annually maintain, as a minimum, the same level of local fully discretionary general fund revenues that were expended on average for fiscal years 2013/14, 2014/15, and 2015/16, for transportation purposes. Dedicated funds for transportation such as gas tax revenues are not counted as general fund revenues. Transfers into the general fund will not be counted as general fund revenues. Grant awards and general fund revenues used as matching funds for grant awards will not be counted as general fund revenues.

5. RECIPIENT hereby agrees to and accepts the formulas used in the allocation of Measure V, as reflected in the Expenditure Plan, and agrees to accept and utilize the California Department of Finance Estimates of Population figures (Report E-1, updated annual in May) for California cities and counties and the maintained miles by jurisdiction as published in the most current California Public Road Data for the annual update of the sales tax allocation formulas to begin in each new fiscal year.

C. OTHER CONSIDERATIONS

1. Transportation Purposes Only: RECIPIENT shall use all Local Projects funds solely for transportation purposes as defined by the Expenditure Plan. Any jurisdiction that violates this provision, as determined by the MCAG Board, 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 Local Projects funds, 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. Fund Exchange: Each local jurisdiction shall have the authority to loan Local Projects funds allocated to them to other local jurisdictions for the implementation of needed transportation projects.
4. CEQA: All projects funded with Local Projects funds shall comply with the California Environmental Quality Act (CEQA) and other environmental reviews as required.
5. Promotion: At a minimum, RECIPIENT agrees to promote all projects funded by more than \$50,000 through Measure V with 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. For this same category of projects, RECIPIENT also agrees to provide MCAG with at least two (2) photographs of the project, either 1) in progress or 2) before and after completion or some combination thereof.

ARTICLE III: REPORTING REQUIREMENTS

A. REQUIREMENTS AND WITHHOLDING

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 payment of further Local Projects funds to RECIPIENT until full compliance is achieved.

1. RECIPIENT shall, by December 31st of each year, submit to MCAG at the RECIPIENT's expense, separate independently audited financial statements for the prior fiscal year of Local Projects funds received and used.
2. RECIPIENT shall provide current and accurate information on RECIPIENT's website (if applicable) and to MCAG for the Measure V website, to inform the public about how RECIPIENT is using Local Projects funds.
3. RECIPIENT shall, at least annually, publish an article highlighting a project or program funded by Local Projects funds, or provide information to MCAG's Public Information Officer regarding such project or program for publication.
4. 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 Local Projects funds before the Citizens Oversight Committee.
5. RECIPIENT agrees that MCAG may review and/or evaluate all projects or programs funded 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 IV: 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 Local Projects funds distributed to RECIPIENT 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 in connection with the Local 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 July 1, 2018 to June 30, 2020, unless amended in writing or a new Master Recipient Funding Agreement is executed between MCAG and RECIPIENT.

F. SEVERABILITY

If any provision of this AGREEMENT is found by a court of competent jurisdiction or, if applicable, an arbitrator, 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 Local Projects funds. 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: _____
Name _____ Date _____
Title _____

By: _____
Patrick Pittenger _____ Date _____
Executive Director

Approved as to Form:

Reviewed as to Budget/Financial Controls:

By:  5-2-2018
Name _____ Date _____
Title Interim City Attorney

By: _____
Nav Bagri _____ Date _____
Finance Director

Approved as to Legal Form:

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