

RESTATED JOINT POWERS AGREEMENT OF THE  
MERCED COUNTY ASSOCIATION OF GOVERNMENTS [MCAG]

Effective Date July 19, 2023

This Restated Joint Powers Agreement is entered into by and among those undersigned of the Cities of Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced, all municipal corporations and the County of Merced, a political subdivision of the State of California.

RECITALS

1. Common Power. Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code authorizes two or more public agencies, by a joint powers agreement entered into respectively by them and authorized by their legislative or governing bodies, to jointly exercise any power common to them.

2. Common Authority. The City of Merced, by virtue of its charter, and the Cities of Los Banos, Atwater, Livingston, Dos Palos and Gustine, and the County of Merced, by virtue of California Government Code Section 6500 – 6539.9, inclusive, possess in common the authority:

a) To study, discuss, and develop solutions to area-wide problems of direct concern to the performance of their constitutional and statutory functions and to establish an area planning organization and expend public funds for these purposes; and

b) To do all acts necessary to participate in federal programs and receive federal funds for transportation, housing, and other community improvement activities, including contracting and cooperating with other agencies.

3. Orderly Development. The people residing within the incorporated and unincorporated areas of Merced County have an interest in the orderly development of their communities.

4. Independent Agency. The continued growth and extensive development within the incorporated and unincorporated areas of Merced County have evidenced the

need to create a wholly independent regional agency capable of dealing with area-wide issues and problems.

5. Merced County Association of Governments. On November 28, 1967, the foregoing needs led to the creation and establishment of Merced County Association of Governments, (hereinafter referred to as "MCAG").

6. Transportation Authority. MCAG was designated by the County of Merced as the Local Transportation Authority for Merced County in 1990 and has operated as such from that date to the present.

7. Effects. The establishment of MCAG has:
- a) Provided a forum to study and develop solutions to area-wide problems of mutual concern to the Agencies.
  - b) Provided efficiency and economy in governmental operations through the cooperation of the Agencies and the pooling of common resources.
  - c) Provided for the establishment of a Joint Powers Authority responsible for identifying, planning, and developing solutions to regional problems requiring multi-jurisdictional cooperation.
  - d) Provided for the establishment of a Joint Powers Authority capable of developing regional plans and policies and performing area-wide planning duties.
  - e) Facilitated cooperation among and agreement between the Agencies for specific purposes, interrelated developmental actions, and for the adoption of common policies with respect to issues and problems which are common to the Agencies.
  - f) Allowed for imposition of a Regional Transportation Impact Fee with the Authority as the planning, administrative and implementation entity.

8. Amendment. The undersigned Agencies and Members desire to amend and restate the "Cooperative Agreement"/Joint Powers Agreement dated November 28, 1967, as amended (the "Original Agreement"), in order to establish the duties and powers of the MERCED COUNTY ASSOCIATION OF GOVERNMENTS. This Restated Joint Powers

Agreement and the terms and conditions set forth herein supersede all prior amendments and restatements of the Original Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED 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 and incorporated 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 Members and the additional powers granted under the Act. To the extent currently applicable, those powers and/or functions are set forth in Article 6 below.

#### ARTICLE 3. CONTINUATION OF AUTHORITY

3.1 Continuation. Upon the effective date of this Agreement, the Parties hereto hereby continue the MERCED COUNTY ASSOCIATION OF GOVERNMENTS, as a public entity separate and distinct from its member entities, as the agent to exercise the common powers provided for in this Agreement and to administer or otherwise execute the terms of this Agreement.

3.2 Assets, Rights and Liabilities. The assets, rights, debts, liabilities, and obligations of MCAG shall be those of MCAG and shall not constitute assets, rights, debts, liabilities, or obligations of any of the Members. However, nothing in this Agreement shall prevent any Member from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of MCAG, provided that both the Board and that Member approve such contract or assumption. The provisions of Government Code

section 6504, specifically including the right of Members to advance funds and make loans, are made a part of this Agreement.

#### ARTICLE 4. TERM

4.1 Effective Date. This Agreement shall become effective on July 19, 2023.

4.2 Term. This Agreement shall continue for a period of thirty years from the effective date unless terminated in accordance with Article 10 of this Agreement. The term may only be modified by the unanimous consent of all Members.

#### ARTICLE 5. BOUNDARIES

5.1 Boundary. MCAG's jurisdictional boundary shall not exceed the jurisdictional boundary of the County of Merced, as the County boundary may be expanded or changed during the Term of this Agreement. This provision shall not prevent MCAG from acquiring services or property outside of its boundaries for the benefit of MCAG Agencies.

#### ARTICLE 6. FUNCTIONS/POWERS

6.1 Authority Functions. MCAG will function or continue to function as:

a. The Local Transportation Authority as designated by the County of Merced in 1990.

b. The Metropolitan Planning Organization as designated by the United States Department of Transportation pursuant to Title 23 of United States Code Section 134 and Title 49 of the United States Code §5303(b)(2).

c. The Regional Transportation Planning Agency as designated by the Secretary of Business and Transportation of the State of California pursuant to California Government Code Sections 65080, et seq.

d. The regional transportation planning representative as designated by the parties hereto for the purpose of acting upon any appropriate proposals which may be presented to the Board for consideration or which the Board may elect to take up and for transmission of proposed recommendations to federal, state and local agencies, including, but not limited to, the member entities of MCAG.

e. The designated E.O. 12372 Intergovernmental Review of Federal Programs Clearing House and as such review all applications for federal funds by any participating entity wherein such review is a requirement of the particular federal aid program involved.

f. The State Census Affiliate Data Center for Merced County.

g. The Service Authority for Freeway Emergencies (SAFE) as created by the Members in 1996.

h. The agency to administer, coordinate, plan and implement/effectuate a Regional Transportation Impact Fee Program if adopted by the Agencies.

i. MCAG shall perform any functions directed by the Board in furtherance of the foregoing or other programs as determined by the Board.

6.2 Powers. MCAG 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. Make and enter into contracts.

b. Acquire, improve, hold, lease, and dispose of real and personal property of all types.

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

d. Hire agents and employees

e. Sue and be sued in its own name.

f. Incur and discharge debts, liabilities and obligations.

g. 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.

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

i. Any additional power granted to Joint Powers Authorities under the Act.

j. All powers necessary to the exercise of the enumerated powers.

## ARTICLE 7. ORGANIZATION

### 7.1 Governing Board.

MCAG shall be governed by a Governing Board (hereinafter "Board"), which shall exercise or oversee the exercise of all powers and authority on its behalf. The Board shall meet in accordance with the MCAG bylaws. Under this Agreement, the Board is expressly charged with carrying out the foregoing provisions through its actions, through contracts, or through staff hired by MCAG.

### 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 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 Members 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 adoption of this Agreement may continue to serve in that capacity without any further action of the Member.

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

(c) This Section 7.2 may only be modified by the unanimous consent of the Members.

7.3 Principal Place of Business. The principal place of business of MCAG shall be located within the Boundary of MCAG.

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 1<sup>st</sup>. The Chair and Vice Chair shall alternate between a Member of the Merced County Board of Supervisors and a city Member representative. The positions shall rotate and there shall be no consecutive terms. These specifications are met with the adherence to the Chair Rotation Schedule adopted by the MCAG Board of Directors on June 15, 2017. The Rotation Schedule may be amended at the discretion of the Board from time to time but shall generally not result in consecutive terms or break the alternation between the County Board of Supervisors Members and the city Member.

(b) Executive Director. The Board shall utilize an Executive Director who shall be the chief executive officer of MCAG.

(c) Deputy Executive Director. The Executive Director may appoint a Deputy Executive Director who shall be a full-time employee of MCAG and who shall serve as Executive Director in the absence of the Executive Director.

(d) Finance Director. The Executive Director shall appoint a Finance Director who shall be a full-time employee of MCAG and who shall function under the guidance of the Executive Director.

(e) Secretary. The Board shall utilize the services of a Secretary who shall be an employee of MCAG.

(f) General Counsel. MCAG shall contract with an attorney licensed to practice in the State of California who shall serve as General Counsel to MCAG.

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 Board,

the procedural rules, ordinances and resolutions of the County of Merced are the governing law for MCAG.

## ARTICLE 8. FINANCIAL MATTERS

### 8.1 Financial Matters.

(a) Budget. MCAG 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.

(b) Treasurer. The Finance Director of MCAG shall be the Treasurer pursuant to Government Code section 6505.6.

(c) Auditor. The Finance Director of MCAG shall be the Auditor 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) Receive and receipt for all money of MCAG and place it in the treasury of the Treasurer so designated to the credit of MCAG.

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

(3) Pay, when due, all sums payable with respect to outstanding indebtedness of MCAG.

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

(5) Make or contract to make an annual audit of the accounts and records of MCAG. The minimum standards of the audit shall be those prescribed 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 MCAG and shall be a charge against any unencumbered funds of MCAG available for the purpose.

(6) Draw warrants to pay demands against MCAG when the demands have been approved by any Person authorized to so approve in this Agreement.

(7) File an official bond or proof of insurance in an agreed amount pursuant to section 6505.1 of the Act.

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

(e) Investment Policy. The investment policy of MCAG shall be the investment policy adopted by the Board.

(f) Revenue Bonds. MCAG may issue revenue bonds, but the revenue bonds shall not constitute a debt, liability, or obligation of an individual Member.

(g) Insurance/Indemnification.

MCAG shall maintain general liability insurance relating to its enumerated functions and shall indemnify, protect, defend and hold harmless all of the Members and their elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the MCAG's acts and/or omissions arising from and/or relating to this Agreement or any act and/or omission performed by a Member on behalf of MCAG or at the request of MCAG. This indemnity shall include Environmental Laws as herein defined.

## ARTICLE 9. WITHDRAWAL FROM MCAG

9.1 Withdrawal Conditions. A Member may not withdraw from MCAG 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 MCAG.

(b) Has provided written notice of intent to withdraw, via a resolution of the governing body of the Member, at least one (1) year prior to the end of the Fiscal Year in which it intends to withdraw. Withdrawal shall be effective at the end of the fiscal year.

(c) This Section 9.1 may only be modified by the unanimous consent of the Members.

9.2 Costs of Withdrawal. A withdrawing Member shall be responsible for all costs associated with its withdrawal from MCAG. Such costs may include, but may not be limited to, MCAG staff time associated with ensuring the proper and complete withdrawal of the Member and costs of continuing contracts attributable to that Member. In determining the costs associated with the withdrawal of a Member, the withdrawing Member shall have the option of allowing MCAG to determine such costs or of hiring, at its own cost, an independent auditor approved by the Board to determine the costs associated with its withdrawal.

## 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, and the winding up of all MCAG business. Upon the date of termination ("Termination Date"), payment of any and all obligations and division of any and all assets of MCAG 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 MCAG where there is a successor public entity that will conduct all of the activities and assume all of its obligations, any and all MCAG 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 MCAG'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 MCAG's activities, then the Board shall allocate MCAG 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 10.

#### 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. To the extent the Bylaws conflict with this Agreement, the terms of this Agreement shall control. 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 With the exception of Article 10, Article 9, Section 7.2 and Section 4.2, this Agreement may be amended at any time by agreement of five Members, one of which must be the County of Merced. The County of Merced's agreement shall be evidenced by a resolution of the County Board of Supervisors. Agreement of a city Member shall be evidenced by a resolution of their respective City Council. However, no amendment may reduce the representation rights of a Member, or 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

Sections 6503.5 and 53051 shall be filed by MCAG 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, when performing their respective functions within the territorial limits of the respective Members, 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 Person or circumstances 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 Persons or 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. MCAG has adopted a conflict of interest code.

13.6 Disputes. Prior to filing a lawsuit, the parties shall attempt to resolve, in good faith, any and all disputes, claims or controversies arising out of or relating to this Agreement, including decisions and official actions of the Board, by participating in mediation, conducted by a mediator selected by the parties to the dispute. This provision may be invoked by any Member with written notice ("Notice of Mediation") to MCAG, or to the other Agency to the dispute, accompanied by a resolution of the invoking Agency's council or board invoking this provision. MCAG may also invoke this provision through a majority vote of the MCAG Board.

Once Mediation Notice is received by an Agency, the parties to the dispute, or their respective representative, shall select a mediator with appropriate expertise and experience with dispute resolution. If the parties are not able to stipulate to a mediator, then, within 10 business days of receiving the Mediation Notice, the parties shall simultaneously exchange a list of three mediators. Each party shall propose their list of mediators independently and without sharing their list with any other party. Within five business days of the exchange, the parties shall, independently and without comparing, rank all of the mediators exchanged in numerical order and exchange such rankings. The highest-ranking person shall be designated as the mediator. In the event of a tie, the earliest available person shall be designated as the mediator. If such mediator is not available to serve, or is otherwise conflicted, the parties shall proceed to contact the mediator who was next highest in ranking until they are able to select a mediator. The parties shall have 30 days from receipt of the Notice of Mediation to select a mediator.

The selected mediator, in consultation with the parties, shall establish the time and place of mediation, rules regarding the prompt exchange of information, and the exchange and preparation of written summaries (if necessary). The parties shall attempt in good faith to complete mediation of the dispute within 120 days of selection. The parties may, by unanimous agreement, establish a different timeframe for mediation. Such alternative timeframe must be in writing and agreed to within 90 days from receipt of the Mediation Notice. Such agreement may be executed by the parties' representatives. The parties agree to attend a minimum of two full-day mediation sessions if the matter cannot be resolved sooner. During the course of the mediation, no party can assert the failure to fully comply with the timelines established herein as a reason not to proceed or to delay the mediation.

The service of the Notice of Mediation shall stay the running of any applicable statute of limitations regarding the dispute until 15 days after conclusion of mediation. Conclusion of the mediation shall occur at the earliest of 1) execution of a settlement

agreement by all parties to the mediation, 2) declaration of the mediator that mediation is terminated, or 3) at the expiration of 120 days from the selection of the mediator (or alternative agreed upon timeframe for mediation) and the parties have attended two full-day mediation sessions. Each side shall bear an equal share of the mediation costs unless the parties agree otherwise.

The mediation process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

13.7 Execution in Counterparts. This Agreement may be executed on behalf of the respective Members in one or more counterparts, all of which shall collectively constitute one agreement.

13.8 Authority to Bind. Each person signing below represents and warrants that he or she is authorized, by resolution or similar action, of their respective city council or board of supervisors to bind the Agency on whose behalf he or she executes this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates shown in the respective signature blocks.

**MERCED COUNTY BOARD OF SUPERVISORS**

By: \_\_\_\_\_  
Chairman

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of County Board of Supervisors

Approved as to Legal Form:

By: \_\_\_\_\_  
County Counsel

**CITY OF ATWATER**

By:\_\_\_\_\_Dated:\_\_\_\_\_  
Mayor

ATTEST:

By:\_\_\_\_\_  
City Clerk

Approved as to Legal Form:

By:\_\_\_\_\_  
City Attorney

**CITY OF DOS PALOS**

By:\_\_\_\_\_Dated:\_\_\_\_\_  
Mayor

ATTEST:

By:\_\_\_\_\_  
City Clerk

Approved as to Legal Form:

By:\_\_\_\_\_  
City Attorney

**CITY OF GUSTINE**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to Legal Form:

By: \_\_\_\_\_  
City Attorney

**CITY OF LIVINGSTON**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to Legal Form:

By: \_\_\_\_\_  
City Attorney



**CITY OF LOS BANOS**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to Legal Form:

By: \_\_\_\_\_  
City Attorney

**CITY OF MERCED**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to Legal Form:

By:  \_\_\_\_\_  
City Attorney

## **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 County of Merced, City of Atwater, City of Dos Palos, City of Gustine, City of Livingston, City of Los Banos, and City of Merced.

#### **Agreement**

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

#### **Auditor**

“Auditor” means the Finance Director of MCAG.

#### **Board**

“Board” means the governing Board of Directors of MCAG, consisting of representatives from each of the Members as more fully described in Article 7 of this Agreement.

#### **Chair**

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

#### **Director**

“Director” means the Member representatives appointed to serve on the governing Board of Directors.

#### **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.

#### Fiscal Year

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

#### 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.

#### MCAG

“MCAG” means Merced County Association of Governments or “Authority”.

#### Member

“Member” means any Agency (as defined above) which signs onto this Agreement.

#### 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.

#### Term

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

#### Treasurer

“Treasurer” means the Finance Director of MCAG.