

Measure X
Pavement Management Programs Funding Agreement
between the
TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND
COUNTY OF MONTEREY

This Pavement Management Programs Funding Agreement (“Agreement”) is effective as of the last date opposite the respective signatures below, and is entered into by and between the Transportation Agency for Monterey County (“TAMC”) and County of Monterey (“COUNTY”).

RECITALS

1. On November 8, 2016, the voters of Monterey County, pursuant to the provisions of the Local Transportation Authority and Improvement Act, California Public Utilities Code Section 180000 et seq. (the “Act”), approved Measure X (TAMC Ordinance No. 2016-01) on the Monterey County Ballot, thereby authorizing TAMC to impose and administer the proceeds from a three-eighths cent transaction and use tax (“Measure X”).
2. The duration of the Measure X sales tax will be 30 years from the initial year of collection, which will begin 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 TAMC’s Transportation Safety and Investment Plan (the “Measure X Investment Plan”), as it may be amended.
3. On August 29, 2017, COUNTY entered into a Master Programs Funding Agreement (“Master Agreement”) setting forth the mutual obligations and rights of TAMC and COUNTY with respect to the allocation of Measure X funds.
4. One of COUNTY’s obligations under the Master Agreement is to develop a Pavement Management Program, or participate in the development of a regional Pavement Management Program, developed by TAMC.
5. COUNTY has chosen to participate in a regional Pavement Management Program and this Agreement confirms COUNTY’s participation in the costs of the development of such Program.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

SECTION I
PAVEMENT MANAGEMENT CONVERSION AND SET UP

1. TAMC, after consultation with COUNTY, has selected the proprietary software known as "Street Saver," developed by the Metropolitan Transportation Commission (MTC), to be used as a regional pavement management program, and has arranged with MTC to obtain services as a group (the "TAMC Group")
2. COUNTY has received a copy of an "Order Acknowledgment" prepared by the MTC for the use of "Street Saver" by COUNTY and others in the TAMC Group. A copy of this "Order Acknowledgement" is attached hereto as Exhibit A.
3. COUNTY agrees to pay its fair share of the costs identified in Exhibit A, which amount is anticipated not to exceed Sixty-Six Thousand Fifty-Three dollars (\$66,053.00), and is based upon a combination of centerline miles within COUNTY, a proportionate share of annual fees, and a fair share of one-time set up fees. The specific allocation of COUNTY's costs is described in Exhibit B, and incorporated herein as though fully set forth.
4. COUNTY acknowledges that additional costs may be incurred in the conversion and set up of Street Savers on its behalf, and agrees to pay such additional costs as may be necessary, as reasonably determined by COUNTY, MTC and TAMC.
5. COUNTY also acknowledges that it may seek additional services from MTC and agrees that it will pay such additional costs.

SECTION II

ADDITIONAL CONSULTANT SERVICES

1. COUNTY acknowledges the possible need for additional consultant services for pavement condition surveys, budget analyses, trainings and reports.
2. TAMC, at its expense, shall issue a Request for Proposals (RFP) for such services to be provided to all entities participating in the Street Saver pavement management program, in consultation with COUNTY and others, in order to achieve efficiencies of scale in such services. The RFP will request that any response include a breakdown of costs, by task, by CITY and by COUNTY.
3. TAMC shall consult with COUNTY in the selection of a consultant in response to such RFP, and COUNTY shall have the discretion to accept the selected consultant or not.
4. If COUNTY does not accept the selected consultant, COUNTY shall be obligated to provide or otherwise obtain such services as referenced in Section II., Paragraph 1, above, independently, and at COUNTY's own expense.
5. If COUNTY accepts the selected consultant, COUNTY shall reimburse TAMC for its share of consultant costs, as will be delineated in the agreement between TAMC and the selected consultant. TAMC will submit invoices periodically or at the completion of the consultant's services, but in any event, no later than 30 days after completion of services.

The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. Prior to TAMC approval of consultant services with respect to COUNTY, TAMC shall confer with COUNTY

6. COUNTY shall signify its discretion to accept or reject the consultant selected by TAMC by delivering to TAMC an executed version of either (a) a NOTICE OF REJECTION, in substantially the form attached hereto as Exhibit C, or (b) a REIMBURSEMENT AGREEMENT, in substantially the form attached hereto as Exhibit D.

III GENERAL PROVISIONS

- A. Additional Acts and Documents. Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.
- B. Integration. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein.
- C. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.
- D. Amendment. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto. Any attempt at oral modification of this Agreement shall be void and of no effect.
- E. Notices. Notice required under this Agreement shall be delivered personally by facsimile, or by first-class postage pre-paid mail to COUNTY and TAMC at the addresses listed below. Notice shall be deemed effective upon personal delivery or facsimile transmission, or on the third day after deposit with the U.S. Postal Service. COUNTY and TAMC shall give prompt notice of any change of address, including contact name and title. Unless otherwise changed according to these notice provisions, notices shall be addressed as follows:

FOR COUNTY:

Enrique M. Saavedra, P.E.
Acting Chief of Road & Engineering
1441 Schilling Place
Salinas, CA 93901
Phone: (831) 755-4800

FOR TAMC:

Hank Myers, P.E.
Senior Transportation Planning Engineer
55-B Plaza Circle
Salinas, CA 93901
Phone: (831) 775-0903

Fax: (831) 755-4958

Fax: (831) 775-0897

- F. Waiver. Any waiver of any terms of this Agreement shall be in writing signed by both parties hereto. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- G. Non-Assignment. Neither party hereto may assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the other party.
- H. No Rights in Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.
- I. Headings. The headings in this Agreement are for convenience only and shall not be used to interpret the terms of this Agreement.
- J. Construction of Agreement. The parties hereto agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

[Signatures on next page]

In Witness Whereof, the parties have executed this AGREEMENT by their duly authorized officers as of the last date opposite the respective signatures below.

County of Monterey (COUNTY)

Transportation Agency for Monterey County (TAMC)

By: _____

Donald D. Searle Date
RMA Deputy Director of Public Works
and Facilities

By: _____

Debra L. Hale
Executive Director

Approved as to Form and Legality:

By: Mary Grace Perry Date 12-21-17
Mary Grace Perry
Deputy County Counsel

Approved as to Form and Legality:

By: Robert M. Shaw 12/18/2011
Robert M. Shaw Date
TAMC Counsel

EXHIBIT A

[STREETSAYER ORDER ACKNOWLEDGEMENT]

EXHIBIT B

ANTICIPATED FAIR SHARE COSTS OF COUNTY OF MONTEREY

TASK/USE	COST
1-yr StreetSaver Software Subscription (bundled rate):	\$3,150
1-yr Training Services Plan (bundled rate):	\$800
1-yr Software Support Plan (bundled rate):	\$800
Database Conversion:	\$27,700
GIS Integration:	\$14,978
GIS Linkage & Resegmentation (based on 30% network update):	\$13,767
Maintenance and Rehabilitation Update (assuming 30% network):	\$4,859
Total Cost:	\$66,053

EXHIBIT C
NOTICE OF REJECTION

Transportation Agency for Monterey County
ATTN: Hank Myers
55B Plaza Circle
Salinas, California 93901

SUBJECT: Rejection of Consultant re Regional Pavement Management Program

Dear Mr. Myers:

This will inform you that County of Monterey has chosen not to use the consultant selected by TAMC pursuant to that Request for Proposals dated September 28, 2017 for Pavement Management Program Consultant Services.

In accordance with Section II., Paragraph 4, of the Measure X Pavement Management Programs Funding Agreement, dated DATE, County of Monterey acknowledges its continuing obligation to meet the Measure X pavement management program requirements, and has arranged to obtain the required services as follows:

[DESCRIBE]

Please call NAME at PHONE, with any questions.

COUNTY SIGNATURE BLOCK

EXHIBIT D
REIMBURSEMENT AGREEMENT

WHEREAS, County of Monterey ("COUNTY") and the Transportation Agency for Monterey County ("TAMC") entered into a Pavement Management Programs Funding Agreement ("PMP Funding Agreement") dated _____; and

WHEREAS, the PMP Funding Agreement provided that TAMC would issue a Request for Proposals for additional consultant services for payment condition surveys, budget analyses, trainings and reports (the "PMP RFP"); and

WHEREAS, the PMP Funding Agreement also provided that COUNTY would have the discretion to accept or reject the consultant selected by TAMC pursuant to that PMP RFP; and

WHEREAS, the COUNTY has considered the response to the PMP RFP proffered by the consultant selected by TAMC, with respect to COUNTY's own needs;

NOW, THEREFORE,

1. COUNTY does hereby accept NAME as the provider of services set forth in the PMP RFP on behalf of COUNTY.
2. Pursuant to Section II., Paragraph 5, of the PMP Funding Agreement, COUNTY hereby agrees to reimburse TAMC for COUNTY's share of consultant costs, as delineated in the agreement between TAMC and [CONSULTANT NAME], in an amount not to exceed DOLLAR AMOUNT (\$XXXX).
3. COUNTY shall reimburse TAMC for its share of consultant costs, as will be delineated in the agreement between TAMC and the selected consultant. TAMC will submit invoices periodically or at the completion of the consultant's services, but in any event, no later than 30 days after completion of services. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. Prior to TAMC approval of consultant services with respect to COUNTY, TAMC shall confer with COUNTY.
4. Both COUNTY and TAMC acknowledge that this Reimbursement Agreement is implementing a portion of the full PMP Funding Agreement, and the PMP Funding Agreement dated _____ is hereby acknowledged and incorporated herein.

[signatures on next page]

In Witness Whereof, the parties have executed this Reimbursement Agreement by their duly authorized officers as of the last date opposite the respective signatures below.

County of Monterey (COUNTY)

Transportation Agency for Monterey County (TAMC)

By:

By:

Debra L. Hale
Executive Director

Approved as to Form and Legality:

Approved as to Form and Legality:

By:

By:

Robert M. Shaw
TAMC Counsel