



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of City Council

**FROM:** Daniel Gho, Public Works Director

**MEETING DATE:** June 21, 2017

**SUBJECT:** Agreement with Transportation Agency for Monterey County for Measure X Distribution

**CEQA STATUS:** Does not constitute a "Project" under California Environmental Quality Act (CEQA) Guidelines Section 15378.

**RECOMMENDATION**

Authorize the City Manager to enter into an agreement with the Transportation Agency for Monterey County for Measure X distribution and execute all necessary documentation prior to the first distribution.

**DISCUSSION**

On November 8, 2016, the voters of Monterey County 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"). 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 based primarily around pedestrian and vehicular transportation projects. The Measure is broken into two different pools of resources, 60% of the revenues will be split between the counties local jurisdictions, based on a formula weighted 50 percent by the jurisdiction's population and 50 percent of lane miles, and the remaining 40% will be used for regional efforts, administered by TAMC.

The Agreement authorizes TAMC to allocate to Pacific Grove its share of the funds derived from Measure X, which will be 3.42% of the received revenues. Exhibit A of the agreement specifies the percentages of each of the City's allocations within the county. It is anticipated that the 3.42% will generate roughly \$410,000 annually for the City.

Prior to the first distribution, which is scheduled for September 2017, the City needs to develop a pavement management program, complete the maintenance of effort report specifying past funding expended on transportation projects, and provide a five year capital improvement program allocation for the Measure X funding. Public Works will complete all the necessary components that are requested by the TAMC as noted in the agreement.

**FISCAL IMPACT**

By entering into the agreement with the Transportation Agency of Monterey County the City will ensure allocation of the Measure X funding, through TAMC, for the next 30 years. If the City opts not to enter into the agreement then there will be no distribution of funds.

**ATTACHMENTS**

1. Measure X Agreement Between TAMC and the City of Pacific Grove
2. Web Link for more information on Measure X: <http://www.tamcmonterey.org/measure-x/programs-projects/>

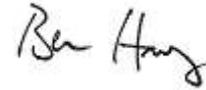
**RESPECTFULLY SUBMITTED:**



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Daniel Gho  
Public Works Director

**REVIEWED BY:**



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Ben Harvey  
City Manager

**Measure X**  
**Master Programs Funding Agreement**  
**between the**  
**TRANSPORTATION AGENCY FOR MONTEREY COUNTY**  
**AND**  
**CITY OF PACIFIC GROVE**

This Master Programs Funding Agreement (“Agreement”) is effective the \_\_\_\_ of \_\_\_\_\_, 2017, and is entered into by and between the Transportation Agency for Monterey County (“TAMC”) and City of Pacific Grove (“RECIPIENT”).

**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. This Agreement delineates the requirements of the Measure X funds that are directly allocated to local jurisdictions, as authorized by Measure X and the Measure X Investment Plan. A table showing the Measure X Local Distribution Summary for the first year of this Agreement is attached hereto as Exhibit A.

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

**Article I: Definitions**

As used herein, the following terms have the following meanings:

1. Annual Program Compliance Report: An Annual Program Compliance Report is a document produced by RECIPIENT no later than December 31 of each year the Measure X tax is in effect, and describes the efforts taken by the jurisdiction to comply with the requirements for the receipt and use of Measure X funds. A template Annual Program Compliance Report is attached as Exhibit B.
2. Eligible Expenses: Those expenses which are eligible to be funded from Measure X, as set forth in greater detail in Article III.C. The first date from which expenses are eligible for funding is January 1, 2017.

3. Local Road Projects: Projects identified in the Policies and Project Descriptions as “Local Road Maintenance, Pothole Repairs and Safety” projects for each jurisdiction, and as may be amended in the RECIPIENT’s Measure X Five-Year Capital Improvement Program.
4. Maintenance of Effort Report: A report to be adopted by a jurisdiction, no later than December 31 of each year the Measure X tax is in effect, verifying that Measure X funds received by the reporting jurisdiction have been used to augment, and not supplant, local resources spent in the fiscal year, as described in Article IV Section A.6. The amount of local resources spent for the fiscal year is calculated by using an average of the prior three (3) years spent for local transportation purposes and shall be the same amount reported to the State Controller pursuant to Streets and Highways Code section 2151.
5. Measure X: TAMC Ordinance No. 2016-01, approved by the voters on November 8, 2106, establishing a three-eighths of one percent (0.375) retail transactions and use tax for a period of thirty (30) years.
6. Measure X Five Year CIP: A Capital Improvement Program looking forward for the next five (5) years that specifically references projects anticipated to be funded by Measure X. The Measure X Five Year CIP is to be updated annually by the RECIPIENT and cover a period of five (5) years from the time of the annual update.
7. Measure X Investment Plan: The Transportation Safety and Investment Plan adopted by TAMC, the County of Monterey, and each city within the County of Monterey, setting forth an expenditure plan for Measure X proceeds.
8. Pavement Management Program: A computerized program for the identification and assessment of the quality of pavement within the jurisdiction, including ETC (“Extent of pavement analyzed, Type of recorded pavement distress, and Condition of the roadway”).
9. Policies & Project Descriptions: A statement of policies governing the requirements for, and allocation of, tax proceeds and project descriptions of anticipated use of tax proceeds by TAMC and the various jurisdictions. The Policies & Project Descriptions are in addition to and elaborate upon the Measure X Investment Plan.
10. Regional Transportation Planning Assessment: An annual assessment currently paid by local jurisdictions from local funds as a form of congestion management fee that is used to fund TAMC’s regional transportation planning efforts.
11. Regional Development Impact Fee Program: A program of development fees prepared and adopted by TAMC and assessed on new development within the County of Monterey, in order that new development pay its fair share of the costs to mitigate negative impacts to the regional transportation system.

## **Article II: Funding Allocations**

1. This Agreement authorizes TAMC to allocate to RECIPIENT its share of the funds derived from Measure X as described in the voter-approved Measure X Investment Plan and TAMC's Policies and Project Descriptions ("Policies and Project Descriptions") for the Local Road Projects program of the Measure X Investment Plan, which constitutes 60% of Measure X revenues after administrative and Board of Equalization expenses have been paid. TAMC will distribute Measure X funds for Local Road Projects pursuant to a formula weighted 50 percent by the jurisdiction's population and 50 percent of lane miles within the jurisdiction utilizing data from the California Department of Finance and Department of Transportation as set forth in Section III.2 below. RECIPIENT's allocations are subject to change based on variations in these measurements, as determined annually pursuant to Article III Section A.2.
2. The remainder of funds received from Measure X and not allocated to RECIPIENT jurisdictions shall be allocated to TAMC for Regional Projects, and administration and Board of Equalization expenses as provided for in Measure X, the Measure X Investment Plan and the Projects & Policies Descriptions.
3. All eligible expenses, as described in Article III Section C, and incurred by RECIPIENT as of January 1, 2017 shall be reimbursable with the RECIPIENT's share of Measure X Local Road Projects funds, to the extent that such funds cover the claim for reimbursement.
4. Measure X funding provided for Local Road Projects is to be used for transportation purposes only, and to supplement and not replace existing local revenues used for transportation purposes. Refer to Article III Section A Paragraph 6 for requirements related to Maintenance of Effort.

## **Article III: Payments and Expenditures**

### **A. TAMC's Duties and Obligations**

1. Within ten (10) working days of actual receipt of the quarterly Measure X sales tax revenues from the State Board of Equalization ("BOE"), TAMC shall remit to the RECIPIENT its designated amount of available funds disbursed on a quarterly basis by the formulas described above.
2. TAMC shall annually update the Measure X fund 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 in May) and the California Department of Transportation's annual lane miles estimates (California Public Road Data Report published in October) as it is made available, but no later than

June 30 of each year. TAMC shall use the updated Measure X program allocation formulas in the allocations beginning July 1 of each new fiscal year, which is from July 1 to June 30.

3. TAMC shall report quarterly to the public the amount of Measure X revenues distributed to RECIPIENT for the quarter and fiscal year to date.
4. TAMC shall provide for an independent annual audit of its financial statements, including revenues and expenditures, and also of its calculation of the allocation formula for distributing Measure X revenues to each recipient and render an annual audit report to the TAMC Board within 240 days following the close of the fiscal year.
5. TAMC may conduct an audit of expenditures made by RECIPIENT to determine whether such expenditures are in compliance with this AGREEMENT and the Measure X Investment Plan, and shall provide timely notice to RECIPIENT prior to conducting such audit.

**B. Recipient's Duties and Obligations**

1. RECIPIENT shall expend all Measure X funds received in compliance with Measure X, the Measure X Investment Plan, and the Policies & Project Descriptions, as they may be adopted or amended by TAMC from time to time, and this Agreement.
2. RECIPIENT shall conduct an independent annual audit of Measure X revenues received and expenditures made by RECIPIENT to demonstrate such expenditures comply with this AGREEMENT and the Measure X Investment Plan, and shall provide said audit to TAMC by December 31, 2018, and each December 31st of each year thereafter, throughout the existence of Measure X funding, including the December 31st of the last year of funding.
3. RECIPIENT shall set up and maintain an appropriate system of accounts to report on Measure X funds received. RECIPIENT must account for Measure X funds, including any interest received or accrued, separately from any other funds received from TAMC or any other source. All Measure X revenues received and expended shall be accounted for and tracked in its own separate budget and fund titled "Transportation Safety & Investment Plan Account" and will not be comingled with any other funds. 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. TAMC and its representatives, agents and nominees shall have the absolute right upon reasonable written notice to RECIPIENT, which is not less than 72 hours, to inspect and copy any accounting records related to such funds, except to the extent specifically prohibited by applicable law.
4. RECIPIENT shall comply with all reporting requirements in Article IV.

5. RECIPIENT hereby agrees to and accepts the formulas used in the allocation of Measure X revenues as reflected in the ballot measure and the Measure X Investment Plan, and agrees to accept and utilize the California Department of Finance Estimates of Population figures (Report E-1, updated each May) and the California Department of Transportation's annual lane miles estimates (California Public Road Data Report published in October) for California cities and counties for the annual update of the sales tax allocation formulas to begin in each new fiscal year.
6. RECIPIENT shall maintain participation in TAMC's Regional Development Impact Fee program and impose these fees on new development as applicable to assure that new development pays for its impacts on the regional transportation system.
7. RECIPIENT shall continue to participate in TAMC's Regional Transportation Planning Assessment program as set forth therein.
8. In order to receive its share of Local Road Projects funds, RECIPIENT shall develop a Pavement Management Program, or participate in the development of a regional Pavement Management Program, developed by TAMC.
9. RECIPIENT shall abide by the Maintenance of Effort requirements imposed by Measure X and State law. RECIPIENT shall annually report on its Maintenance of Effort as provided in Article IV.

**C. Eligible Expenditures**

RECIPIENT may expend Local Road Projects funds on any or all of the following categories:

1. Road and Street Maintenance and Repairs: Filling potholes, repairing, resurfacing or reconstruction of roads, streets and bridges, or otherwise conducting maintenance to extend the lifetime of the roadway network and/or reduce or eliminate liability and safety concerns. Repairs, reconstruction or maintenance of walkways or bikeways are also eligible.
2. Road Safety and Operations: Improvements designed to reduce traffic collisions and related injuries and fatalities, as well as projects designed to reduce traffic delays. Examples of safety projects include, but are not limited to: roundabouts, turning lanes, traffic signals or other intersection improvements, hazard eliminations, safety barriers, traffic calming or speed reduction measures. New lane miles or roadways are not eligible with the exception of the Pinnacles Parkway Connection project.
3. Walkability and Pedestrian Safety: Projects designed to make neighborhoods or corridors walkable by making walking safer, more comfortable and convenient. Examples include, but are not limited to: sidewalks, lighted crosswalks, walking paths, landscaping or other barriers from traffic, bulb-outs to shorten the crossing distance, safe-haven islands, pedestrian countdown signals, street or path lighting and traffic calming.

4. Bike Safety Projects: Projects designed to support safe and convenient bicycling for all levels of riders. Examples include, but are not limited to: new or improved bikeways (lanes, paths, bridges, protected lanes or other barriers to automobile traffic); removing barriers to bicycling (curbs, medians, etc.); signal detectors; and, bicycle racks, lockers and other storage facilities.
5. Street Enhancements: Streetscape projects that enhance the safety and experience of the transportation corridor. Examples include, but are not limited to: lighting, landscaping, and drainage improvements.
6. New Technology: Projects that support or include new technology to promote transportation safety, mobility, cost savings or air quality improvements. Examples include, but are not limited to: electric vehicle chargers, vehicle detection systems, traffic signal synchronization, as well as the required participation in the Pavement Management Program referenced in Art. III.B.8, above.
7. Planning, Engineering and Design, Environmental Review and Mitigation and Acquisition: The costs of planning, engineering, design and environmental review and mitigation and acquisition necessary to undertake any project within a category described above are also eligible expenses under Measure X and this Agreement.
8. Reporting and Implementation of this Agreement: The costs of fulfilling the requirements imposed by this Agreement, including the preparation of audits and reports, are eligible expenses, provided, however, that only the direct costs of such actions (such as actual hours worked by staff) are eligible.

#### **D. Other Expenditure Restrictions**

1. Transportation Purposes Only: RECIPIENT shall use all Measure X funds solely for transportation purposes as defined by the authorizing ballot measure. Any jurisdiction that violates this provision must fully reimburse all misspent funds, including all interest which would have been earned thereon at the Pooled Money Investment Account Earnings Yield Rate at determined by the California State Controller's Office.
2. Staff Cost Limitations: Direct costs associated with the delivery of programs and projects associated with Measure X programs, including direct staff costs and consultant costs, are eligible uses of Measure X funds. Indirect costs are eligible for funding provided that the jurisdiction has a Caltrans-approved Indirect Cost Allocation Plan / Indirect Cost Rate Proposal (ICAP/ICRP or equivalent) established. Jurisdictions with an ICAP/ICRP approved by its cognizant agency will submit a copy of the cognizant agency approval, the approved proposal, plan, and other relevant data prior to invoicing for indirect costs. If a jurisdiction does not currently have an approved ICAP/ICRP or equivalent, a flat rate of 40% is eligible for indirect costs.
3. Matching Funds: Measure X funds can be utilized to match grants, loans, programs and pay annual debt service to fund eligible approved bonds for local road maintenance or safety projects as defined Article II Section C.

4. Environmental and Engineering Standards: RECIPIENT shall design projects to meet current standards, and shall include bicycle and pedestrian access whenever possible. RECIPIENT shall thoroughly study projects for environmental impacts and incorporate identified environmental mitigations consistent with applicable environmental law.

#### **Article IV: 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, TAMC may withhold payment of further Measure X funds to RECIPIENT until full compliance is achieved, as described in Article V.

1. RECIPIENT shall complete, at RECIPIENT's expense, a separate independent audit of RECIPIENT's financial statements for the prior fiscal year ended June 30 of Measure X funds received and used. To that end, RECIPIENT shall provide such audit to TAMC by December 31st of each year.
2. RECIPIENT shall, at RECIPIENT'S own expense, and by December 31st of each year, submit to TAMC Annual Program Compliance Reports (covering the prior fiscal year) regarding programs and projects on which RECIPIENT expended Measure X funds.
3. RECIPIENT shall document expenditure activities and report on the performance of Measure X-funded activities through the Annual Program Compliance reporting process, annual audits, the Five-Year Capital Improvement Program Report, the Pavement Management Program Report, the Maintenance of Effort Report, and shall provide any additional information reasonably requested by TAMC.
4. RECIPIENT shall prepare and submit to TAMC a Measure X 5-Year Capital Improvement Program that identifies the eligible transportation projects that are anticipated to be funded with the jurisdiction's share of Local Road Projects funds. RECIPIENT shall update this document on an annual basis no later than August 31, 2017 and December 31st of each year thereafter. A template of the form that RECIPIENT shall use to submit this report is included as Exhibit C.
5. RECIPIENT shall submit annual Pavement Management Program reports no later than December 31st each year on the conditions of RECIPIENT's streets, to ensure timely repairs and keep the public informed. A template of the form that RECIPIENT shall use to submit these reports in included as Exhibit D.
6. RECIPIENT shall certify, no later than August 31, 2017 and December 31st of each year thereafter, in an annual Maintenance of Effort Report verification that these Measure X funds are used to augment and not supplant local resources spent. RECIPIENT shall expend each fiscal year from its general fund for street and highway purposes an amount

not less than the annual average of its expenditures from its general fund during the preceding three fiscal years, as reported to the Controller pursuant to Streets and Highways Code section 2151 (“Maintenance of Effort”). For purposes of this calculation, an average of the prior three (3) years spent for local transportation purposes will be used. Exemptions from this calculation include one-time capital expenses, and expiration of any voter-approved fund sources that were used for local transportation purposes. In the case of expired voter-approved fund sources, the three-year average baseline would be recalculated in the next annual verification period without said expired fund sources. Revenues from a fee imposed or contribution first received by a local jurisdiction on or after January 1, 2016 which are used on or after July 1, 2016, by that local jurisdiction for maintenance or improvement purposes on its streets and highways shall be considered as general fund expenditures for the purposes of compliance with the provisions of this Section in the fiscal year in which such expenditures are made. A template of the form that RECIPIENT shall use to submit these reports is included as Exhibit E.

**B. Public Outreach**

1. RECIPIENT shall install or mount Measure X signage adjacent to Measure X funded construction projects through completion, where practical and shall reference TAMC, so Monterey County taxpayers are informed as to how RECIPIENT is using Measure X funds. TAMC and RECIPIENT shall mutually approve the design for the Measure X signage to be used by RECIPIENT.
2. RECIPIENT shall provide current and accurate information on RECIPIENT’s website, to inform the public about how RECIPIENT is using Measure X funds.
3. RECIPIENT shall actively participate in TAMC’s public awareness program, developed in collaboration with TAMC, as a means of ensuring that the public has access to the ability to know which projects and programs are funded through Measure X funds.
4. RECIPIENT shall upon reasonable notice and within a reasonable time make its administrative officer or designated staff available to render a report or answer any and all inquiries in regard to RECIPIENT’s receipt, usage, and/or compliance audit findings regarding Measure X funds before the TAMC Board and/or the Measure X Citizens Oversight Committee, as applicable.
5. RECIPIENT agrees that TAMC may review and/or evaluate all project(s) or program(s) funded by Measure X. This may include visits by representatives, agents or nominees of TAMC 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 board.

**Article V: Enforcement**

**A. Verification and Compliance**

1. In addition to RECIPIENT reporting requirements, TAMC may request fiscal data from local jurisdictions as needed to ensure compliance. Each local jurisdiction shall furnish the data to the TAMC not later than 90 days after receiving a request therefor. TAMC may withhold payments to local jurisdictions which do not comply with requests for information or which provide incomplete information.
2. Failure to meet any of the conditions included in this AGREEMENT by the RECIPIENT shall result in the suspension of the distribution of funds to the RECIPIENT. Resumption of funding distribution to the RECIPIENT shall resume only after full repayment for any misuse, and confirmation by TAMC of compliance to each of the conditions in this AGREEMENT. Local Road Projects program funding accrued due to the failure of a city/county to meet the above conditions will be held in trust for up to two (2) years for said jurisdiction, after which the funds will be redistributed to the remaining cities/county in Monterey County per formula. Resumption of funding to the RECIPIENT can occur at any time during the life of Measure X upon compliance with the conditions included in this AGREEMENT and full repayment of any prior misused funds.

**B. Dispute Resolution Process**

1. If at any time either party hereto is considered to have failed to meet any of the conditions included in this AGREEMENT, the parties shall meet and confer in a good faith effort to resolve the matter. Such meet and confer shall occur within thirty (30) days of a notice from one party to the other of non-compliance.
2. If, after meeting and conferring, there is still a dispute as to compliance or non-compliance with a term or condition of the AGREEMENT, TAMC shall refer the matter to the Measure X Oversight Committee for its review and recommendation. Consistent with the terms of the Ralph M. Brown Act, the Measure X Oversight Committee meeting may be a special meeting, provided that at least 72 hours prior notice is provided to the public and an agenda is posted. After considering the matter, the Measure X Oversight Committee may make its recommendation to the parties to resolve the matter.
3. Pending the consideration and possible resolution of the issue by the Measure X Oversight Committee, TAMC shall withhold future Measure X payments to RECIPIENT under this AGREEMENT, except for allocations required for bond payments, which shall not be withheld.
4. If, after receiving the recommendation from the Measure X Oversight Committee the parties are still in dispute over compliance or non-compliance of this AGREEMENT, the matter shall be agendized at the next available TAMC Board meeting. Each party may submit up to five (5) pages in support of its position, as part of the agenda package to be submitted for such Board meeting. The decision of the TAMC Board on the dispute shall be final.

5. Resumption of funding distribution to the RECIPIENT can occur at any time during the life of Measure X but shall only occur after full repayment of any unauthorized expenditure(s) of Measure X funds, and confirmation by TAMC of RECIPIENT's compliance with each of the conditions in this AGREEMENT. Repayment of unauthorized expenditures may not be made by future Measure X funds.
6. Local Road Projects program funding accrued due to the failure of a city/county to meet the above conditions will be held in trust for up to two (2) years for said jurisdiction, after which the funds will be redistributed to the remaining cities/county in Monterey County per the formula set for in Art.II.
7. In the event that RECIPIENT's allocations are exempt from suspension because of bond payments, but RECIPIENT continues to fail to comply with the requirements of this AGREEMENT, RECIPIENT and TAMC agree that an action for specific performance is an available remedy.

## **Article VI: Other Provisions**

### **A. Indemnity by RECIPIENT**

Neither TAMC, nor its governing body, elected officials, any officer, consultant, agent, or employee thereof 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 Measure X funds distributed to RECIPIENT pursuant to this AGREEMENT or any work or action taken with such funds. Notwithstanding Government Code Section 895.6, it is also understood and agreed, pursuant to Government Code Section 895.4, that RECIPIENT shall fully defend, indemnify and hold harmless TAMC, its governing body, and all its officers, agents, and employees, from any liability imposed on TAMC 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 Measure X funds distributed to RECIPIENT pursuant to this AGREEMENT or any work or action taken with such funds.

### **B. Indemnity by TAMC**

Neither RECIPIENT, nor its governing body, elected officials, any officer, consultant, agent, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC under this Tax Sharing AGREEMENT. Notwithstanding Government Code Section 895.6, it is also understood and agreed, pursuant to Government Code Section 895.4, that TAMC shall fully defend, indemnify, and hold harmless RECIPIENT, and its governing body, elected officials, all its 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 TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC 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 Monterey County, California and the parties hereto hereby waive inconvenience of forum as an objection or defense to such venue.

**D. Term**

The term of this AGREEMENT shall be from July 1, 2017 to June 30, 2047, unless amended in writing or a new Master Programs Funding Agreement is executed between TAMC and RECIPIENT.

**E. 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.

**F. Modification**

This AGREEMENT, its Exhibits, as well as the referenced Policies and Project Descriptions and TAMC Ordinance 2016-01, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings regarding Measure X funds (but not project funding agreements). This AGREEMENT may only be changed by a written amendment executed by both parties. Notwithstanding the foregoing, the Policies and Project Descriptions related to Measure X funds may be changed from time to time by TAMC Board action.

**G. Independent Contractor**

Nothing in this AGREEMENT is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, partnership, or allow TAMC to exercise discretion or control over the professional manner by which RECIPIENT designs or constructs projects using Measure X funds. RECIPIENT staff performing work using Measure X funds shall at all times remain employees of RECIPIENT and shall not be deemed employees of TAMC for any purpose. RECIPIENT shall be solely responsible for any and all compensation, payroll taxes, withholdings, workers' compensation and any other insurance or benefits of any kind for any RECIPIENT employee performing work using Measure X funds. Similarly, nothing in this AGREEMENT is intended nor shall be construed to create an employer-employee

relationship, a joint venture relationship, partnership, or allow RECIPIENT to exercise discretion or control over the professional manner by which TAMC designs or constructs projects using Measure X funds. TAMC staff performing work using Measure X funds shall at all times remain employees of TAMC and shall not be deemed employees of RECIPIENT for any purpose. TAMC shall be solely responsible for any and all compensation, payroll taxes, withholdings, workers' compensation and any other insurance or benefits of any kind for any TAMC employee performing work using Measure X funds.

#### **H. Notices**

Notice required under this AGREEMENT shall be delivered personally by facsimile or by first-class postage pre-paid mail to RECIPIENT 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. RECIPIENT 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 RECIPIENT:**

**Daniel Gho, Public Works Director  
2100 Sunset Drive  
Pacific Grove, CA 93950  
831-648-5722**

##### **FOR TAMC:**

**[insert name title address and phone]**

#### **I. 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.

#### **J. 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.

#### **K. Headings**

The headings in this AGREEMENT are for convenience only and shall not be used to interpret the terms of this AGREEMENT.

#### **L. 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 date first written below.

City of Pacific Grove

Transportation Agency for  
Monterey County (TAMC)

By: \_\_\_\_\_  
Ben Harvey                      Date:  
City manager

By: \_\_\_\_\_  
Debra L. Hale Date  
Executive Director

Approved as to Form and Legality:

Approved as to Form and Legality:

By: \_\_\_\_\_  
David Laredo                      Date:  
City Attorney

By: \_\_\_\_\_  
Kathryn Reimann  
TAMC Counsel

EXHIBIT A

MEASURE X LOCAL DISTRIBUTION SUMMARY

TAMC distributes Measure X funds based on the distribution percentages for net Measure X Revenues specified in the Measure X Investment Plan as shown below. Annual amounts will be updated by TAMC annually without amendments to this agreement.

	<b>Population</b>	<b>Lane Miles</b>	<b>Local Road Projects Fund Percentage</b>
<b>Carmel</b>	3775	60	1.19%
<b>Del Rey Oaks</b>	1648	19	0.44%
<b>Gonzales</b>	8296	19	1.22%
<b>Greenfield</b>	16729	44	2.54%
<b>King City</b>	13073	56	2.25%
<b>Marina</b>	20073	129	3.99%
<b>Monterey</b>	28252	235	6.29%
<b>Pacific Grove</b>	15268	129	3.42%
<b>Salinas</b>	153215	578	25.38%
<b>Sand City</b>	338	10	0.16%
<b>Seaside</b>	33312	177	6.16%
<b>Soledad</b>	25430	39	3.50%
<b>County</b>	102085	2512	43.46%

**EXHIBIT B**

**ANNUAL PROGRAM COMPLIANCE REPORT**

**ANNUAL PROGRAM COMPLIANCE REPORT**

The Annual Program Compliance Report should, at a minimum, describe the efforts of the local jurisdiction to comply with the policies of Measure X over the reporting period. The report should include a narrative of how the jurisdiction spent Measure X funds on local projects including the project title; brief description; discussion of the project benefits; and before and after pictures. A balance sheet should also be included with the report detailing the receipt and expenditure of Measure X funds, as shown in the example below.

**CITY/COUNTY OF XXX - YEAR 20XX BALANCE SHEET EXAMPLE**

<b>REVENUES</b>	
Carryover from Previous Year	
Measure X Revenues	
Earning on Interest	
<b>TOTAL REVENUES:</b>	
<b>EXPENDITURES</b>	
(Listing of Program Expenditures)	
<b>TOTAL EXPENDITURES:</b>	
<b>FUND BALANCE, END OF PERIOD:</b>	

As attachments to the Annual Program Compliance Report, the jurisdiction should include the following additional reports:

- ATTACHMENT 1: Independent Audit of Financial Statements for Measure X Funds, Prior Fiscal Year
- ATTACHMENT 2: Five-Year Capital Improvement Program
- ATTACHMENT 3: Pavement Management Program Report
- ATTACHMENT 4: Maintenance of Effort Report

EXHIBIT C

FIVE YEAR CAPITAL IMPROVEMENT PROGRAM

**CITY / COUNTY of XXX**  
**MEASURE X FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM**  
**FOR YEARS 20XX – 20XX**

**YEAR 1**

Project	Description & Phase	Total Cost	Measure X	PCI
<b>Totals:</b>				

**YEAR 2**

Project	Description & Phase	Total Cost	Measure X	PCI
<b>Totals:</b>				

**YEAR 3**

Project	Description & Phase	Total Cost	Measure X	PCI
<b>Totals:</b>				

**YEAR 4**

Project	Description & Phase	Total Cost	Measure X	PCI
<b>Totals:</b>				

**YEAR 5**

Project	Description & Phase	Total Cost	Measure X	PCI
<b>Totals:</b>				

**DEFINITIONS OF REQUESTED INFORMATION:**

1. Project: The title of the project to receive Measure X funding.
2. Description & Phase: A general description of the project and the phase (e.g. Environmental; Design; Right-of-Way; or Construction) that will be funded in the given year.
3. Total Cost: The total cost of the project.
4. Measure X: The amount of Measure X funding that will be expended on the project.
5. PCI: The Pavement Condition Index for the roadway, from the local jurisdiction’s Pavement Management Program.

EXHIBIT D

PAVEMENT MANAGEMENT PROGRAM REPORT

## **PAVEMENT MANAGEMENT PROGRAM REQUIREMENTS**

The approved ordinance for the Transportation Safety & Investment Plan (Measure X) outlines the requirements for the use of local road maintenance, pothole repair and safety funds. It includes a requirement for each jurisdiction to have a pavement management program. "Each city and the County of Monterey shall develop, or participate in the development of by TAMC, a pavement management program. They shall submit regular reports on the conditions of their streets, to ensure timely repairs and keep the public informed. Development of the pavement management program by TAMC is eligible to be funded out of this program prior to distribution of funds to the cities and the County."

**SYSTEM REQUIREMENTS:** In order to receive Measure X funds, the cities and the County shall utilize a pavement management program (PMP) and submit regular reports on the conditions of their streets, to ensure timely repairs and keep the public informed. The pavement management program should utilize an approved software-based tool for analyzing pavement conditions and reports findings on rehabilitation/maintenance strategies based on funding levels. The pavement management program used by the jurisdiction must contain, at a minimum, the following features:

- Store the inventory all roadways within a jurisdiction (in a compatible database with other jurisdictions).
- Assess the condition of the roadways (based on seven distresses and three severity levels).
- Provide the current Pavement Condition Index (PCI) for the roadways (as per ASTM D6433)
- Identify all pavement sections needing maintenance, rehabilitation, or replacement.
- Calculate budget needs for maintenance, rehabilitation or replacement of deficient pavement sections (for the current year and the next three years at various overall condition levels).
- Develop maintenance strategies for the most cost effective level of maintenance or repair appropriate at the time of the inspection.
- Generate pavement management program reports (in various formats).

All jurisdictions must implement and maintain an approved Pavement Management Program ("StreetSaver" or equivalent). The "StreetSaver" Pavement Management Program developed by Metropolitan Transportation Commission (MTC) is the most utilized program in the Bay Area and would be an excellent program for this region as well. The use of the "StreetSaver" Pavement Management Program is recommended (but not required) since it would allow good compatibility between local jurisdictions and also provide regional benefits. Jurisdictions may elect to use an alternative pavement management program provided it meets the above listed minimum requirements and receives written approval from TAMC.

The Agency will assist with the development of an overall pavement management implementation plan for this region with the participation and coordination of all the cities and the county. The Agency recommends the development of a regional system to benefit from a coordinated system. The regional system would be developed collaboratively between local jurisdictions. In order to have a regional database, it is recommended that all agencies utilize a

common pavement management program. This would allow compilation of information on a regional basis. It would also create opportunities for interagency coordination and to guide regional transportation investments and planning.

**UPDATE REQUIREMENTS:** The jurisdictions must complete the following updates:

- Review and update the pavement information for all roads every two years.
- Pavement conditions must be re-inspected every three years for arterials and collectors.
- Pavement conditions must be re-inspected every six years for residential streets and local/rural roads, unless otherwise approved by TAMC. Pavement condition surveys may be done by either automated or manual inspections, and may be done either individually or in conjunction with another agency. A percentage of the network can be scheduled each year so that the entire network is updated on a regular cycle.

**REPORT REQUIREMENTS:** All jurisdictions shall submit an annual Pavement Management Program Report Letter to TAMC no later than December 31 of each year the Measure X tax is in effect using the approved report letter format. It shall include all the highlighted information and shall be on local agency letterhead (see attached template).

All jurisdictions shall also participate in the biennial pavement needs survey conducted for the California Statewide Local Streets and Roads Needs Assessment and provide the requested roadway data for their jurisdiction.

**Pavement Management Program Annual Report Letter Template (April 2017)**

**Instructions:**

- Please use Local Agency Letterhead
- Text highlighted in yellow needs to be completed. Remove highlighting in final version.

Date: [Enter current DATE]

To: Todd Muck  
Deputy Executive Director  
Transportation Agency for Monterey County  
55-B Plaza Circle  
Salinas, CA 93901

Re: Pavement Management Program Annual Report Letter

The [City/County/of XYZ] confirms that it has a Pavement Management Program that conforms to the criteria established by the Transportation Agency for Monterey County and included in the Measure X Agreement with the Local Agency. An approved Pavement Management Program must be in place to be eligible for Measure X funds.

The Pavement Management Program utilizes a software system developed by:

[ ] Metropolitan Transportation Commission StreetSaver, [fill in version]  
[ ] Other [Fill in name of system] [fill in version]

The system was updated by [enter consultant name] and contains, at a minimum, the following elements:

- Inventory of all existing pavements under the local agency jurisdiction:

Centerline miles: [fill in miles]  
Total lane miles (or equivalent units): [fill in miles]  
The last update of the inventory was completed on: [date of inspection]

- Pavement Condition Index (PCI) [fill in PCI]
- Identification of sections of pavement needing maintenance, rehabilitation, or replacement.

Total lane miles (or equivalent units) [fill in miles]

- Estimated budget needs to rehabilitate or replace deficient sections for the current year and the next three years:

[\$ enter dollar amount] (Unconstrained Needs)

You may direct any questions regarding the system to [contact person's name] at [phone number and consultant firm if not listing a city employee].

Sincerely,

[Signature]

[Name of City Manager, Public Works Director or equivalent department head]

EXHIBIT E

MAINTENANCE OF EFFORT REPORT

**CITY / COUNTY of XXX**  
**THREE-YEAR MAINTENANCE OF EFFORT REPORT**  
**FOR YEARS 20XX – 20XX**

**Year 1**

<b>Fund Source</b>	<b>Amount</b>	<b>Year</b>
<b>Total Expended on Transportation</b>		

**Year 2**

<b>Fund Source</b>	<b>Amount</b>	<b>Year</b>
<b>Total Expended on Transportation</b>		

**Year 3**

<b>Fund Source</b>	<b>Amount</b>	<b>Year</b>
<b>Total Expended on Transportation</b>		

**Three-Year Average of Transportation Expenditures:**

\$ \_\_\_\_\_

I, the undersigned, certify that the above information is true and correct to the best of my knowledge.

[Signature]

\_\_\_\_\_  
[Name of City Manager, Public Works Director or equivalent department head]