

**AGREEMENT BETWEEN THE
TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND THE CITY OF SALINAS
FOR REGIONAL SURFACE TRANSPORTATION PROGRAM EXCHANGE FUNDS**

This agreement is made on June 17, 2014 by and between the City of Salinas, a public body, hereinafter referred to as “RSTP Recipient,” and the Transportation Agency for Monterey County, hereinafter referred to as “TAMC.”

WHEREAS, as authorized by section 182.6(g) of the Streets and Highways Code, the TAMC has entered into a separate agreement with the State of California, through the Department of Transportation (Caltrans), to assign a defined portion of its annual Regional Surface Transportation Program (RSTP) apportionment to Caltrans in exchange for state funds for specified fiscal year(s); and

WHEREAS, TAMC is authorized to use these exchanged funds (hereinafter RSTP Exchange Funds) to assist local agencies to promote projects which otherwise qualify for RSTP funds; and

WHEREAS, the TAMC Board has approved the allocation of funds toward the projects listed in Exhibit A; and

WHEREAS, it is contemplated by TAMC and the RSTP Recipient that the amount of funding and the projects designated in Exhibit A may change from time to time as set forth below; and

WHEREAS, the TAMC has requested the Monterey County Auditor-Controller to establish a separate fund for the Federal Apportionment Exchange Program and such a separate fund has been established.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The TAMC agrees to allocate these state funds paid by Caltrans under the Federal Apportionment Exchange Program only for projects as authorized under sections 133(b) and 133 (c) of Title 23, United States Code and Article XIX of the California State Constitution.
2. The RSTP Recipient agrees to use the funds only for the RSTP Exchange project(s) described in Exhibit A, as approved by the TAMC Board of Directors, for the amounts awarded for each project.
3. The projects described in Exhibit A, and the amounts allocated therefore, may be amended from time to time without changing the rest of this Master Agreement, by means of approval by the TAMC Board of Directors of a revised Exhibit A, which shall be designated by a date and number (e.g., “Exhibit A-1 (DATE)”).

4. The RSTP Recipient agrees to submit an annual report to TAMC by April 30 describing the progress towards completion for all projects listed in Exhibit A.
5. The RSTP Recipient agrees to mention TAMC's role in funding the project in any press releases or media events held by the RSTP Recipient to promote a RSTP funded project.
6. The TAMC agrees to reimburse the RSTP Recipient within 30 days of receipt of a completed claim form (Exhibit B) from the RSTP Recipient.
7. The RSTP Recipient agrees to cause the completion of the RSTP Exchange project(s) within three years from the date funds were awarded by the TAMC Board of Directors, as recorded in Exhibit A. Failure to complete the RSTP Exchange project(s) in a timely basis shall allow TAMC to refuse reimbursement and to reprogram such Exchange Funds for other purposes.

8. COST PRINCIPLES

A. RSTP Recipient agrees to comply with Office of Management and Budget Circular A-87, Cost Principles for State and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

B. RSTP Recipient agrees to:

(a) use Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., to determine the allowability of individual project cost items; and

(b) comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Every sub-recipient receiving Exchange Funds as a contractor or sub-contractor under this AGREEMENT shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

9. THIRD PARTY CONTRACTING

A. RSTP Recipient shall not award a construction contract over \$10,000 or other contracts over \$25,000 on the basis of a noncompetitive negotiation for work to be performed using Funds without the prior written approval of Caltrans. This provision shall not apply to professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e), and (f).

- B. RSTP Recipient agrees that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as project costs only after those costs are incurred and paid for by the subcontractors and only if consistent with Paragraph 12, below.
- C. In addition to the above, the pre-award requirements of third party contractor/consultants with RSTP Recipient shall be consistent with Local Program Procedures as published by Caltrans.

10. ACCOUNTING SYSTEM

RSTP Recipient, its contractors and subcontractors, shall establish and maintain an accounting system and records that properly accumulate and segregate Exchange Fund expenditures by line item. The accounting system of RSTP Recipient, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment claims.

11. RIGHT TO AUDIT

For the purpose of verifying that funds paid hereunder are properly accounted for and proceeds are expended in accordance with the terms of this agreement, the RSTP Recipient, its contractors and subcontractors each agrees to grant State of California and/or TAMC auditors access to the RSTP Recipients books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including but not limited to, the costs of administering those various contracts. All documents shall be made available for inspection by authorized Caltrans or TAMC agents at any time during project development and for a four-year period from date of completion of project or one year after the audit is completed or waived by Caltrans, whichever is later.

12. TRAVEL AND SUBSISTENCE

Payments to RSTP Recipient for travel and subsistence expenses of RSTP Recipient forces and/or its contractors or subcontractors, claimed for reimbursement or applied as local match credit, shall not exceed rates authorized to be paid exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of those authorized DPA rates, then RSTP Recipient is responsible for the cost difference and any overpayments shall be reimbursed to TAMC on demand.

13. PROJECT COMPLETION

RSTP Recipient agrees to provide to TAMC a short report summarizing total project costs and milestones, including before and after photos of the project, for each RSTP Exchange Fund project within sixty (60) days of completion.

- 14. GOVERNING LAWS. This Agreement shall be construed and enforced according to the laws of the State of California, and the parties hereby agree that the County of Monterey shall be the proper venue for any dispute arising hereunder.

15. CONFLICT OF INTEREST. RSTP Recipient warrants that it presently has no interest and shall not acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with its full and complete performance of all services under this Agreement.
16. CONSTRUCTION OF AGREEMENT. The parties 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 exhibit or amendment. To that end, it is understood and agreed that this Agreement has been arrived at through negotiation, and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654. Section and paragraph headings appearing herein are for convenience only and shall not be used to interpret the terms of this Agreement.
17. WAIVER. Any waiver of any term or condition hereof must be in writing. No such waiver shall be construed as a waiver of any other term or condition herein.
18. SUCCESSORS AND ASSIGNS. This Agreement and all rights, privileges, duties and obligations hereunder, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and heirs.
19. TIME IS OF THE ESSENCE. The parties mutually acknowledge and agree that time is of the essence with respect to every provision hereof in which time is an element. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act, nor shall any such extension create a precedent for any further or future extension.
20. EXECUTION OF AGREEMENT. Any individual executing this Agreement on behalf of an entity represents and warrants that he or she has the requisite authority to enter into this Agreement on behalf of such entity and to bind the entity to the terms and conditions hereof. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.
21. ENTIRE AGREEMENT. This document, including all exhibits hereto, constitutes the entire agreement between the parties, and supersedes any and all prior written or oral negotiations and representations between the parties concerning all matters relating to the subject of this Agreement.
22. TERMINATION DATE. This Agreement shall remain in effect for a period of three (3) years from the date of this Agreement.

IN WITNESS WHEREOF, TAMC and RSTP Recipient execute this Agreement as follows:

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

Debra L. Hale
Executive Director

Date

RSTP Recipient:
CITY OF SALINAS

Joe Gunter, Mayor

Date

Approved as to Form:

Kathryn Reimann
TAMC Counsel

Date

Christopher Callihan
City Attorney
City of Salinas

Date