

RESOLUTION NO. 2021-24

A RESOLUTION OF CITY COUNCIL OF THE CITY OF MARINA
APPROVING AMENDMENT NO. 1 TO THE REGIONAL PAVEMENT
MANAGEMENT PROGRAM FUNDING AGREEMENT WITH THE
TRANSPORTATION AGENCY FOR MONTEREY COUNTY (TAMC) FOR
THE CITY'S PAVEMENT MANAGEMENT PROGRAM, AND;
AUTHORIZING THE FINANCE DIRECTOR TO MAKE THE NECESSARY
ACCOUNTING AND BUDGETARY ENTRIES, AND; AUTHORIZING THE
CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE
CITY COUNCIL SUBJECT TO FINAL REVIEW AND APPROVAL BY THE
CITY ATTORNEY

WHEREAS, at the regular meeting of July 5, 2017, the City Council adopted Resolution No. 2017-66, approving Master Programs Funding Agreement with the Transportation Agency for Monterey County (TAMC) for the local allocation and expenditure of Measure X Transportation and Safety Investment Plan funds, and;

WHEREAS, at the regular meeting of November 21, 2017, the City Council adopted Resolution No. 2017-104, approving the Regional Pavement Management Program Funding Agreement with the Transportation Agency for Monterey County (TAMC) for the City's Pavement Management Program, and;

WHEREAS, one of the City's obligations under the Master Funding Agreement for Measure X is the development of a Pavement Management Program, utilizing management tools such as the Metropolitan Transportation Commission's Streetsaver Pavement Management program, and;

WHEREAS, the original Master Funding Agreement entered with TAMC allowed for the participation in a Regional Pavement Management Program (PMP) that would reduce costs and provide an updated system-wide investigation for future planning. The proposed amendment shall provide three (3) years of continued discounted rates for the Streetsaver PMP software registration as well as continue the regional coordination of the Master Agreements intent. The Regional Pavement Management Program will help the City continue to meet the reporting requirements of the Measure X Funding Agreement as well as present to the City the most up to date information on the entire roadway network, and;

WHEREAS, should the City Council approve this request, adequate funding is available from the Measure X sales tax funds provided to the City for its Pavement Management Program costs.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve Amendment No. 1 to the Regional Pavement Management Program Funding Agreement with the Transportation Agency for Monterey County (TAMC) for the City's Pavement Management Program, and;
2. Authorize the Finance Director to make the necessary accounting and budgetary entries, and;

3. Authorize the City Manager to execute the amendment on behalf of the City Council subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 6th day of April 2021, by the following vote:

AYES: COUNCIL MEMBERS: Medina Dirksen, Burnett, Berkley, Biala, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**EXHIBIT A
TO STAFF REPORT**

**AMENDMENT No. 1 to MEASURE X
PAVEMENT MANAGEMENT PROGRAMS FUNDING AGREEMENT
between the
TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND
CITY OF MARINA**

WHEREAS, City of Marina ("CITY") and the Transportation Agency for Monterey County ("TAMC") entered into a Pavement Management Programs Funding Agreement ("PMP Funding Agreement") dated December 21, 2017; and

WHEREAS, the PMP Funding Agreement provided that TAMC, after consultation with CITY, selected the proprietary software known as "StreetSaver," developed by the Metropolitan Transportation Commission ("MTC"), to be used as a regional pavement management program, and arranged with MTC to obtain services for a number of jurisdictions as a group, including CITY; and

WHEREAS, the PMP Funding Agreement also provided that CITY acknowledged receipt of an "Order Acknowledgment" which identified the services provided, including annual and one-time services, and the apportioned costs therefor; and

WHEREAS, in the PMP Funding Agreement the CITY also acknowledged the possible need for additional services and agreed to pay for such services; and

WHEREAS, the PMP Funding Agreement also contained, in Section I., Paragraph 3., a specific reimbursement agreement for the CITY that identified the amount for the initial year of the StreetSaver program and placed a "not-to-exceed" amount of \$3,301.00; and

WHEREAS, the CITY has continued participation in the regional pavement management program provided by TAMC, with respect to CITY's own needs; and

WHEREAS, the CITY recognizes the need to pay its proportionate share of continued use of the StreetSaver program; and

WHEREAS, the CITY acknowledges receipt and review of StreetSaver Invoice # 4926-AR11761 for StreetSaver services, as well as TAMC's proposed allocation of 13.1% of such costs to CITY.

NOW, THEREFORE,

1. The Effective Date of this Agreement is November 1, 2020.
2. Notwithstanding Section I., Paragraph 3, and pursuant to Section I., Paragraph 5, of the PMP Funding Agreement, CITY hereby agrees to reimburse TAMC for its share of consultant costs, pursuant to Invoice # 4926-AR11761, in an amount not to exceed TWO THOUSAND NINE HUNDRED FIFTY DOLLARS (\$2,950.00).
3. Such reimbursement shall be made within thirty (30) days of TAMC's presentation to CITY of an invoice showing approval of and payment for the consultant's services, or within thirty (30) days of the effective date of this Amendment No. 1, whichever occurs last.
4. CITY also agrees to pay it proportionate share of up to three additional StreetSaver invoices without the need for further amendment if all the following conditions are met:
 - a. Within five (5) business days of TAMC's presentation of a StreetSaver invoice for a given year, CITY has not notified TAMC of its intent to end participation in the StreetSaver program;
 - b. The invoices represent only annual payments of previously approved services;
 - c. No proportionate share to be paid by CITY exceeds 13.1% of the invoice amount; and
 - d. No amount to be paid per invoice by CITY exceeds the amount of FIVE THOUSAND DOLLARS (\$5,000.00).
5. All other provisions of the PMP Funding Agreement shall remain in full force and effect.

[Signatures on the next page]

In witness whereof, the parties have executed this Reimbursement Agreement by their duly authorized officers as of the date first written below.

City of Marina

Transportation Agency for
Monterey County (TAMC)

By: _____
Name Date
Title

By: _____
Debra L. Hale Date
Executive Director

Approved as to Form and Legality:

Approved as to Form and Legality:

By: _____
Name Date
Title

By: _____
Kay Reimann Date
TAMC Counsel

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

This Pavement Management Programs Funding Agreement (“Agreement”) is effective the 21st of December, 2017, and is entered into by and between the Transportation Agency for Monterey County (“TAMC”) and City of Marina (“CITY”).

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 DATE, 2017, CITY entered into a Master Programs Funding Agreement (“Master Agreement”) setting forth the mutual obligations and rights of TAMC and CITY with respect to the allocation of Measure X funds.
4. One of CITY’s obligations under the Master is to develop a Pavement Management Program, or participate in the development of a regional Pavement Management Program, developed by TAMC.
5. CITY has chosen to participate in a regional Pavement Management Program and this Agreement confirms CITY’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 CITY, 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. CITY has received a copy of an "Order Acknowledgment" prepared by the MTC for the use of "Street Saver" by CITY and others in the TAMC Group. A copy of this "Order Acknowledgement" is attached hereto as Exhibit A.
3. CITY agrees to pay its fair share of the costs identified in Exhibit A, which amount is anticipated not to exceed Three Thousand Three Hundred and One dollars (\$3,301.00), and is based upon a combination of centerline miles within CITY, a proportionate share of annual fees, and a fair share of one-time set up fees. The specific allocation of CITY's costs is described in Exhibit B, and incorporated herein as though fully set forth.
4. CITY 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 CITY, MTC and TAMC.
5. CITY 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. CITY 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 CITY and others, in order to achieve efficiencies of scale in such services. The RFP will request that any response include a breakdown of costs, both by task and by CITY.
3. TAMC shall consult with CITY in the selection of a consultant in response to such RFP, and CITY shall have the discretion to accept the selected consultant or not.
4. If CITY does not accept the selected consultant, CITY shall be obligated to provide or otherwise obtain such services as referenced in Section II., Paragraph 1, above, independently, and at CITY's own expense.
5. If CITY accepts the selected consultant, CITY shall reimburse TAMC for its share of consultant costs, as will be delineated in the agreement between TAMC and the selected

consultant. Such reimbursement shall be made within thirty (30) days of TAMC's presentation to CITY of an invoice showing approval of and payment for the consultant's services. Prior to TAMC approval of consultant services with respect to CITY, TAMC shall confer with CITY.

6. CITY 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 the 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, and 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 CITY 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. CITY 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 CITY:

**Brian McMinn
Public Works Director
211 Hillcrest Avenue
Marina CA 93933
Tel (831) 884-1212
Fax (831) 384-0425**

FOR TAMC:

**Debra L. Hale, Executive Director
TAMC
55-B Plaza Circle
Salinas, CA 93901
Tel: (831) 775-0903
Fax: (831) 775-0897**

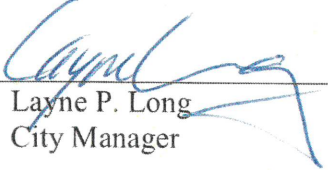
- F. Waiver. Any waiver of any terms of this Agreement shall be in writing signed by both parties hereto. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- G. Non-Assignment. Neither party hereto may 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.

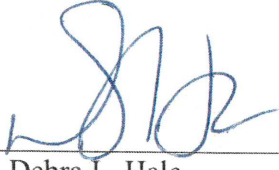
[Signatures on next page]

In Witness Whereof, the parties have executed this AGREEMENT by their duly authorized officers as of the date first written below.

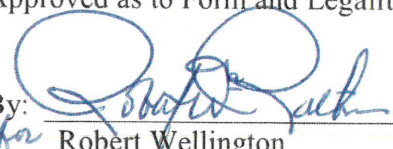
City of Marina (CITY)

Transportation Agency for
Monterey County (TAMC)

By:  12/17/17
Layne P. Long Date
City Manager

By:  12/21/17
Debra L. Hale Date
Executive Director

Approved as to Form and Legality:

By: 
for Robert Wellington
City Attorney

Approved as to Form and Legality:

By:  12-21-17
Robert M. Shaw
TAMC Counsel

EXHIBIT A

[STREETSAVER ORDER ACKNOWLEDGEMENT]

EXHIBIT D

REIMBURSEMENT AGREEMENT

WHEREAS, City of Marina ("CITY") and the Transportation Agency for Monterey County ("TAMC") entered into a Pavement Management Programs Funding Agreement ("PMP Funding Agreement") dated December 21, 2017; and

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

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

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

NOW, THEREFORE,

1. CITY does hereby accept Nichols Consulting Engineers (NCE) as the provider of services set forth in the PMP RFP on behalf of CITY.
2. Pursuant to Section II., Paragraph 5, of the PMP Funding Agreement, CITY hereby agrees to reimburse TAMC for its share of consultant costs, as delineated in the agreement between TAMC and Nichols Consulting Engineers (NCE), in an amount not to exceed Twenty-One Thousand Seven Hundred and Ten Dollars (\$21,710.00).
3. Such reimbursement shall be made within thirty (30) days of TAMC's presentation to CITY of an invoice showing approval of and payment for the consultant's services. Prior to TAMC approval of consultant services with respect to CITY, TAMC shall confer with CITY.
4. Both CITY and TAMC acknowledge that this Reimbursement Agreement is implementing a portion of the full PMP Funding Agreement, and the PMP Funding Agreement is hereby acknowledged and incorporated herein.

[signatures on next page]

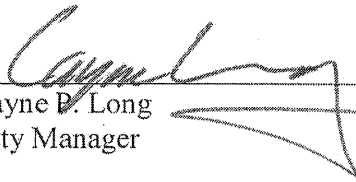
Pavement Management

	Kickoff Meeting	Pavement Condition Surveys	Update M & R Strategies	Budget Analysis & Funding Scenarios	Training	Final Report	Council Presentation & Training	Nichols Consulting Pavement Management Program Total	Nichols Consulting Add'l Pavement Condition Surveys	MTC Street Saver Software	Total Pavement Management Costs
Carmel	\$ 502.00	\$ 4,003.00	\$ 191.00	\$ 418.00	\$ 1,096.00	\$ 1,800.00	\$ 3,288.00	\$ 11,298.00	\$ 1.00	\$ 3,787.00	\$ 15,086.00
Del Rey Oaks	\$ 502.00	\$ 1,483.00	\$ 71.00	\$ 155.00		\$ 800.00		\$ 3,011.00	\$ 1.00	\$ 1,485.00	\$ 4,497.00
Greenfield	\$ 502.00	\$ 3,410.00	\$ 162.00	\$ 356.00	\$ 1,096.00	\$ 1,800.00	\$ 3,288.00	\$ 10,614.00	\$ 1,945.00	\$ 4,678.00	\$ 17,237.00
King City	\$ 502.00	\$ 4,151.00	\$ 198.00	\$ 434.00	\$ 1,096.00	\$ 1,800.00	\$ 3,288.00	\$ 11,469.00	\$ 328.00	\$ 5,024.00	\$ 16,821.00
Marina	\$ 502.00	\$ 11,565.00	\$ 551.00	\$ 1,209.00	\$ 1,096.00	\$ 3,500.00	\$ 3,288.00	\$ 21,711.00	\$ 1,693.00	\$ 3,301.00	\$ 26,705.00
Pacific Grove	\$ 502.00	\$ 8,303.00	\$ 396.00	\$ 868.00	\$ 1,096.00	\$ 3,500.00	\$ 3,288.00	\$ 17,953.00	\$ 17.00	\$ 6,819.00	\$ 24,789.00
Sand City	\$ 502.00	\$ 741.00	\$ 35.00	\$ 77.00	\$ 1,096.00	\$ 800.00	\$ 3,288.00	\$ 6,539.00	\$ 9,731.00	\$ 2,942.00	\$ 19,212.00
Monterey County	\$ 502.00	\$ 160,124.00	\$ 7,628.00	\$ 16,728.00	\$ 1,096.00	\$ 16,549.00	\$ 3,288.00	\$ 205,915.00		\$ 66,053.00	\$ 271,968.00
	\$ 4,016.00	\$ 193,780.00	\$ 9,232.00	\$ 20,245.00	\$ 7,672.00	\$ 30,549.00	\$ 23,016.00	\$ 288,510.00	\$ 13,716.00	\$ 94,089.00	\$ 396,315.00

In Witness Whereof, the parties have executed this Reimbursement Agreement by their duly authorized officers as of the date first written below.

City of Marina (CITY)

Transportation Agency for
Monterey County (TAMC)

By:  _____
Layne P. Long Date
City Manager

By:  2/2/18
for Debra L. Hale Date
Executive Director

Approved as to Form and Legality:

Approved as to Form and Legality:

By:  _____
for Rob Wellington Date
City Attorney

By:  2-1-2018
Robert M. Shaw Date
TAMC Counsel

EXHIBIT D-1

ANTICIPATED FAIR SHARE COSTS OF MARINA PAVEMENT MANAGEMENT PROGRAM CONSULTING SERVICES

TASK/USE	COST
Task A - Kickoff meeting	\$502
Task B – Pavement Condition Surveys	\$11,565
Task C - Update Maintenance and Rehabilitation Strategies	\$551
Task D - Budget Analysis and Funding Scenarios	\$1,209
Task E - Training (One day hands-on training at TAMC)	\$1,096
Task F-1 - Final Reports (optional)	\$3,500
Task F-2 - Council/Board Presentations by Consultants (optional)	\$3,288
Total Cost:	\$21,710

March 31, 2021

Item No. **8g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting of
April 6, 2021

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2021-,
APPROVING AMENDMENT NO. 1 TO THE REGIONAL PAVEMENT
MANAGEMENT PROGRAM FUNDING AGREEMENT WITH THE
TRANSPORTATION AGENCY FOR MONTEREY COUNTY (TAMC)
FOR THE CITY'S PAVEMENT MANAGEMENT PROGRAM, AND;
AUTHORIZING THE FINANCE DIRECTOR TO MAKE THE
NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND;
AUTHORIZING THE CITY MANAGER TO EXECUTE THE
AMENDMENT ON BEHALF OF THE CITY COUNCIL SUBJECT TO
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY**

REQUEST:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2021-, approving Amendment No. 1 to the Regional Pavement Management Program Funding Agreement with the Transportation Agency for Monterey County (TAMC) for the City's Pavement Management Program (**"EXHIBIT A"**), and;
2. Authorize the Finance Director to make the necessary accounting and budgetary entries, and;
3. Authorize the City Manager to execute the amendment on behalf of the City Council subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of July 5, 2017, the City Council adopted Resolution No. 2017-66, approving Master Programs Funding Agreement with the Transportation Agency for Monterey County (TAMC) for the local allocation and expenditure of Measure X Transportation and Safety Investment Plan funds.

At the regular meeting of November 21, 2017, the City Council adopted Resolution No. 2017-104, approving the Regional Pavement Management Program Funding Agreement with the Transportation Agency for Monterey County (TAMC) for the City's Pavement Management Program. (**"EXHIBIT B"**)

ANALYSIS:

One of the City's obligations under the Master Funding Agreement for Measure X is the development of a Pavement Management Program, utilizing management tools such as the Metropolitan Transportation Commission's Streetsaver Pavement Management program.

The original Master Funding Agreement entered with TAMC allowed for the participation in a Regional Pavement Management Program (PMP) that would reduce costs and provide an updated system-wide investigation for future planning. The proposed amendment shall provide three (3) years of continued discounted rates for the Streetsaver PMP software registration as well as continue the regional coordination of the Master Agreements intent. The Regional Pavement Management Program will help the City continue to meet the reporting requirements of the Measure X Funding Agreement as well as present to the City the most up to date information on the entire roadway network.

FISCAL IMPACT:

Should the City Council approve this request, adequate funding is available from the Measure X sales tax funds provided to the City for its Pavement Management Program costs.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
Public Works Department
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina