

RESOLUTION NO. 2019-125

A RESOLUTION OF CITY COUNCIL OF THE CITY OF MARINA APPROVING AMENDMENT # 1 TO THE 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; AUTHORIZING THE FINANCE DIRECTOR TO MAKE THE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY COUNCIL SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND; AUTHORIZING THE CITY MANAGER TO SUBMIT REPORTS TO TAMC AS REQUIRED BY THE AGREEMENT

WHEREAS, Measure X was approved by voters on November 8, 2016 with 67.71% of the votes, and;

WHEREAS, the Measure X sales tax is estimated to generate \$600,000 in revenue per year for the City, and;

WHEREAS, the City entered into a Master Programs Funding Agreement with the Transportation Agency for Monterey County (TAMC) on August 31st, 2017 to be eligible for receipt of funding, and;

WHEREAS, the agreement requires annual reporting on general fund expenditures for roadway maintenance (maintenance of effort) to reassure the public that Measure X tax revenues are not displacing general fund dollars that will be used for other purposes, and;

WHEREAS, the maintenance of effort requirement in the original agreement was calculated based on a rolling three-year average that would inadvertently penalize agencies seeking to make a large one-time contribution towards street maintenance, and;

WHEREAS, the TAMC Technical Advisory Committee and the TAMC Measure X Citizen Advisory Committee reviewed recommended changes to the maintenance of effort calculation, and;

WHEREAS, The TAMC Board of Directors approved the draft Amendment # 1 to the Master Programs Funding Agreement at their October 23, 2019 meeting which incorporates a baseline maintenance of effort calculation with an annual cost index escalation, and;

WHEREAS, Each TAMC member agency is required to execute an acceptance of the revised ordinance by amendment of the Master Agreement.

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

1. Approve Amendment #1 to the Master Programs Funding Agreement with the Transportation Agency for Monterey County for the local allocation and expenditure of Measure X Transportation and Safety Investment Plan funds, 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, and;
4. Authorize the City Manager to submit reports to TAMC as required by the Agreement.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th day of November 2019, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, Urrutia, O'Connell, Morton

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Delgado

ABSTAIN: COUNCIL MEMBERS: None

Gail Morton, Mayor Pro-Tem

ATTEST:

Anita Sharp, Deputy City Clerk

AMENDMENT #1
TO MEASURE X MASTER PROGRAMS FUNDING AGREEMENT
BETWEEN
THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND
MARINA

THIS AMENDMENT No. 1 to the agreement originally dated August 31, 2017, between the Transportation Agency for Monterey County, hereinafter referred to as “TAMC,” and Marina, hereinafter referred to as “Jurisdiction,” is hereby entered into between TAMC and the Jurisdiction.

R E C I T A L S:

- A. **WHEREAS**, TAMC and Jurisdiction entered into a Measure X Master Programs Funding Agreement on August 31, 2017, hereinafter referred to as “Agreement;”
- B. **WHEREAS**, both the Agreement and Measure X implementing ordinance (Ordinance 2016-01) included a Maintenance of Effort requirement defined as an average of the prior three years spent for local transportation purposes; and
- C. **WHEREAS**, subsequent to the adoption of Measure X, the State of California adopted “SB 1,” which provided, among other things, funding to local jurisdictions based upon a different Maintenance of Effort calculation, thus creating potential confusion and conflicts in such calculations for Measure X jurisdictions; and
- D. **WHEREAS**, TAMC also received feedback from local jurisdictions during the Fiscal Year 2017/18 Measure X Annual Reporting period that this Maintenance of Effort calculation would penalize local jurisdictions that make large one-time investments in transportation maintenance improvements;
- E. **WHEREAS**, on July 16, 2019, the Measure X Citizens Oversight Committee recommended that the Maintenance of Effort definition be revised to “an amount not less than the annual average of its expenditures from its general fund during the preceding three fiscal years 2009-10, 2010-11, and 2011-12 fiscal years, but not less than what was expended in 2016-17 (when Measure X passed), as reported to the Controller pursuant to Streets and Highways Code section 2151. This baseline amount will be indexed annually to the Engineering News Record construction index.”;
- F. **WHEREAS**, on October 23, 2019, the TAMC Board of Directors, with support from the Measure X Citizens Oversight Committee and Jurisdiction, duly approved Ordinance 2019-01, which amended the Measure X implementing ordinance (Ordinance 2016-01) to revise the definition for calculating the Maintenance of Effort, as described above; and
- G. **WHEREAS**, TAMC and Jurisdiction desire to amend the Agreement to make the Maintenance of Effort definition consistent with Ordinance 2019-01.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Article I, Paragraph 4

The definition of “Maintenance of Effort Report” shall be replaced in its entirety with the following:

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 as the annual average of its expenditures from its general fund during the 2009-10, 2010-11, and 2011-12 fiscal years, but not less than what was expended in 2016-17 (when Measure X passed), as reported to the Controller pursuant to Streets and Highways Code section 2151. This baseline amount will be indexed annually to the Engineering News Record construction index.”

2. Article IV, Section A, Paragraph 6

Article IV, Section A, Paragraph 6 shall be replaced in its entirety with the following:

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 2009-10, 2010-11, and 2011-12 fiscal years, but not less than what was expended in 2016-17 (when Measure X passed), as reported to the Controller pursuant to Streets and Highways Code section 2151 (“Maintenance of Effort”). This baseline amount will be indexed annually to the Engineering News Record construction index.”

3. REMAINDER OF TERMS UNCHANGED

All other terms of the Agreement remain in full effect.

An executed copy of this Amendment No. 1 shall be attached to the Agreement and shall be incorporated as if fully set forth therein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Agreement with Consultant.

TAMC:

JURISDICTION:

Debra L. Hale
Executive Director

(date)

Approved as to form:

TAMC Counsel

(date)

(date)

November 8, 2019

Item No. **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting of
November 19, 2019

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2019-,
APPROVING AMENDMENT # 1 TO THE 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; AUTHORIZING THE FINANCE
DIRECTOR TO MAKE THE NECESSARY ACCOUNTING AND
BUDGETARY ENTRIES; AUTHORIZING THE CITY MANAGER TO
EXECUTE THE AMENDMENT ON BEHALF OF THE CITY COUNCIL
SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY, AND; AUTHORIZING THE CITY MANAGER TO SUBMIT
REPORTS TO TAMC AS REQUIRED BY THE AGREEMENT**

REQUEST:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2019-, approving Amendment # 1 to the 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;
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, and;
4. Authorize the City Manager to submit reports to TAMC as required by the Agreement.

BACKGROUND:

Measure X was approved by voters on November 8, 2016 with 67.71% of the votes. The measure put in place a 3/8th % sales tax that will generate revenue for a period of 30 years. A portion of the Measure X revenue will be allocated to the City of Marina for use on roadway and transportation projects identified in the Measure X Investment Plan. The sales tax collection began on April 1, 2017 and revenue will be available to the City by September 2017.

At the regular meeting of July 5, 2017, the City Council adopted Resolution 2017-66, approving the 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. The agreement requires accounting and reporting on expenditures to reassure the public that tax revenues are spent in accordance with the ballot language.

At the regular meeting of October 23, 2019, the TAMC Board adopted Ordinance 2019-01, revising the Measure X Maintenance of Effort calculation in the Master Programs Funding Agreement.

ANALYSIS:

The funding agreement requires a number of reports that the City submits to TAMC annually, including a Maintenance of Effort calculation report. The purpose of the Maintenance of Effort requirement is to assure that no funds previously used for transportation are shifted to other uses and then back-filled with Measure X monies - the so-called "bait and switch."

The original agreement had a rolling three-year average calculation of Maintenance of Effort. Cities would be required to fund their future transportation program with no less than the three-year average calculation. This methodology would inadvertently penalize agencies making a large one-time investment into their transportation program.

The revised calculation to be used in reporting in December of 2019 and going forward will be "not less than the annual average of its expenditures from its general fund during the 2009-10, 2010-11, and 2011-12 fiscal years, but not less than what was expended in 2016-17 (when Measure X passed), as reported to the Controller pursuant to Streets and Highways Code section 2151 ("Maintenance of Effort")." Per the revised maintenance of effort requirements, the baseline for the City of Marina will be set at \$434,257 and increased annually by the Construction Cost Index.

Each jurisdiction is required to execute an acceptance of the revised ordinance by amendment of the Master Agreement (**EXHIBIT A**).

FISCAL IMPACT:

Should the City Council approve this request, the amendment will allow the City to better implement funding options to effectively execute the Council's Pavement Management Program goals with Measure X funds.

CONCLUSION:

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

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

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina