

**LOAN AGREEMENT  
BETWEEN  
THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY  
&  
MONTEREY SALINAS TRANSIT DISTRICT**

This Loan Agreement (“Agreement”) is made and entered into on \_\_\_\_\_, 2019 by and between the Monterey Salinas Transit District (“MST”) and the Transportation Agency for Monterey County (“TAMC”).

**RECITALS**

**WHEREAS**, MST was created by California law, AB 644 (2010) to succeed prior joint powers agencies providing public transit to Monterey County and southern Santa Cruz County, and currently provides bus and related transit services in a service area of approximately 300 square miles; and

**WHEREAS**, TAMC is the designated Regional Transportation Planning Agency (RTPA) for Monterey County, as well as the designated fund administrator for Monterey County under the Transportation Development Act (SB 325, Statutes 1971); and

**WHEREAS**, disruptions in federal funding, adversely impact MST’s ability to receive federal funds in a timely manner and has caused a cash-flow problem affecting MST’s ability to meet payroll obligations, and other operating costs; and

**WHEREAS**, unless MST can obtain funds at a reasonable rate to keep an adequate cash-flow pending receipt of federal funds, MST could be forced to reduce services to the community; and

**WHEREAS**, 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 the Transportation Safety & Investment Plan 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”); and

**WHEREAS**, Measure X identifies as one of its goals and purposes the improvement of transportation for seniors, young people, and people with disabilities, and also identifies assistance with bus service as a regional project; and

**WHEREAS**, TAMC has funds from Measure X which may be used to provide short-term cash-flow funding to the MST, in anticipation of the receipt of federal funds by MST; and

**WHEREAS**, TAMC and MST desire to enter into a Loan Agreement for funding of public transportation options pursuant to the authority provided by Measure X and consistent with past short-term, cash-flow funding provided to MST by TAMC; and

**WHEREAS**, MST has requested the ability to obtain a short-term loan from TAMC (the “TAMC Loan”), to be repaid with interest by MST from MST’s share of federal allocations for public transit, secured by MST’s normal allocation under the Transportation Development Act; and

**WHEREAS**, TAMC is authorized to manage the distribution of Measure X funds, as well as the distribution of Transportation Development Act funding in Monterey County; and

**WHEREAS**, TAMC agrees to provide funding for the short-term cash-flow needs of MST according to the terms and conditions set forth herein.

**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 Covenants of MST**

- 1.1. Purpose of the TAMC Loan. MST agrees to use the proceeds of the TAMC Loan for the cash-flow needs of MST to meet payroll obligations and cover other operating costs necessary to continue current and existing services within MST's area of service.
- 1.2. Eligible Costs. Eligible costs to be funded by the TAMC Loan include payroll obligations and operating costs as specified in Section 1.1. No TAMC Loan funds shall be invested by MST.
- 1.3. Repayment of TAMC Loan. For this Agreement, the MST will repay the TAMC Loan as quickly as possible once federal funding for MST has resumed, and no later than one (1) year six (6) months after the resumption of such funding. Repayment of the TAMC Loan includes payment of interest as described in Exhibit B. This Loan Agreement shall not terminate until full repayment of the TAMC Loan.
- 1.4. Timing of TAMC Loan Disbursements. The TAMC Loan is intended as "short-term, cash-flow financing" for MST, and MST shall first use its available funds, up to the amount of Three Million Dollars (\$3,000,000) for the costs and expenses of MST. TAMC will disburse funds from the TAMC Loan directly to the MST upon documentation (as described in Section 1.5 below) that MST has expended funding towards the provision of services. As MST complies with the procedure set forth in Section 1.5, below, MST will submit its documentation in a sufficiently timely basis to allow TAMC to review Requests for Payment and to disburse funds from the TAMC Loan directly to MST within a period of fifteen (15) business days. TAMC shall not be responsible for any penalties or charges related to late payments to MST, if TAMC has made a disbursement to MST within this period, or if TAMC has complied with Section 2.4 ("Suspension of Disbursements") for any invoices/Requests for Payments that are disputed.
- 1.5. Requests for Payment and Progress Reports. MST anticipates that it will seek TAMC Loan disbursements within 120 days after approval of this Agreement, and will provide at least 30 days' prior written notice to TAMC before the first anticipated Request for Payment. Starting after MST has provided documentation suitable to TAMC that MST has expended its available funds up to the amount of \$3,000,000 Dollars, MST will submit monthly progress reports and Requests for Payment, based upon anticipated activities to conducted

over the next month.

- 1.6. Pledge of TDA Funds: MST hereby pledges as security for the TAMC Loan, the amount of \$3,000,000 (plus accrued interest) from Transportation Development Act funds. If MST has not repaid the TAMC Loan as set forth in Section 1.3, MST hereby waives all rights to receive Transportation Development Act funds until such time as the TAMC Loan is repaid.

## **SECTION II**

### **Covenants of TAMC**

- 2.1. Loan and Repayment: TAMC shall loan to MST funds for short-term cash-flow up to the amount of Three Million (\$3,000,000), which shall be released pursuant to Requests for Payments made pursuant to Section 1.4. This amount shall be maintained in a separate internal TAMC fund in order to ensure its availability to MST, upon the terms stated in this Loan Agreement.
- 2.2. Requests for Payments. TAMC shall make payments to MST from the TAMC Loan amount as specified in Section 1.5 and Exhibit A.
- 2.3. Ineligible Costs. TAMC reserves the right to adjust current or future payments to MST from the TAMC Loan if a Request for Payment includes ineligible costs.
- 2.4. Suspension of Disbursement. If TAMC determines that any costs in a Request for Payment are not allowable, or determines a lack of supporting progress reports for a Request for Payment, TAMC shall contact MST within ten (10) business days of receipt, together with a dispute notice outlining the reason for the disputed and the proposed remedy, if one exists, which would make the Request for Payment acceptable. MST may re-submit the Request for Payment package after reviewing the dispute notice and making any necessary corrections. MST may also immediately submit a new Request for Payment representing only the amounts which are not in dispute, while setting aside the disputed amounts for review in accordance with the provisions set forth in the Dispute Resolution policies of the Measure X Master Programs Funding Agreement (Article V, Section B).
- 2.5. Right to Conduct Audit. TAMC shall, at TAMC's expense, have the right to conduct an audit of all MST's records pertaining to the TAMC Loan and this Agreement at any time during the course of the TAMC Loan and up to a five (5) year period after completion of the Project and repayment of the TAMC Loan. If any irregularities are found as a result of an audit, MST shall reimburse TAMC for the cost of the audit.

### **SECTION III**

#### **Mutual Covenants**

- 3.1. Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2.
- 3.2. Discharge. This Agreement shall be subject to discharge as follows:
  - 3.2.1. Termination by Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties, but only upon immediate repayment of any outstanding balance (including accrued interest) of the TAMC Loan.
  - 3.2.2. Discharge Upon Completion of Project and Full Repayment of TAMC Loan. Except as to any rights or obligations which survive discharge as specified in Section 3.14, this Agreement shall be discharged, and the parties shall have no further obligation to each other under this Agreement, upon full repayment of the TAMC Loan, including accrued interest, as certified by TAMC.
- 3.3. Indemnity. It is mutually understood and agreed, relative to the indemnification of TAMC and MST:
  - 3.3.1. MST shall fully defend, indemnify and hold harmless TAMC, its Board and Board members and any officer, agent or employee of TAMC, against any damage or liability occurring by reason of anything done or omitted to be done by MST under the Loan Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, MST shall fully defend, indemnify and hold TAMC, its Board and Board members, its officers, agents and employees, harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by MST under this Agreement or in connection with any work, authority, or jurisdiction delegated to MST or funded by MST in connection with this Agreement.
  - 3.3.2. TAMC shall fully defend, indemnify and hold harmless MST, its elected officials, officers, employees and agents, against any damage or liability occurring by reason of anything done or omitted to be done by TAMC under or in connection with any obligation agreed to by TAMC under the Loan Agreement.
- 3.4. Liability. As TAMC is only a lender under this Loan Agreement, and not the primary or responsible agency for carrying out the duties of MST. TAMC is not liable for any loss, cost, liability, damage, claim, lien, action, cause of action, demand or expense which may arise as a result of the acts or omissions of MST or its agents, contractors, consultants, engineers, or representatives. Nor shall TAMC be liable for any loss, cost, liability, damage, claim, lien, action, cause of action, demand or expense which may arise as a result of TAMC's provision of funds which may be utilized by MST pursuant to this Loan Agreement.
- 3.5. Notices. Any notice which may be required under this Agreement shall be in writing and shall be given by personal service, or by first class or certified, with postage prepaid, to the

addresses set forth below:

TAMC  
Debra L. Hale  
Executive Director  
55B Plaza Circle  
Salinas, California 93901

MONTEREY-SALINAS TRANSIT  
Carl Sedoryk  
Executive Director  
19 Upper Ragsdale Drive, Ste. 200  
Monterey, California 93940

Either party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.5. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

- 3.6. 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 Loan Agreement.
- 3.7. Integration. This Loan 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.
- 3.8. Amendment. This Loan 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.
- 3.9. Independent Agency. MST undertakes its obligations under this Agreement as an independent agency and TAMC is also an independent agency under the Agreement. None of MST's agents or employees shall be agents or employees of TAMC and none of TAMC's agents or employees shall be agents or employees of MST.
- 3.10. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.
- 3.11. Binding on Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of TAMC or MST, as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.
- 3.12. Severability. Should any part of this Loan Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Loan Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

- 3.13. Counterparts. This Loan Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.
- 3.14. Survival. The following provisions in this Loan Agreement shall survive discharge:
- 3.14.1. MST. As to MST, the following section shall survive discharge: Section 1.8 (obligation to provide copies and retain records for the stated period).
- 3.14.2. TAMC. As to TAMC, the following section shall survive discharge for a period of 5 years: Section 2.5 (right to conduct audit).
- 3.14.3. Both Parties. As to both parties, the following sections shall survive discharge: Section 3.3. (Indemnity) and Section 3.4 (Liability) until the expiration of all relevant statutes of limitation.
- 3.15. Applicable Law. This Loan Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.
- 3.16. No Continuing Waiver. The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Loan Agreement.
- 3.17. No Rights in Third Parties. Nothing in this Loan 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.
- 3.18. Signatory's Warranty. Each party warrants to each other that he or she is fully authorized and competent to enter into this Loan Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.

**IN WITNESS WHEREOF**, the undersigned parties have executed this Agreement as of the day and year first written above.

MONTEREY SALINAS TRANSIT DISTRICT		TRANSPORTATION AGENCY FOR MONTEREY COUNTY:	
By: _____ Carl Sedoryk Executive Director		By: _____ Debra L. Hale Executive Director	
APPROVED AS TO FORM:		APPROVED AS TO FORM:	
By: _____ David Laredo District Counsel		By: _____ Kathryn Reimann Agency Counsel	

**EXHIBIT A**

**ELIGIBLE COSTS:** MST Cash-Flow Loan [MST schedule of anticipated expenses]

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## **EXHIBIT B**

### **LOAN TERMS AND REPAYMENT SCHEDULE**

Project Name: MST Cash-Flow Loan

Project Contact: Carl Sedoryk, Executive Director

Loan Amount: \$3,000,000

Annualized Interest Rate: 2.5% annualized fixed interest rate until such time that the Monterey County Pool Quarterly Rate rises above 2.0% annualized interest rate, at which point the interest rate will be variable, tied to the Monterey County Pool Quarterly Rate plus 50 basis points, only becoming fixed again at 2.5% when the Monterey County Pool Quarterly Rate drops below 2.0%. Interest shall begin to accrue upon initial disbursement of Loan proceeds and shall be based only on the amounts disbursed and outstanding.

Repayment Source: Any funds available to MST, with pledge of Transportation Development Act funds.

TAMC will calculate the interest on the loan monthly based on the remaining balance.