

**MEASURE X
PROJECT LOAN AGREEMENT
FOR THE ALTA STREET REHABILITATION PROJECT
BETWEEN
THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY
&
THE CITY OF GONZALES**

This Loan Agreement ("Agreement") is made and entered into on **August 23, 2017** by and between the City of Gonzales ("City") and the Transportation Agency for Monterey County ("TAMC").

RECITALS

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, allowing for fluctuations in sales tax revenue, Measure X is projected to generate \$600 million over the 30-year term of the program; and

WHEREAS, allowing for fluctuations in population and lane miles, the City of Gonzales's share of Measure X revenues is estimated at \$5,220,000 over the 30-year term of the program; and

WHEREAS, the City desires to advance work on a Measure X eligible project known as the Alta Street Rehabilitation project specified herein ("Project") but has insufficient current revenue to complete the Project in the projected time frame; and

WHEREAS, TAMC has funds from sources other than Measure X which may be used to provide advance funding to the City, in anticipation of the receipt of Measure X funds; and

WHEREAS, TAMC and City desire to enter into a Loan Agreement for funding of transportation improvements in the City of Gonzales pursuant to the authority provided by Measure X and consistent with the Master Programs Funding Agreement between the City and TAMC, dated May 24, 2017; and

WHEREAS, the City has requested a \$2,500,000 loan from TAMC (the "TAMC Loan"), to be repaid with interest by the City from the City's share of Measure X revenues, for the Alta Street Rehabilitation project specified herein ("Project"); and

WHEREAS, TAMC is authorized to manage the distribution of Measure X funds to the City based on the Master Funding Agreement; and

WHEREAS, TAMC agrees to provide funding for the transportation improvements of the City's Project 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 City

- 1.1. Project Definition. The complete Project description, scope of work, delivery schedule, estimate of cost by activity, anticipated amount and type of funds that will be used for the Project are specified in Exhibit A, and incorporated herein by this reference.
- 1.2. Change In Project Scope. No change in the Project scope, as described in Exhibit A, may be approved or implemented by the City until it has been reviewed and approved in writing by TAMC. Changes in scope approved or implemented by the City prior to TAMC approval may not be funded by the TAMC Loan.
- 1.3. Eligible Costs. Eligible costs to be funded by the TAMC Loan include planning, engineering, design, environmental review, construction and reporting duties, all as set forth in the Master Funding Agreement and as specified in Exhibit A or as may be approved from time to time by TAMC pursuant to Section 1.2.
- 1.4. Repayment of TAMC Loan. For this Agreement, the City will repay the TAMC Loan allowing TAMC to retain the City's share of Measure X revenues as specified in Section 2.1, and Exhibit B, which is incorporated herein by this reference. 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. The City in its sole discretion may discharge the remaining loan balance (including accrued interest) at any time without penalty.
- 1.5. Timing of TAMC Loan Disbursements. The TAMC Loan is intended as "gap financing" for the Project, and the City shall first use its available funds, up to the amount of One Million Seven Hundred Seventy-Five Thousand Dollars (\$1,775,000) for the costs and expenses of the Project. TAMC will disburse funds from the TAMC Loan directly to the City upon documentation (as described in Section 1.6 below) that the City has expended \$1,775,000 towards the Project. As the City complies with the procedure set forth in Section 1.6, below, the City 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 the City within a period of fifteen (15) business days. TAMC shall not be responsible for any penalties or charges related to late payments to City or City contractors, if TAMC has made a disbursement to the City within this period, or if TAMC has complied with Section 2.4 ("Suspension of Disbursements) for any invoices/Requests for Payments that are disputed.
- 1.6. Invoices, Requests for Payment and Progress Reports. The City 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 the City has provided documentation suitable to TAMC that the City has expended its available funds up to the amount of One Million Seven Hundred Seventy-Five Thousand Dollars, the City will submit monthly progress reports and Requests

for Payment, based upon invoices for activities conducted over the prior unbilled month. These documents will include the following specified information:

- 1.6.1. Invoices. The City will provide TAMC with one (1) copy of all invoices submitted to the City by every contractor, subcontractor, consultant, or sub-consultant performing work related to the Project, timecards reflecting hours invoiced for reimbursement by the City's employees and staff, and invoices supporting direct expenses billed to project by the City. The City shall also provide a running tabulation of all invoices and costs incurred towards the Project.
- 1.6.2. Progress Reports. The monthly progress reports will include a brief description of the status of the Project including the work completed to date. This summary may be included on the invoices submitted to TAMC or be attached to those invoices.
- 1.6.3. Request for Payments. A Request for Payment for an amount not to exceed the total invoice for the prior month, shall accompany the invoices and progress reports.
- 1.7. Completion of Project. The City will be responsible for the timely completion and acceptance of the Project, including meeting any timely use of funds deadlines, if applicable, set forth in Exhibit A and provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work.
- 1.8. Letter of Completion. The City will, within 45 days of the Project being accepted and deemed complete, provide a letter of Project completion which includes final cost, revenues, and schedule of completed and future activities. This letter shall accompany the final invoice and Request for Payment from the City.
- 1.9. Submittal of Documents. The City will provide copies to TAMC of all executed contracts which relate to the Project scope as described in Exhibit A, or approved by TAMC pursuant to Section 1.2, within five (5) business days of execution of such contracts. The City will retain records pertaining to the Project for a five (5) year period following both completion of the Project and repayment of the TAMC Loan.
- 1.10. Provision of Signs. The City shall install signs consistent with TAMC's Project Signs Guidelines and Specifications set forth in Exhibit C of this Agreement, attached hereto and incorporated herein by this reference.
- 1.11. Cost Savings and Excess Costs:
 - 1.11.1. Cost Savings. After the Project has been accepted by the City as complete, any positive difference between the cost allocated to the TAMC Loan, as listed in Exhibit A, or approved by TAMC pursuant to Section 1.2, and the total amount of Requests for Payments shall be considered "TAMC Loan Cost Savings." All (100%) of the TAMC Loan Cost Savings will be re-credited to the TAMC Loan and reduced from the balance of the City's loan.
 - 1.11.2. Excess Costs. In the event the actual Project cost exceeds the estimate shown in

Exhibit A, this amount will be considered an excess cost and is solely the responsibility of the City.

- 1.12. Errors and Omissions. The City shall diligently monitor and manage all aspects of the Project and shall aggressively pursue any and all remedies, including full restitution and damages from any consultant, contractor or sub-contractor and their insureds and sureties suspected of any acts, errors, or omissions committed during business activities that economically or legally damage the Project. Commencing with the receipt of any TAMC Loan funds by the City, any amounts received as a result of such errors or omissions shall be credited/allocated, first to the TAMC Loan, in order to reduce the City's obligation for repayment, and then to the City.

SECTION II Covenants of TAMC

- 2.1. Loan and Repayment: TAMC shall loan to the City funds for the Project up to the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000), which shall be released pursuant to Requests for Payments made pursuant to Section 1.5. This amount shall be maintained in a separate internal TAMC fund in order to ensure its availability to the City, upon the terms stated in this Loan Agreement. TAMC shall retain 100% of the City's share of Measure X revenues until repayment of the TAMC Loan, together with accrued interest, has been completed, as described in repayment schedule in Exhibit B.
- 2.2. Requests for Payments. TAMC shall make payments to the City from the TAMC Loan amount for eligible Project costs as specified in Section 1.5 and Exhibit A.
- 2.3. Ineligible Costs. TAMC reserves the right to adjust current or future payments to the City from the TAMC Loan if an invoice includes ineligible costs.
- 2.4. Suspension of Disbursement. If TAMC determines that any costs in an invoice are not allowable, or determines a lack of supporting progress reports for a Request for Payment, TAMC shall return the invoice to the City within ten (10) business days of receipt, together with an invoice dispute notice outlining the reason for the return and the proposed remedy, if one exists, which would make the Request for Payment acceptable. The City may re-submit the Request for Payment package after reviewing the invoice dispute notice and making any necessary corrections. The City 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 the City's records pertaining to the TAMC Loan and this Agreement at any time during the course of construction 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, the City 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, upon completion of the Project and 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 the City:
 - 3.3.1. The City 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 the City under the Loan Agreement. It is also fully understood and agreed that, pursuant to Government Code Section 895.4, the City 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 the City under this Agreement or in connection with any work, authority, or jurisdiction delegated to the City or funded by the City in connection with this Agreement.
 - 3.3.2. TAMC shall fully defend, indemnify and hold harmless the City, 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 Project herein identified, 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 the City 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 in, but not limited to the acquisition of, the design, implementation, or construction of the project herein described.
- 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

CITY
Rene L. Mendez
City Manager
P.O. Box 647
Gonzales, California 93926

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. The City undertakes its obligations under this Agreement as an independent agency and TAMC is also an independent agency under the Agreement. None of the City'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 the City.
- 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 the City, 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. City. As to the City, the following sections shall survive discharge: Section 1.6 (obligation to continue to manage Project until completion and acceptance), 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. Limitation. All obligations of TAMC under the terms of this Loan Agreement are expressly contingent upon TAMC's continued authorization to collect and expend the sales tax proceeds provided by Measure X. If, for any reason, TAMC's right or ability to collect or expend such sales tax proceeds is terminated or suspended in whole or part so that it materially affects the City's ability to repay the TAMC Loan, TAMC shall promptly notify the City, the parties shall consult on a course of action and the City shall identify a new source of funding for repayment of any outstanding balance of the loan.
- 3.16. Applicable Law. This Loan Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.
- 3.17. 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.
- 3.18. 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.
- 3.19. 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 on the day and year first written above.

CITY OF GONZALES

TRANSPORTATION AGENCY FOR MONTEREY
COUNTY:

By: _____
Rene L. Mendez
City Manager

By: _____
Debra L. Hale
Executive Director

APPROVED AS TO FORM:

By: _____
Michael F. Rodriquez
City Attorney

By: _____
Kathryn Reimann
Agency Counsel



EXHIBIT A

PROJECT SCOPE, COST, SCHEDULE AND FUNDING PLAN

Project Name: Alta Street Rehabilitation Project

Project Contact: Rene Mendez, City Manager

PROJECT SCOPE

Responsible Agency: City of Gonzales

Project Limits: Approximately Tenth Street on the north to Approximately Gloria Road on the south.

Project Phase: Construction (Includes Project Construction & Construction Management)

Project Phase Scope: Removal and grinding of the existing pavement down to the base layer, reusing the ground pavement as the new base, and repaving the roadway.

Project Purpose: Road rehabilitation to extend the life of the roadway, and serve existing truck traffic

Current Status: Ready to list for construction

PROJECT COST

Project Work Description	Cost
Planning	
Engineering/Design	
Environmental Review	
Construction	
Reporting Duties	
TOTAL	\$4,275,000



EXHIBIT A Continued

PROJECT SCOPE, COST, SCHEDULE AND FUNDING PLAN

Project Name: Alta Street Rehabilitation Project

Project Contact: Rene Mendez, City Manager

PROJECT SCHEDULE

Project Phase	Start	End	Timely Use of Funds Deadline (if applicable)
Construction	August 2017	May 2018	

PROJECT FUNDING PLAN

Fund Source	Fund Amount
TAMC Loan	\$2,500,000
Local Funds	\$1,775,000
Total	\$4,275,000



EXHIBIT B

LOAN TERMS AND REPAYMENT SCHEDULE

Project Name: Alta Street Rehabilitation Project

Project Contact: Rene Mendez, City Manager

Loan Amount: \$2,500,000

Interest Rate: 2.5% fixed until such time that the Monterey County Pool Quarterly Rate rises above 2.0%, 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: City of Gonzales Measure X Share

TAMC will collect the City of Gonzales' share of Measure X revenues on a monthly basis and deduct the amount collected from the outstanding balance of the loan, crediting payments first towards any accrued interest.

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

TAMC will send notification on a monthly basis to the City of Gonzales on the amount of Measure X revenue collected and deducted from the balance of the loan, the amount of the payment applied to principle and interest, the interest accrued, and the remaining balance on the loan.

Upon final payment, TAMC will send the City of Gonzales a close out letter and begin depositing the City's share of Measure X revenues into their account.

The City in its sole discretion may discharge the loan balance (including accrued interest) at any time without penalty.



EXHIBIT C

PROJECT SIGNS GUIDELINES AND SPECIFICATIONS

Project Name: Alta Street Rehabilitation Project

Project Contact: Rene Mendez, City Manager

The City shall install Measure X project signs per measurements below that include the project title, Measure X logo, TAMC logo, and project sponsor logo.

The signs will be posted for the duration of the project construction.

Construction signs should be 36'' by 24''.

- Long-term project signs should be mounted on posts.
- Short-term project signs can be mounted on barricades.

