

MASTER FUNDING AGREEMENT

THE NAPA VALLEY TRANSPORTATION AUTHORITY – TAX AGENCY AND THE COUNTY OF NAPA

NVTA-TA AGREEMENT NO. 2023-

COUNTY OF NAPA AGREEMENT NO. 230271B

This Master Funding Agreement (“Agreement”) is made this 3rd day of January, 2023, by and between the Napa Valley Transportation Authority – Tax Agency, a local transportation authority authorized by the provisions of Division 19 of the California Public Utilities Code, hereinafter referred to as “NVTA-TA”, and the County of Napa, hereinafter referred to as “County.”

SECTION 1 RECITALS.

1. The voters of Napa County approved the Napa Countywide Road Maintenance Act (also known as, and hereinafter referred to as, “Measure T,” “the Measure,” or “Ordinance No. 2012-01”) at the General Election held on November 6, 2012, thereby authorizing NVTA-TA to administer the proceeds from a one-half cent transaction and use tax.

2. The tax proceeds will be used to pay for the projects eligible under Measure T (Ordinance No. 2012-01) submitted by and allocated to the County of Napa and the cities and town within Napa County (“Local Agencies”) as set forth in Measure T as approved by Local Agencies’ Board or Councils and by the NVTA-TA.

3. Under Measure T and the Expenditure Plan, Measure T funds are provided to the Local Agencies to be used for streets and roads maintenance projects as defined in the Measure.

4. The parties previously approved a Master Funding Agreement identified as NVTA-TA Agreement No. 2018-02 and this amended Master Funding Agreement completely repeals and replaces Agreement No. 2018-02. This Agreement sets forth all future Measure T sales tax funding requirements, terms, and conditions between NVTA-TA and County.

SECTION 2 PURPOSE OF FUNDING AGREEMENT. This Agreement is entered into by and between NVTA-TA and the County to document the funding conditions necessary for the County to receive sales tax disbursements. This Agreement includes additional documents, listed in Section 30 of this Agreement, which are listed herein for reference.

TERMS

SECTION 3 CLASS 1 BIKE FACILITY FUNDING. In order to receive funding under this Agreement, the Local Agencies must demonstrate to NVTA-TA that they have collectively committed eligible revenues totaling at least 6.67% of the value of the total annual allocations of Measure T funds to Class 1 Bike Facility projects identified in the adopted Countywide Bicycle Plan, as that Plan may be amended from time to time and as provided in the Measure. By January 31st of each calendar year, the County must provide to NVTA-TA a copy of the Equivalent Fund Class I Facilities Expenditure Resolution approved by the County's governing body, along with backup documentation, showing the qualifying funding spent on Class I facilities for the prior fiscal year.

SECTION 4 MAINTENANCE OF EFFORT. Prior to January 1, 2018, the County determined and certified to NVTA-TA that the average maintenance of effort for Fiscal Years 2007-08, 2008-09 and 2009-10 ("baseline years") was consistent with the criteria set forth in Section 9 of Ordinance No. 2012-01, certifying a memorandum detailing supporting financial documentation and the methodology utilized to calculate the average fiscal year street and roads costs. That amount is the County's "Maintenance of Effort," which must be maintained annually throughout the term of the Measure from the County's General Fund. At the beginning of each fiscal year, the County must certify to NVTA-TA that it will meet its Maintenance of Effort expenditures that fiscal year. By January 31st each calendar year, the County must provide to NVTA-TA a copy of a Resolution approved by the County's governing body, along with backup documentation showing that the Maintenance of Effort was met the prior fiscal year. In the event the County does not meet its requirement for local Maintenance of Effort over three year average period, NVTA-TA shall reduce the County's allocation for the following fiscal year in an amount equal to the deficiency in the Maintenance of Effort. Any such reduction based on a deficiency in the Maintenance of Effort will be withheld by NVTA-TA until a plan to meet the Maintenance of Effort amount moving forward has been approved by NVTA-TA. Any funds not allocated due to failure to meet the maintenance of effort requirement shall be reserved for the Agency until any and all maintenance of effort expenditures are fulfilled.

SECTION 5 FIVE-YEAR LIST OF PROJECTS. The County has and shall continue to provide to NVTA-TA at least biennially on January 1st, its Measure T five-year list of projects (hereinafter "Project List").

SECTION 6 ALLOCATION & DISBURSEMENT. No later than the 20th day following the end of each quarter, the County shall be allocated the funding allotted to the County as defined by Measure T, provided the County has complied with the terms of this Agreement. The allocated funds will be disbursed to the County upon NVTA-TA's determination that the projects are consistent with the County's approved Project List and in conformance with the Accounting, Reporting and Auditing Guidelines.

SECTION 7 COST ELIGIBILITY. Cost eligibility shall be determined by NVTA-TA based upon the County's approved Project List. Funds may be expended only for streets and roads project(s) included on the County's approved Project List.

SECTION 8 BUDGET AND SCOPE. The County shall maintain a project(s) or program budget. The County shall carry out the project(s) and shall incur obligations against and make disbursements of Measure T revenues in conformity with the requirements of this Agreement and the budget.

SECTION 9 PROJECT MANAGEMENT. The County shall be responsible for the project(s) and provide for the management of consultant and contractor activities for which the County contracts, including responsibility for schedule, scope and budget.

SECTION 10 PROJECT OVERSIGHT. The County shall cooperate with NVTA-TA staff or its Measure T consultants for project information and financial information necessary to fulfill the requirements outlined in NVTA-TA Ordinance No. 2012-01.

SECTION 11 ATTRIBUTION AND SIGNAGE. If any portion of Measure T revenue is used for production of reports, acknowledgment of the NVTA-TA's role shall be included in the documents. If any project(s) funding receives \$250,000 or more, the County shall, upon initiation of field work or at the earliest feasible time thereafter, install and maintain a sign or signs at the construction site, utilizing the adopted Measure T logo and text, identifying the County and NVTA-TA. The County shall demonstrate compliance with attribution and signage requirements as an indispensable condition for authorization of future Measure T allocations. The County may provide signage for projects with a value of less than \$250,000 if they so desire.

SECTION 12 PRESS RELEASES. The County shall notify NVTA-TA in advance of any press releases about project(s) and program activities, particularly groundbreakings and ribbon cuttings, in connection to Measure T revenues expended from this Agreement.

SECTION 13 COMPLIANCE WITH LAW. In the performance of its obligations pursuant to this Agreement, the County shall keep itself fully informed of the federal, state and local laws, ordinances and regulations in any manner affecting the performance of this Agreement, and must at all times comply with such laws, ordinances, and regulations as they may be amended from time to time.

SECTION 14 ENVIRONMENTAL COMPLIANCE. The County shall comply with the requirements under the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*; as implemented through California Code of Regulations Title 14, Chapter 3, Sections 15000 *et seq.*).

SECTION 15 FINANCES. All costs charged to the project(s) shall be supported by properly prepared and documented time records, invoices, vouchers, or other documentation evidencing in detail the nature and propriety of the charges.

SECTION 16 RECORDS. All checks, payrolls, invoices, contracts, vouchers, journal entries, work orders, or other accounting documents pertaining in whole or in part to the project(s) shall be maintained by the County for a period of five (5) years after the later of project(s) closeout or termination of Agreement. Such project(s) documents shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other similar documents not pertaining to the project(s).

SECTION 17 ELIGIBLE EXPENSES. The County shall expend funds only on eligible direct expenses as follows: operating costs, direct staff time (salary and benefits), material costs related to construction of improvements, consultants; right of way engineering and acquisition costs (including permitting), and competitively bid construction contracts. Indirect costs (as defined by OMB Circular A-87) will not be considered an eligible expense. Funds shall also be expended according to the applicable provisions of Measure T and of the Public Utilities Code Section 180000 et seq.

If in the course of an audit or a semi-annual expenditure review it is determined that an ineligible expense(s) was made, the County will be required to transfer the amount of ineligible expense into the Special Revenue Fund from any source other than Measure T Funds.

NVTA-TA shall provide notice to the County of any audit determination if any expenditure made by the County is found not to comply with this Agreement, the Expenditure Plan or Measure T promptly after NVTA-TA becomes aware of any such finding.

SECTION 18 AUDITS. The County shall cooperate with and allow NVTA-TA's Auditor, or any of its duly authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the Measure T projects, and to audit the books, records, and accounts of the County and its contractors. The County shall see Accounting, Reporting and Auditing Guidelines (EXHIBIT C).

SECTION 19 THIRD PARTY CONTRACT AUDITS. NVTA-TA reserves the right to request an audit of other third party contracts for any reason related to Measure T. If the County is subject to third party financial audit requirements imposed by another funding source, for a project(s) related to Measure T, copies of audits performed in fulfillment of such requirements shall be provided to the NVTA-TA.

SECTION 20 PROJECT REPORTING AND CLOSEOUT PROCEDURES.

The County shall provide to NVTA-TA a Semi-Annual Update on Expenditures as show in Accounting, Reporting and Auditing Guidelines (EXHIBIT C).

SECTION 21 INDEMNIFICATION. To the fullest extent permitted by law, NVTA-TA and the County shall each defend, indemnify and hold harmless each other as well as their respective officers, agents, employees, volunteers or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, arising out of or connected with any acts or

omissions of that party or its officers, agents, employees, volunteers, or contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

SECTION 22 INTEGRATION. This Agreement represents the entire agreement of the parties with respect to the subject matter thereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

SECTION 23 AMENDMENT. Except as otherwise provided herein, 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.

SECTION 24 INDEPENDENT AGENCY. The County performs the terms and conditions of this Agreement as an entity independent of NVTA-TA. None of the County's agents or employees shall be agents or employees of NVTA-TA. No third parties have any rights or remedies under this Agreement.

SECTION 25 ASSIGNMENT. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

SECTION 26 BINDING ON SUCCESSORS, ASSIGNEES OR TRANSFEREES.

This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of NVTA-TA or the County, as may be the case. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

SECTION 27 LEGAL EXPENSES. Each party shall be solely responsible for and shall bear all of its own respective legal expenses in connection with any dispute arising out of this Agreement and the transactions hereby contemplated. The County may not use Measure T funds, or other NVTA-TA or NVTA programmed funds, for the aforementioned purpose.

SECTION 28 SEVERABILITY. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions 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 Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

SECTION 29 ACCEPTANCE OF ALLOCATION. The County does hereby declare that all written statements, representations, covenants, and materials submitted as a condition of this Agreement are true and correct and does hereby accept NVTA-TA's allocations and agrees to all of the terms and conditions of this Agreement. The parties have executed this Agreement as of the date first written above, and it shall remain in effect until such time as no Measure T revenues remain available for expenditure, or until this Agreement is rescinded in accordance with Section 23 of this Agreement.

SECTION 30. EXHIBITS. The following Exhibits are hereby referenced to provide guidance to the jurisdictions and Measure T process and procedures:

EXHIBIT A - Measure T Ordinance and Expenditure Plan

EXHIBIT B - Five-Year Project List Template

EXHIBIT C - Accounting, Reporting and Auditing Guidelines

EXHIBIT D - Project List Adoption Resolution Template

EXHIBIT E - Progress Report Template

EXHIBIT F – Maintenance of Effort Certification Resolution Template

EXHIBIT G- Equivalent Fund Spending Resolution Template

SECTION 31. FEDERAL AVIATION ADMINISTRATION REVENUE USE POLICY

The Parties agree that Measure T sales tax collected on the sale of jet fuel at the Napa County Airport must be expended in compliance with Federal Aviation Administration's (FAA) Revenue Use Policy. The Parties responsibilities related to said compliance are set forth below:

The County's responsibilities:

- Allocate a portion of the Measure T funds as those funds are received by the County in an amount at least equivalent to the Measure T sales tax revenue on jet fuel at the Napa County Airport towards rehabilitation and maintenance of public roads that will meet the requirements of the FAA's Revenue Use Policy and Measure T.
- Report to NVTA-TA Measure T sales tax revenues generated on the sale of jet fuel at the Napa County Airport.

NVTA-TA's responsibilities:

- Submit reports to FAA when expressly requested by FAA in coordination with the NVTA Auditor on the use of Measure T funds in compliance with the FAA's Revenue Use Policy.

**Napa Valley Transportation
Authority – Tax Agency**

By: _____
Kate Miller, NVTA-TA Executive Director

Date: _____

ATTEST:

By: _____
Laura Sanderlin, NVTA-TA Board Secretary

Date: _____

APPROVED:

By: _____
Osman Mufti, NVTA-TA General Counsel

Date: _____

"COUNTY"

NAPA COUNTY, a political subdivision of the State of California

By: _____
Belia Ramos, Chair of the Board of Supervisors

Date: _____

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Interim County Counsel</p> <p>Date: <u>June 8, 2022</u> PL Doc. No. 73243</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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