

**AMENDED MASTER FUNDING AGREEMENT
THE NAPA VALLEY TRANSPORTATION AUTHORITY – TAX AGENCY
AND**

NVTA-TA AGREEMENT NO. 2022-__

[CITY/TOWN/COUNTY][CITY/TOWN/COUNTY AGREEMENT NO. _____

This Amended Master Funding Agreement (“Agreement”) is made this ____ day of _____, 2022, 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 Napa County, hereinafter referred to as “[City/Town/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 Napa County 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 [City/Town/County].

SECTION 2. PURPOSE OF FUNDING AGREEMENT

This Agreement is entered into by and between NVTA-TA and [City/Town/County] to document the funding conditions necessary for the [City/Town/County] to receive sales tax disbursements. This Agreement includes additional documents, listed in Section 30 of this Agreement, which are listed herein for reference.

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, [City/Town/County] must provide to NVTA-TA a copy of the Equivalent Fund Class I Facilities Expenditure Resolution approved by [City/Town/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 [City/Town/County] determined and certified to NVTA-TA the average maintenance of effort for Fiscal Years 2007-08, 2008-09, and 2009-10 ("baseline years") is consistent with the criteria set forth in Section 9 of Ordinance No. 2012-01, including a memorandum detailing the supporting financial documentation and the methodology utilized to calculate the average fiscal year street and roads costs. That amount is deemed [City/Town/County]'s "Maintenance of Effort," which must be maintained annually throughout the term of the Measure from the [City/Town/County]'s General Fund. At the beginning of each fiscal year, [City/Town/County] must certify to NVTA-TA that it will meet its Maintenance of Effort expenditures that fiscal year. By January 31st each calendar year, [City/Town/County] must provide to NVTA-TA a copy of a Resolution approved by [City/Town/County]'s governing body, along with supporting documentation, showing that the Maintenance of Effort was met the prior fiscal year. In the event [City/Town/County] does not meet its requirement for local Maintenance of Effort over a three year average period, NVTA-TA shall reduce [City/Town/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. [City/Town/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 [City/Town/County] shall be allocated the funding allotted to [City/Town/County] as defined by Measure T, provided [City/Town/County] has complied with the terms of this Agreement. The allocated funds will be disbursed to [City/Town/County] upon NVTA-TA's determination that the projects are consistent with the [City/Town/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 [City/Town/County]'s approved Project List. Funds may be expended only for streets and roads project(s) included on the [City/Town/County]'s approved Project List.

SECTION 8. BUDGET AND SCOPE

[City/Town/County] shall maintain a project(s) or program budget. [City/Town/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

[City/Town/County] shall be responsible for the project(s) and provide for the management of consultant and contractor activities for which [City/Town/County] contracts, including responsibility for schedule, scope, and budget.

SECTION 10. PROJECT OVERSIGHT

[City/Town/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 revenues 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, [City/Town/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, project, and identifying the [City/Town/County] and NVTA-TA. [City/Town/County] shall demonstrate compliance with attribution and signage requirements as an indispensable condition for authorization of future Measure T allocations. [City/Town/County] may provide signage for projects with a value of less than \$250,000 if they so desire.

SECTION 12. PRESS RELEASES

[City/Town/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, [City/Town/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

[City/Town/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 [City/Town/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

[City/Town/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. Funds shall also be expended according to the applicable provisions of Measure T and of the Public Utilities Code Section 180000 et seq.

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

SECTION 18. AUDITS

[City/Town/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 [City/Town/County] and its contractors. [City/Town/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 [City/Town/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 upon request by NVTA-TA.

SECTION 20. PROJECT REPORTING AND CLOSEOUT PROCEDURES

[City/Town/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 [City/Town/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

[City/Town/County] performs the terms and conditions of this Agreement as an entity independent of NVTA-TA. None of [City/Town/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 [City/Town/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. [City/Town/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

[City/Town/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 amended or 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: MOE Certification Resolution Template

EXHIBIT G: Equivalent Fund Spending Resolution Template

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

Napa Valley Transportation Authority – Tax Agency

By: _____ Date: _____
Kate Miller
NVTA-TA Executive Director

[City/Town/County]

By: _____ Date: _____

APPROVED AS TO FORM
[City/Town/County]
By: ____

Counsel
Date:

APPROVED AS TO FORM
NVTA-TA General Counsel
By: ____

General Counsel
Date:

