# Memorandum

**To:** Alameda County Technical Advisory Committee (ACTAC)

**From:** Tess Lengyel, Deputy Director of Policy, Public Affairs and Legislation

**Date:** September 5, 2011

**Subject:** **Review of Proposed Policies for Master Funding Agreements for Measure B and Vehicle Registration Fee funds**

## Recommendation

It is requested that the Commission review and provide input on the proposed policy framework for the development of the new Master Funding Agreements as the vehicle document for distributing funds from the current Measure B Pass-Through Programs and the new Vehicle Registration Fee (VRF) Programs. Based upon Commission direction, staff will prepare draft agreements for review in October and adoption in December 2011 to enable the funds to flow in early 2012.

## Background

The development of new Master Funding Agreements with all local jurisdictions and transit operators who are the current recipients of Measure B Programmatic Pass-Through funds and future recipients of VRF funds provides an opportunity to integrate funding requirements of the two revenue streams and streamline eligibility, monitoring and reporting. This effort aims to improve efficiencies for Alameda CTC oversight of the funds and the recipient agencies' reporting requirements under the agreements.

Alameda CTC staff proposes the development of 10-year Master Funding Agreements and Implementation Guidelines that address each fund source. The Implementation Guidelines will be referenced in the Master Funding Agreements and will specify matters related to eligibility, fund uses and performance requirements. The Implementation Guidelines could be updated on a more frequent basis than the Master Funding Agreements to respond to changing transportation needs over the next ten year period.

The Master Funding Agreements and Implementing Guidelines will be brought before appropriate Alameda CTC Committees that provide oversight on certain funds (for example, the Paratransit Funds Implementing Guidelines will be brought through PAPCO, the Paratransit Technical Advisory Committee, and ACTAC) prior to recommendation for approval to the Commission, and will be incorporated into the Master Funding Agreements by reference. The following describes the Measure B funds and VRF funds that will be incorporated into the Master Funding Agreements.

## Existing Process

**Measure B Funds**: Measure B Funds were approved by voters in November 2000 and collection of the sales tax began on April 1, 2002. Agreements were executed for transit agencies, Alameda County, and local jurisdictions to receive Measure B "pass-through funds" for four types of programs: bicycle and pedestrian, local streets and roads, mass transit, and paratransit. Agencies include the Alameda-Contra Costa Transit District (AC Transit), Water Emergency Transportation Authority (WETA), Altamont Commuter Express (ACE), the Livermore Amador Valley Transit Authority (LAVTA), San Francisco Bay Area Rapid Transit District (BART), and Union City Transit; cities include Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City.

The Alameda County Transportation Improvement Authority (ACTIA) put agreements in place with these agencies/jurisdictions shortly after the measure began in 2000 as follows:

- Bicycle and Pedestrian Safety: Agreements with Alameda County and 14 cities began in 2002.
- Local Streets and Roads: Agreements with Alameda County and 14 cities began in 2002.
- Mass Transit: Agreements with five transit agencies began in 2002. WETA's agreement was established in 2011 due to transfer of the Alameda Ferry Services to WETA.
- Paratransit: Agreements with three transit agencies and 10 cities began in 2002. In 2003, ACTIA revised these agreements, and in 2007, ACTIA again revised the agreements with the agencies and cities to reflect an updated allocation formula.
- Transit Center Development Funds are allocated on a grant basis or for studies and agreements are established for each approved use.

The majority of these agreements expire in mid-2012, which is the exact 10-year midpoint of the current Measure B 2000 Sales Tax.

Under the current agreements, the agencies/jurisdictions that receive Measure B funds are required to submit a hard copy and electronic version of year-end audit and compliance reports annually, and to stay current on the following deliverables:

- Road miles served (not applicable to transit agencies)
- Population numbers (not applicable to all fund types)
- Public awareness program participation in partnership with the Commission and or the Community Advisory Committees
- Annual newsletter article
- Website coverage of the project
- Signage about Measure B funding

**Vehicle Registration Fee:** The Measure F Alameda County Vehicle Registration Fee (VRF) Program was approved by the voters on November 2, 2010, with 63 percent of the vote. The fee will generate about $11 million per year through a $10 per year vehicle registration fee. As the congestion management agency for Alameda County, the Alameda CTC will distribute these funds to four main types of programs:

- Local streets and roads (60 percent)
- Transit (25 percent)
- Local transportation technology (10 percent)
- Bicycle and pedestrian projects (5 percent)

Under the VRF legislation, an expenditure plan must be adopted for the VRF demonstrating that it has a relationship or benefit to the people paying the fee.

**Proposed Approach**

Rather than create separate agreements with the jurisdictions that will receive Measure B and VRF funds, staff recommends creating Master Funding Agreements that specify the types of funds that the agencies/jurisdictions can receive from the Commission, including Measure B and VRF pass-through and grant funds. For example, a single Master Funding Agreement would capture the following types of distributions:

- Bicycle and Pedestrian Safety: Measure B pass-through funds, grants and VRF funds
- Local Streets and Roads: Measure B pass-through funds and VRF pass-through funds
- Mass Transit: Measure B pass-through funds, grants and VRF grant funds, which could be applied to paratransit services as well.
- Paratransit: Measure B pass-through funds, grants and stabilization funds, including base program and minimal service level funds, and VRF transit funds
- Local Transportation Technology Funds: VRF funds
- Transit Center Development Funds: Measure B funds

**Policy Considerations**

To allow the Measure B and VRF funding recipients to continue to have maximum flexibility and efficiency in the delivery of their projects and programs, and at the same time, ensuring that the voter-approved funds are appropriately expended and on a timely basis, it is proposed that the new master funding agreements incorporate the following policies which are currently not included in the existing agreements:

1. ***Timely Use of Funds/Reserve Fund Policy:*** Establish a timely use of funds requirement for each of the fund sources and allow the establishment of reserve funds for a specified period of time, which will be monitored through the annual compliance audit and reporting process already established for Measure B pass-through funds. In recognition of the need for jurisdictions to aggregate funds over time to deliver large capital projects or to establish operating reserves to address variances in funding streams due to economic conditions or state legislative actions, staff recommends allowing separate types of reserve funds to be established. These include:

   - **Capital Fund Reserve:** Allows a jurisdiction to establish a specific reserve to save funds over a three year period to pay for a larger capital project than could be funded with a single year's worth of Measure B or VRF funds. For example, a city may plan for a major city-wide street resurfacing project and would be allowed to accumulate funds within the Capital Fund Reserve over a three-year period for that project. The jurisdiction would be required to expend the funds within the fiscal year three years from the time the reserve was established. The jurisdiction would be required to report implementation schedules and funding plans for each proposed project to be funded from the reserve as part of the annual programs compliance reporting process. The jurisdiction would have the opportunity to seek a one-time, one-year extension if it could demonstrate that unforeseen and extraordinary circumstances occurred that would justify the extension. The fund expenditures or extension request would be required to be reported in the annual programs compliance and audit reporting process already established as part of the Measure B funding requirements. Extension requests would come before the Commission for approval. If a jurisdiction does not expend the Capital Reserve Funds in the timeline established, the funds would be subject to a Rescission of Funds Policy (described below).

- **Operations Fund Reserve**: A jurisdiction that provides operations of transit, paratransit, or other operational programs, would be allowed to establish an Operations Fund Reserve that may not exceed six months worth of revenues from the Measure B or VRF funds. This reserve would allow the operator to use these funds to address fluctuations in revenues, or to serve as a "rainy day fund" for transportation operations. Over the past decade, there has been tremendous fluctuation in transit operating funds; this Operations Fund Reserve would allow an operator to establish a reserve to help smooth service delivery as a result of delayed or reduced funding. The Operations Fund Reserve would be required to be reported in the annual audit and compliance reporting process already established for the Measure B funds.

- **Undesignated Fund Reserve**: Jurisdictions could establish an Undesignated Fund Reserve that could be used for transportation needs over a fiscal year, such as matching funds for grants, studies for transportation purposes, or contingency funds for a project or program. The jurisdiction would be required to report the range of potential uses for the reserve funds, and the overall Undesignated Fund Reserve could not be more that 10% of gross revenues. This reserve could also be a placeholder for any unanticipated increases in revenues (such as higher than anticipated sales tax revenues as experienced this fiscal year) and would be required to be allocated in the subsequent fiscal year. The funds uses must be reported in the annual audit and compliance reporting process.

***Rationale*:** A timely use of funds policy will increase the accountability of jurisdictions in planning for and expending voter-approved transportation dollars. Based upon current experience with the Measure B funds, where a timely use of funds policy was not established, many jurisdictions are holding larger fund reserves and do not fully detail how those funds will be expended. This type of policy, coupled with the opportunity of specific reserve funds, will allow jurisdictions to plan for larger projects, prudently establish operating reserves, and require spend down times for undesignated funds - all of which will provide greater transparency, delivery and accountability. If the Timely Use of Funds requirements are not met Alameda CTC can withhold or rescind funds as noted below.

2. ***Rescission of Funds Policy***: For jurisdictions that are not able to expend funds per the Timely Use of Funds policy, the Alameda CTC could determine that these funds are not needed by the jurisdiction. Unless a request for extension of use is submitted and approved, unallocated funds would be returned to the Alameda CTC and placed into an account out of which funding allocations could be made based upon countywide needs, not restricted to the planning area from which the funds came. Use of these funds by the Alameda CTC would be required to be used on transportation projects according to the fund source.

3. ***Transportation Purposes Only Policy****:* Funds are required to be used solely for transportation purposes as defined by the authorizing ballot measures. Any jurisdiction that violates this provision must fully reimburse, including interest, all misspent net revenues.

4. ***Non-Substitution of Fund Policy***: Recipient shall not use Measure B or VRF funds to replace funds previously provided by property or gas tax subventions for transportation purposes. Measure B and VRF funds shall be used to supplement existing revenues used for transportation purposes.

5. ***Fund Exchange Policy***: Any fund exchanges made using the Measure B or VRF Funds must be made for transportation purposes. Exchange proposals will be considered on a case by case basis.

6. ***Staff Cost Limitations Policy***: In its role as the distributor of Measure B funds, the Alameda CTC has a cap of 4.5 percent on administration and a 1 percent cap on staff cost. The VRF has a 5 percent cap on administrative costs. It is recommended that all direct costs associated with the delivery of programs and projects associated with Measure B and VRF programs, including direct staff costs, are eligible uses of Measure B and VRF funds. Indirect costs, inclusive of indirect administrative staff costs would not be allowed to be funded with Measure B and VRF funds.

7. ***Other Program-Specific Funding Policies***:
   - For bicycle and pedestrian and local streets and roads funds, it is recommended that a Measure B and VRF funded recipient demonstrate that it either has adopted a bicycle/pedestrian plan and complete streets policy in its general plan pursuant to Complete Streets Act of 2008, or demonstrate that these activities are in progress. The Alameda CTC plans to develop guidelines for Complete Streets policies.

   - For local streets and roads agreements, include a policy on the citywide pavement condition index (PCI), which rates the “health” of local streets from 1 to 100, and specify that Alameda CTC will require submission of a corrective action plan to address how improvements will be made if the recipient’s total average index falls below a 60 (good condition).

8. ***Other requirements:***
   - An annual independent audit must be submitted to Alameda CTC which audits both VRF and Measure B funds

   - An annual compliance report must be submitted which specifically states how the funds were used; describes what the funds were spent on and the benefits derived from the projects and programs; reports on the fund reserves, including anticipated project and program expenditures; and reports on the term of the reserve fund.
   - Implementing Guidelines will be established for each fund source and will describe eligible fund uses, eligibility for services (as applicable to the fund source) and performance measures

- Public awareness efforts to ensure that the public has access to and the ability to know which projects and programs are funded through the transportation sales tax measure and the VRF

Once the new agreement templates are in place, Alameda CTC staff will update the compliance report forms to reflect the requirements of the new master agreements.

**Master Agreement Update Schedule and Process**

The attached schedule shows the timeline for production and execution of the Master Funding Agreements and Implementing Guidelines. Before finalizing the agreements, staff plans to bring the master agreement templates for review and input to staff, legal counsel, the Alameda County Technical Advisory Committee, the Paratransit Technical Advisory Committee, a Citizens Watchdog Committee Compliance subcommittee, the Paratransit Advisory and Planning Committee, the Bicycle and Pedestrian Committee, as well as to the Planning, Policy and Legislation Committee, and the Commission.

Staff will bring draft agreements and implementing guidelines for review in October with the aim of receiving final approval of the Master Funding Agreements and Implementing Guidelines in December and full execution by February/March 2012. The proposed development schedule is below:

| TASKS | COMPLETION DATE |
|---|---|
| Review Draft Policy Considerations for the Master Agreements | September 2011 |
| Review Draft Master Agreement Templates and Implementing Guidelines | October 2011 |
| Review Final Draft Master Agreement Templates and Guidelines | November 2011 |
| Commission Adoption of Master Funding Agreement Templates and Implementing Guidelines | December 2012 |
| Execute Master Funding Agreements | January – March 2012 |
| Allocation of Funds Pursuant to Master Agreements | March-April 2012 |

**Fiscal Impact**

There is no fiscal impact at this time.