

Comments on the Draft Master Program Funding Agreement by ACTAC Members

Chapter/ Article	Page	Other Identifier	Commenter First Name	Commenter Last Name	Commenter Organization	Date	Comment	Response
C.3.	18	Undesignated Fund Reserve	Paul	Keener	ACPWA	11/22/2011	The ACTC should be required to provide a notice before making a determination that the County [does] not need the funds.	Any rescission action would be taken to the Board as an agenda item. Through our annual compliance process, we will review the reserves and will write the City/County with questions and or concerns about their compliance reports or audits. If an action is proposed to the Alameda CTC Board regarding rescission, the agency will be notified in writing.
D.2.	19	Non-substitution of Funds	Paul	Keener	ACPWA	11/22/2011	The County cannot agree to language that would place restriction on the County's general fund budget or how the County will spend general fund money in the future. There may be some scenarios where this could be an issue.	Comment noted. However, the PUC 180000 series includes language indicating that "funds generated pursuant to this division be used to supplement and not replace existing local revenues used for transportation purposes." We are working with our legal counsel on the definition of "local funds"
D.4.	19	Staff Cost Limitations	Paul	Keener	ACPWA	11/22/2011	Alameda CTC must allow indirect costs, because the costs are required to deliver the project. Most of the County's transportation projects are administered by staff at various levels of the Public Works Agency. The County charges overhead rates to capture the administrative costs from other departments that help to deliver the transportation projects.	Only direct costs are allowed for staff and consultants that are directly working on the projects or programs funded by the Measure. Indirect costs are allowed if the jurisdiction has an approved Indirect Cost Allocation Plan.
Article 4-Section 10	22	Reporting Requirements	Paul	Keener	ACPWA	11/22/2011	The reference at the top of the page to discussions with the "governing board" would need to be subject to the Brown Act (i.e. they would need to be done during an open session of a board meeting). We cannot agree to meetings with the Board otherwise.  The definition of "Central Area" and "East Area" with respect to unincorporated areas of the County is circular (i.e. The Central Area includes the unincorporated area in the Central Area). Is there a map that can be referenced?	We won't include a map in the Master Funding Agreements, and included the language in the agreement so as to not spell out all the smaller districts within those areas of the County.
Article 5 - C.	23	Indemnity by Alameda CTC	Paul	Keener	ACPWA	11/22/2011	Revise the indemnity section as follows:  Indemnity by Alameda CTC. Neither RECIPIENT, nor its governing body, elected officials, any officer, consultant, agents or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Alameda CTC under or in connection with any work, authority or jurisdiction delegated to Alameda CTC under this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, Alameda CTC shall fully defend, indemnify and hold harmless RECIPIENT, and its governing body, elected officials, all its officers and employees from any liability imposed on RECIPIENT for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Alameda CTC under or in connection with any work, authority or jurisdiction delegated to Alameda CTC under this AGREEMENT.	Legal counsel has agreed to making this change to the Master Funding Agreements. In addition, (1) matching changes to the indemnity clause from the Recipient to Alameda CTC will be made, (ii) the word "agent" should be used instead of "agents" in the initial paragraph, and (iii) the word "agents" will be added as part of the County's second set of proposed changes to read as follows:  Indemnity by RECIPIENT. Neither Alameda CTC nor its governing body, any officer, consultant, agent or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Measure B or VRF funds distributed to RECIPIENT pursuant to this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, RECIPIENT shall fully defend, indemnify and hold harmless Alameda CTC, its governing body, and all its officers, agents and employees, from any liability imposed on Alameda CTC for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Measure B or VRF funds distributed to RECIPIENT pursuant to this AGREEMENT.  Indemnity by Alameda CTC. Neither RECIPIENT, nor its governing body, elected officials, any officer, consultant, agent or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Alameda CTC under or in connection with any work, authority or jurisdiction delegated to Alameda CTC under this AGREEMENT. It is also understood and agreed, pursuant to Government Code Section 895.4, Alameda CTC shall fully defend, indemnify and hold harmless RECIPIENT, and its governing body, elected officials, all its officers, agents and employees from any liability imposed on RECIPIENT for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Alameda CTC under or in connection with any work, authority or jurisdiction delegated to Alameda CTC under this AGREEMENT.
N/A	26	Agreement Signature Page	Paul	Keener	ACPWA	11/22/2011	Change the approved as to form to:  Approved to form: DONNA R. ZIEGLER County Counsel  By: _____ Deputy	Comment will be incorporated for Alameda County.
Article 3 - Section A(1)		Timely Use of Funds Policy	Jaimee	Bourgeois	City of Dublin	11/21/2011	The Agreement requires recipients to use the funds in a "timely" and "expeditious" manner. However, there is no expansion on what "timely" means, or who determines its meaning.	The intent of the Measure funds are to deliver projects and programs to benefit the public paying the tax during the time of the tax collection. The funds are expected to be spent on needs in each of the jurisdictions, and with the exception of the provisions and expenditure requirements in the allowable reserves, it is anticipated that as many of the funds as possible would be spent each year to benefit the traveling public. Where they are not able to be spent, they may be placed in a reserve for specified purposes and spend down timelines, or a written request for undesignated reserve fund amounts may be requested in writing and subject to approval by the Alameda CTC Board.

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Article 3 - Section A(1)		Timely Use of Funds Policy	Jaimee	Bourgeois	City of Dublin	11/21/2011	The Agreement <i>suggests</i> that recipients may submit a written request to Alameda CTC and, upon Board approval, may retain funds beyond those included in reserves not expended in a timely manner. Please clarify whether this is true and clarify this issue in the Agreement.	This is true and it is written in Article 3, A 1.
Article 3 - Section B		Reserve Fund Policy	Jaimee	Bourgeois	City of Dublin	11/21/2011	Recipients can place funds into reserves during the annual reporting process. Article 3, Section B(1)(c) specifically indicates that recipients may seek a single one-year extension for a given Capital Fund Reserve. Article 3, Section C, on the other hand, generally refers to the recipient's ability to seek an extension to avoid rescission of funds. Is the "general" extension referenced in Article 3, Section C supposed to be in addition to the one-year extension specifically stated in Article 3, Section B(1)(c) Is the "general" extension referenced in Article 3, Section C applicable to the Undesignated Fund Reserve as well? This should be clarified.	No, it is the same one-year extension. The only reserve with a time limitation is the capital fund reserve. The undesignated fund reserve includes a dollar cap on the amount of funds that can be kept in that reserve and a jurisdiction may request in writing that a larger amount be allowed, subject to approval by the Alameda CTC Board. This will be clarified in the agreement.
Article 3 - Section C		Rescission of Funds Policy	Jaimee	Bourgeois	City of Dublin	11/21/2011	Suggest the following clarification to the first sentence:  If RECIPIENT does not meet the timeliness requirements set forth in Sections A and B, Alameda CTC may determine that RECIPIENT does not need the <u>unspent</u> funds.	Agreed. This will be clarified in the agreement.
Article 3 - Section D(2)		Non-substitution of Funds	Jaimee	Bourgeois	City of Dublin	11/21/2011	This section is extremely vague as to how it is to be administered. We are assuming that the restriction applies to current approved funding and does not establish any form of "maintenance of effort" for past expenditures of General Fund dollars. Although in the past we may have been able to fund sidewalk repairs, for example using General Fund monies, we might have a need in the future to use Alameda CTC funds, and this should not violate the intent of the agreement. To limit the expenses retroactively based on past practices would not be a fair application of the requirement.	We are getting clarification from legal counsel on the intent of local funds, pursuant to PUC 180000 series whence this is derived.
Article 4 - Section A(2)			Jaimee	Bourgeois	City of Dublin	11/21/2011	Regarding the submission of an independent compliance audit on an annual basis at the Recipient's expense, this section should not prevent the agency from paying for the cost of the compliance audit from the funds distributed by Alameda CTC.	These are eligible costs.
Article 5 - Section F		Term	Jaimee	Bourgeois	City of Dublin	11/21/2011	It would be administratively easier to implement the new agreement provisions at the start of the fiscal year. If at all feasible, extend the terms of the existing agreement to June 30, 2012, and begin the new agreement on July 1, 2012.	Current agreements expire on March 31 and there is currently not a method to allocate VRF funds. We could potentially extend the existing agreements, but that would require <u>not allocating VRF funds until June 2012</u> .
Section 6 - Subsection A(1)		Implementation Guidelines for the Bike/Ped Safety Program	Jaimee	Bourgeois	City of Dublin	11/21/2011	In reference to the eligible use "Staff time to complete End of Year compliance report," it should not be limited to staff time as there may be consultants used. Also, it would be appropriate to allow audit and reporting expenses.	This has been clarified.
Section 5 - Subsection A(1)(b)(7)		Implementation Guidelines for the Bike/Ped Safety Program	Jaimee	Bourgeois	City of Dublin	11/21/2011	The Guidelines impose a requirement for cities to establish a Complete Streets policy and to comply with the California Complete Streets Act of 2008, relating to circulation elements of the General Plan. Agency costs incurred in meeting these requirements should be listed as eligible uses.	These are eligible uses.
Section 5 - Subsection A(1)(a)		Measure B Pass-through Funds, General	Jaimee	Bourgeois	City of Dublin	11/21/2011	Clarify whether "These funds must be placed in a separate account from the VRF Funds" actually means that a special "bank" account is required or that the funds simply need to be accounted for separately.	No, a separate account is fine, just as jurisdictions currently place each of the Measure B fund types into separate accounts.
Section 5 - Subsection A(2)(a)		VRF Pass-through Funds, General	Jaimee	Bourgeois	City of Dublin	11/21/2011	Clarify whether "These funds must be placed in a separate account from the Measure B Funds" actually means that a special "bank" account is required or that the funds simply need to be accounted for separately.	See above
Section 5 - Subsection A(2)(b)		VRF Pass-through Funds, Eligible Expenses	Jaimee	Bourgeois	City of Dublin	11/21/2011	The description of eligible street rehabilitation work is different than for Measure B. Are they really intended to have different eligibility requirements?	These are both included in the Implementation Guidelines to honor what was approved by voters. The main difference is that the Measure B funds are more flexible and may be used on any transportation needs in a jurisdiction as determined through a public process.
Section 5 - Subsection A(2)(b)		VRF Pass-through Funds, Eligible Expenses	Jaimee	Bourgeois	City of Dublin	11/21/2011	Staff and consultant time for auditing and reporting should be included as an eligible expense.	These are direct costs and are eligible.
Section 6 - Subsection A(1)			Jaimee	Bourgeois	City of Dublin	11/21/2011	The Guidelines impose a requirement for cities to establish a Complete Streets policy and to comply with the California Complete Streets Act of 2008, relating to circulation elements of the General Plan. Agency costs incurred in meeting these requirements should be listed as eligible uses (both Measure B and VRF).	These are eligible direct costs.
Section 7 - Subsection A(1)			Jaimee	Bourgeois	City of Dublin	11/21/2011	The Guidelines impose a requirement for cities to report on the citywide pavement condition index. Agency costs incurred in meeting these requirements should be listed as eligible uses (both Measure B and VRF).	These are eligible direct costs.
Article 3 - Section B.1.c			Soren	Fajeau	City of Newark	11/18/2011	We would like to see a less stringent requirement for obtaining the one-year extension on the Capital Fund Reserve. Demonstrating "unforeseen and extraordinary circumstances" to the board sounds imposing. Unless a jurisdiction has had an ongoing issue with expending funds in a timely manner, this seems a little harsh.	For most jurisdictions, this item should be attainable.
		LS&R and Bike/Ped Guidelines	Soren	Fajeau	City of Newark	11/18/2011	We'd like as much flexibility as possible regarding timing for formal adoption of a Complete Streets Policy and our Bike/Ped plan.	Comment noted.
			Soren	Fajeau	City of Newark	11/18/2011	Staff has some significant concerns with geographic equity within our Planning Area in the draft TEP and CWTP. To the extent that the agreement references the current Measure B TEP and future amendments, we need to resolve those concerns before recommending adoption of the agreement.	Comment noted. New agreements will need to be signed if the Measure passes
		VRF Implementation	Soren	Fajeau	City of Newark	11/18/2011	With the implementation of the VRF, I assume there will be flexibility in terms of expending funding in this first year.	There will only be three months to expend it, so, yes, there will be flexibility due to the timing of the agreements.
		MPFA	Mike	Dubinsky	CWC	11/29/2011	Would the Staff be able to provide a copy of the VRF legislation? For some reason I am not able to locate a full copy.	YES
Recital F	8	MPFA	Mike	Dubinsky	CWC	11/29/2011	This could read: F. On June 24, 2010.....CTC. Alameda CTC has assumed the responsibilities of ACTIA and ACCMA.	Comment noted
Article 1 - Section A	8	MPFA	Mike	Dubinsky	CWC	11/29/2011	"...AGREEMENT shall be effective as of April 1, 2011." Should this be 2012?	This has been corrected.
Article 2 - Section A(5)	14	MPFA	Mike	Dubinsky	CWC	11/29/2011	Should fiscal year be defined? If the fiscal year of some of the jurisdictions differs from the ACTC's it might be appropriate.	This will be defined in the agreement.
Article 2 - Section B(2)	14	MPFA	Mike	Dubinsky	CWC	11/29/2011	If the recipient can receive funds from both funds and spend them on the same projects why must they keep separate records? Will the ACTC expect recipients of VRF and Measure B funds to have separate audits? performed?	It is required that each fund source be placed in a separate account to allow for accurate auditing of the funds.
Article 2 - Section B(3)	15	MPFA	Mike	Dubinsky	CWC	11/29/2011	Have we seen the VRF Exp. Plan? If not is it available?	This will be provided to CWC.

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Article 3 - Section A(1)	15	MPFA	Mike	Dubinsky	CWC	11/29/2011	I did not see where "expeditiously" was defined. If it is not defined, I would strongly suggest it be defined. Otherwise the "timely use of funds" will be open to interpretation.	Comment noted.
Article 3 - Section C	18	MPFA	Mike	Dubinsky	CWC	11/29/2011	Change [the last sentence] to read, "All such funds returned to Alameda CTC shall be placed into an account for reallocation to appropriate programmatic transportation projects in the County."	Comment will be incorporated.
Article 5 - Section H	24	MPFA	Mike	Dubinsky	CWC	11/29/2011	Sentence 2 should read "...changed by a written amendment executed and approved by both parties."	Comment noted.
Article 5 - Section H	24	MPFA	Mike	Dubinsky	CWC	11/29/2011	Sentence 3 should read "...may be changed from time to time by the Alameda CTC after appropriate notice and opportunity to comment."	This is clarified in item 9 of the Implementation Guidelines
Section(2)(a)	31	Implementation Guidelines for the Bike/Ped Safety Program	Mike	Dubinsky	CWC	11/29/2011	Sentence 2: Can't input from the jurisdictions be requested also? Or is that accomplished via the Board Meetings?	Yes it can be requested
Section 3 - Subsection A	39	Implementation Guidelines for the LSR Program	Mike	Dubinsky	CWC	11/29/2011	Sentence 2: Should this be 22.33 percent?	The percentages will be consistent with the expenditure plan
		MPFA	Thomas	Ruark	Union City	11/17/2011	Our City Attorney has the Master Program Funding Agreement and the City of Union City has the following comments:  First, Section 180000(e) of the Public Resources Code explains that the Legislature intended for Measure M funds to supplement existing local revenues used for transportation purposes. The Agreement outright prohibits the City from using the Measure M funds as a replacement to general funds for transportation purposes. Section 180000(e) does not expressly prohibit the replacement of local transportation funds with Measure M funds, but there is a good argument that the Legislature's intent was clear based on the wording that the Measure M funds are not to replace general transportation funds. It seems as if the Agreement is taking this approach. The City of Union City would prefer the wording match the language of the Public Resource Code rather than use the word prohibits.  The indemnity sections look good. They are fair and mutual.	Comment noted
		MPFA	Thomas	Ruark	Union City	11/17/2011	There are a few provisions that would benefit from clarification:  1. Timely Use of Funds. The Agreement includes the requirement that a recipient use the funds in a "timely" and "expeditious" manner in Article 3, Section A(1). What constitutes "timely" is unclear. Will this be agreed upon at a later date by a specific agreement, depending on the funding and project? If there are no pre-set time periods for what is "timely" (it is a purely discretionary concept) we would recommend that the Agreement include a provision that provides a written warning to the recipient when the funds are in danger of not being used in a timely manner so that the recipient can act accordingly by setting funds aside in reserve (if possible) and/or request an extension in writing.  2. Rescission of Funds. The violation of the timely use of funds policy may result in rescission of the funds. We recommend that the Agreement clarify that the funds rescinded are only those funds not yet used. And what about committed but unused funds?  3. Fund Reserve. Recipients can place funds into reserves during the annual reporting process. Each fund reserve includes different time limit requirements as specified in Article 3, Section B(1). The Capital Fund Reserve allows a specific one-year extension. Subsection C of Article 3 also allows a recipient to apply for an extension for the use of all reserve funds. Is this general extension in subsection C in addition to the one-year extension for the Capital Fund Reserve, effectively allowing several years of extension for this fund?  4. Funds Exceeding those in Reserve. Although not entirely clear, Article 3, Section (1) suggests that funds beyond those included in reserves and those not expended in a timely manner may still be kept by the recipient if the recipient submits a written request to Alameda CTC and the Board approves. Perhaps this could be expanded upon in the Agreement and confirmed by Alameda CTC since it is not included in the Memorandum.	1)The intent of the Measure funds are to deliver projects and programs to benefit the public paying the tax during the time of the tax collection. The funds are expected to be spent on needs in each of the jurisdictions, and with the exception of the provisions and expenditure requirements in the allowable reserves, it is anticipated that as many of the funds as possible would be spent each year to benefit the traveling public. Where they are not able to be spent, they may be placed in a reserve for specified purposes and spend down timelines, or a written request for undesignated reserve fund amounts may be requested in writing and subject to approval by the Alameda CTC Board. 2) This will be clarified in the agreement. 3) No, it is intended to be only a one-year extension for the capital reserve fund; this will be clarified in the agreement. 4) this is allowed and is described in Article 3, A 1.
		MPFA	James	Paxson	CWC	11/30/2011	Add something about when the implementation guidelines go into effect, so if someone has a project in process and the implementation guidelines change, how that will affect the process.	Legal counsel is working on language about the state statute about local funds and the requirements to show intent.
		MPFA	James	Paxson	CWC	11/30/2011	Suggests moving some of the detail in the implementation guidelines into the MPFA if those items will stay the same over 10 years.	The implementation guidelines are more procedural, and need to be flexible so we can react to changes in law or changes in policies from other funding agencies such as the Metropolitan Transportation Commission. We would like to keep the process within those guidelines and keep the contractual obligations of both parties in the MPFA.
Section B(1)(a)	10	Capital Fund Reserve	James	Paxson	CWC	11/30/2011	We need to try to prevent the "clock from restarting" on three-year projects, and make sure jurisdictions do not move funds to another project and reset the clock.	The agencies/jurisdictions are required to give a detailed account of their expenditures in their annual compliance report. The Alameda CTC will revise the compliance report to match the new MPFA and implementation guidelines, and funding recipients will need to report on how they are spending the dollars reserved for a three-year project (even if the project changes), and need to expend the funds within the three years. Alameda CTC will also develop funding procedures to support the enforcement provisions.

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Section C	12	Rescission of Funds Policy	James	Paxson	CWC	11/30/2011	We need to try to prevent the "clock from restarting" on three-year projects, and make sure jurisdictions do not move funds to another project and reset the clock.	The agencies/jurisdictions are required to give a detailed account of their expenditures in their annual compliance report. The Alameda CTC will revise the compliance report to match the new MPFA and implementation guidelines, and funding recipients will need to report on how they are spending the dollars reserved for a three-year project (even if the project changes), and need to expend the funds within the three years. Alameda CTC will also develop funding procedures to support the enforcement provisions.
		MPFA	Harriet	Saunders	CWC	11/30/2011	How can we ensure people use the dollars for necessary maintenance, like filling potholes, so people can see the results of the transportation sales tax measure?	This policy seems to oppose the measure. What are the legal ramifications of asking the fund recipient to return funds and then transferring those funds to another agency/jurisdiction for another project within the same program, when the Expenditure Plan specifies that Alameda CTC will allocate funds to the agencies/jurisdictions? Is that a violation of the Expenditure Plan?