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<tr>
<th>Chapter/Article</th>
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<th>Require</th>
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<tbody>
<tr>
<td>C.3.</td>
<td>18</td>
<td>Undesignated Fund Reserve</td>
<td>Paul</td>
<td>Keener</td>
<td>ACPIWA</td>
<td>11/22/2011</td>
<td>The ACTC should be required to provide a notice before making a determination that the County (does) not need the funds.</td>
<td>Any excision action would be taken to the Board as a general matter. Through our annual compliance process, we will review the reserves and write the City/Council with questions and or concerns about their compliance reports or audits. If an action is proposed to the Alameda CTC Board regarding excisions, the agency will be notified in writing.</td>
</tr>
<tr>
<td>D.2.</td>
<td>19</td>
<td>Non-substitution of Funds</td>
<td>Paul</td>
<td>Keener</td>
<td>ACPIWA</td>
<td>11/22/2011</td>
<td>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.</td>
<td>Comment noted. However, the PUC 18000.00 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”</td>
</tr>
<tr>
<td>D.4.</td>
<td>19</td>
<td>Staff Cost Limitations</td>
<td>Paul</td>
<td>Keener</td>
<td>ACPIWA</td>
<td>11/22/2011</td>
<td>Nameda 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.</td>
<td>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.</td>
</tr>
<tr>
<td>Article 4-Section 10</td>
<td>22</td>
<td>Reporting Requirements</td>
<td>Paul</td>
<td>Keener</td>
<td>ACPIWA</td>
<td>11/22/2011</td>
<td>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.</td>
<td>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?</td>
</tr>
<tr>
<td>Article 5 - C.</td>
<td>23</td>
<td>Indemnity by Alameda CTC</td>
<td>Paul</td>
<td>Keener</td>
<td>ACPIWA</td>
<td>11/22/2011</td>
<td>Revise the indemnity section as follows:</td>
<td>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 “agents” 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:</td>
</tr>
<tr>
<td>N/A</td>
<td>26</td>
<td>Agreement Signature Page</td>
<td>Paul</td>
<td>Keener</td>
<td>ACPIWA</td>
<td>11/22/2011</td>
<td>Change the approved as to form to:</td>
<td>Comment will be incorporated for Alameda County.</td>
</tr>
<tr>
<td>Article 3 - Section A(1)</td>
<td>11/22/2011</td>
<td>Timely Use of Funds Policy</td>
<td>James</td>
<td>Bourgeois</td>
<td>City of Dublin</td>
<td>11/22/2011</td>
<td>The Agreement requires recipients to use the funds in a &quot;timely&quot; and &quot;expeditious&quot; manner. However, there is no expansion on what &quot;timely&quot; means, or who determines its meaning.</td>
<td>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 specific purposes and spent down thereafter, or a written request for undesignated reserve fund amounts may be requested in writing and subject to approval by the Alameda CTC Board.</td>
</tr>
</tbody>
</table>
Comments on the Draft Master Program Funding Agreement by ACTAC Members

Chapter I: Article A

Article 1 - Section A[1]
TimeUse of Funds Policy
The Agreement suggests that recipients may submit a written request to Alameda CTC and, upon Board approval, may retain funds beyond those included in reserves not expanded in a timely fashion. Please clarify whether this is true and clarify this issue in the Agreement.

Article 3 - Section B
Reserve Fund Policy
Recipients can place funds into reserves during the annual reporting process. Article 3, Section B.1(c) specifically indicates that recipients may set aside a single one-year extension for a green Capital Fund Reserves. Article 3, Section C, on the other hand, generally refers to the recipient’s ability to set aside funds to avoid accession of funds. Is the “general” extension referenced in Article 3, Section C supposed to be at one-year extension specifically stated in Article 3, Section B.1(c)? Is the “general” extension referenced in Article 3, Section C Capable to the Undersigned Fund Reserve as well? This should be clarified.

Article 3 - Section C
Restriction of Funds Policy
Suggest the following clarification to the first sentence:
If RECPIENT does not meet the timelessness requirements set forth in Sections A and B, Alameda CTC may determine that RECIPIENT does not need the funded funds.

Agreed. This will be clarified in the agreement.

Article 3 - Section G
Non-substitution of funds
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. It is a very broad general fund formula. Although in the year we may have been able to fund sidewalks repairs, for example using General Fund monies, we might need to own them in the future to use Alameda CTC funds, and this should not prevent the use of the existing agreement.

We are getting clarification from legal counsel on the intent of local funds, pursuant to PUC 18000 series, where this is derived.

Article 4 - Section A(3)
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. This should not deter the intent of the agreement. To limit the expenses retroactively based on past practices would not be a fair application of the requirement.

These are eligible costs.

Article 5 - Section F
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 no a method to allocate WVF Funds. We could potentially extend the existing agreements, but that would require the Federal Funds until June 2012.

Section 6 - Subsection A(1)
Implementation Guidelines for the Bike/Ped Safety Programs
In reference to the eligible use “Staff time to complete kind of year compliance report,” it should not be limited to staff time as there may be consultants used. Also, it should be appropriate to allow audit and reporting expenses.

These are eligible uses.

Section 6 - Subsection A(2)
Implementation Guidelines for the Bike/Ped Safety Programs
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 Local Plan. Agency costs incurred in meeting these requirements should be listed as eligible uses.

These are eligible uses.

Section 6 - Subsection A(3)
Measure B Pass-through Funds, General
Clarify whether “Other funds must be placed in a separate account from the WVF 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, as jurisdictions currently place each of the Measure B fund types into separate accounts.

Section 6 - Subsection A(4)
Measure B Pass-through Funds, Eligible Expenses
Clarify whether “Other funds must be placed in a separate account from the WVF Funds” actually means that a special “bank” account is required or that the funds simply need to be accounted for separately.

These are eligible costs.

Section 6 - Subsection A(5)
Measure B Pass-through Funds, Eligible Expenses
The description of eligible street rehabilitation work is different than for Measure B. Are they really intended to have different eligibility requirements?

These are eligible direct costs.

Section 6 - Subsection A(6)
Staff and consultant time for auditing and reporting should be included as an eligible expense.

These are eligible direct costs.

Section 6 - Subsection A(7)
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 Local 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)
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 Fijima 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 an "unfrequent and extraordinary circumstances" to the board sounds impossible. Unless a jurisdiction has an ongoing issue with expending funds in a timely manner, this section is a little harsh.

For most jurisdictions, this item should be attainable.

Soren Fijima 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.

Staff has some significant concerns with geographic equity within our Planning Area in the draft TIP and CMT. To the extent that the agreement references the current Measure B TIP and future amendments, we need to resolve those concerns before recommending adoption of the agreement.

Soren Fijima City of Newark 11/18/2011
Staff has some significant concerns with geographic equity within our Planning Area in the draft TIP and CMT. To the extent that the agreement references the current Measure B TIP and future amendments, we need to resolve those concerns before recommending adoption of the agreement.

Soren Fijima City of Newark 11/18/2011
If the recipient can receive funds from both funds and spend them on the same projects why must they keep separate records? Will the AACT agreements require recipients of VRF and Measure B funds to have separate audits performed? There is required that each fund source be placed in a separate account to allow for accurate auditing of the funds.

This will be provided to CMC.

Soren Fijima City of Newark 11/18/2011
We have seen the VRF Exp. Plans if not is it available?

This will be provided to CMC.

Soren Fijima 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.

Soren Fijima 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.

MPPA 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.

MPPA Mike Dubinsky CWC 11/29/2011
This could read: If on June 24, 2009,... CTC-Alameda CTC has assumed the responsibilities of ACTAC and ACCAA.

MPPA Mike Dubinsky CWC 11/29/2011
"...AGREEMENT shall be effective as of April 1, 2011." Should this be 2017?

MPPA Mike Dubinsky CWC 11/29/2011
This has been corrected.

MPPA Mike Dubinsky CWC 11/29/2011
Should fiscal year be defined if the fiscal year of some of the jurisdictions differs from the ACTAC’s? It might be appropriate.

This will be defined in the agreement.

MPPA 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 AACT agreements require recipients of VRF and Measure B funds to have separate audits performed?

MPPA Mike Dubinsky CWC 11/29/2011
This is required that each fund source be placed in a separate account to allow for accurate auditing of the funds.

MPPA Mike Dubinsky CWC 11/29/2011
We have seen the VRF Exp. Plans if not is it available?

This will be provided to CMC.
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<tbody>
<tr>
<td>Article 3 - Section A(1)</td>
<td>15</td>
<td>MPFA</td>
<td>Mike Zubinsky</td>
<td>CWC</td>
<td>12/26/2011</td>
<td>did not see where &quot;expeditiously&quot; was defined. If it is not defined, I would strongly suggest it be defined. Otherwise the &quot;timely use of funds&quot; will be open to interpretation.</td>
<td>Comment noted.</td>
</tr>
<tr>
<td>Article 3 - Section C</td>
<td>18</td>
<td>MPFA</td>
<td>Mike Zubinsky</td>
<td>CWC</td>
<td>11/29/2011</td>
<td>Change the first sentence to read: &quot;All such funds returned to Alameda CTC shall be placed into an account for reallocation to appropriate programmatic transportation projects in the County.&quot;</td>
<td>Comment will be incorporated.</td>
</tr>
<tr>
<td>Article 5 - Section H</td>
<td>24</td>
<td>MPFA</td>
<td>Mike Zubinsky</td>
<td>CWC</td>
<td>11/29/2011</td>
<td>Sentence 2 should read: &quot;...changed by a written amendment executed and approved by both parties.&quot;</td>
<td>Comment noted.</td>
</tr>
<tr>
<td>Article 5 - Section H</td>
<td>24</td>
<td>MPFA</td>
<td>Mike Zubinsky</td>
<td>CWC</td>
<td>11/29/2011</td>
<td>Sentence 3 should read: &quot;...may be changed from time to time by the Alameda CTC after appropriate notice and opportunity to comment.&quot;</td>
<td>This is clarified in Item 9 of the Implementation Guidelines.</td>
</tr>
<tr>
<td>Section 2(x)</td>
<td>31</td>
<td>Implementation Guidelines for the Bike/Ped Safety Program</td>
<td>Mike Zubinsky</td>
<td>CWC</td>
<td>11/29/2011</td>
<td>Sentence 2: Can't input from the jurisdictions be requested also? Or is that accomplished via the Board Meetings?</td>
<td>Yes it can be requested.</td>
</tr>
<tr>
<td>Section 3 - Subsection A</td>
<td>39</td>
<td>Implementation Guidelines for the LRT Program</td>
<td>Mike Zubinsky</td>
<td>CWC</td>
<td>11/29/2011</td>
<td>Sentence 2: Should this be 22.33 percent?</td>
<td>The percentages will be consistent with the expenditure plan.</td>
</tr>
<tr>
<td>MPFA</td>
<td>11/17/2011</td>
<td>Thomas Krull</td>
<td>Union City</td>
<td>Our City Attorney has the Master Program Funding Agreement and the City of Union City has the following comments: First, Section 18000(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 18000(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 Measure M is taking this approach. The City of Union City would prefer the wording match the language of the Public Resources Code rather than use the word prohibits. The indemnity sections look good. They are fair and mutual.</td>
<td>Comment noted.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MPFA</td>
<td>11/17/2011</td>
<td>Thomas Krull</td>
<td>Union City</td>
<td>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 &quot;timely&quot; and &quot;expeditious&quot; manner in Article 3, Section A(1). What constitutes &quot;timely&quot; 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 set time periods for what is &quot;timely&quot; it is a purely discretionary concept. We would recommend that the Agreement include a provision that provides a written warning to the recipient if the funds are 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) Restiction 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 A(1). The Capital Fund Reserve available 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 the 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.</td>
<td>(1) The intent of the Measure M 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 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).</td>
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<tr>
<td>MPFA</td>
<td>11/30/2011</td>
<td>James Parson</td>
<td>CWC</td>
<td>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.</td>
<td>Legal counsel is working on language about the state statute about local funds and the requirements to show intent.</td>
<td></td>
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<tr>
<td>MPFA</td>
<td>11/30/2011</td>
<td>James Parson</td>
<td>CWC</td>
<td>Suggests moving some of the detail in the implementation guidelines into the MPFA if those items will stay the same over 10 years.</td>
<td>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.</td>
<td></td>
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<tr>
<td>Section 8(1)</td>
<td>10</td>
<td>Capital Fund Reserve</td>
<td>James Parson</td>
<td>CWC</td>
<td>11/30/2011</td>
<td>We need to try to prevent the &quot;lock from restarting&quot; on three-year projects, and make sure jurisdictions do not move funds to another project and reset the clock.</td>
<td>The agencies/jurisdictions are required to provide a detailed account of their expenditures in their annual compliance report. The Alameda CTC will review the compliance report to see if the funds were spent in accordance with the 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.</td>
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<tr>
<td>Section C</td>
<td>12</td>
<td>Recession of Funds Policy</td>
<td>James</td>
<td>Passon</td>
<td>CWC</td>
<td>11/30/2011</td>
<td>We need to try to prevent the &quot;clock from restarting&quot; on three-year projects, and make sure jurisdictions do not move funds to another project and reset the clock.</td>
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<tr>
<td>MFIA</td>
<td></td>
<td>Harriet</td>
<td>Saunders</td>
<td></td>
<td>CWC</td>
<td>11/30/2011</td>
<td>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?</td>
</tr>
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</table>