

# Measure L Regional Control Project and Program Delivery Policies



**Stanislaus Council of Governments**

**Adopted June 19, 2019**

**Resolution 18-39**

# **MEASURE L REGIONAL CONTROL**

## **Project and Program Delivery Policies**

### **I. Overview**

1. These policies apply to the 16 Regional, Community Connections and Rail Services projects and programs included in the Measure L Expenditure Plan.
2. Projects will be funded according to the dollar amounts contained in the Measure L Expenditure Plan and delivered according to the schedule in the adopted Measure L Strategic Plan, as may be amended.
3. Measure L costs savings realized on a project phase<sup>1</sup> will be available for use on a subsequent phase of project development, subject to fund availability. Cost savings remaining after construction closeout will be reserved as a contingency for other projects in the same category (Regional, Community Connections, Rail Services).

### **II. General Policies and Procedures**

#### **1. General**

- A. A project sponsor/lead agency can receive Measure L funds if the project is listed in the Measure L Expenditure Plan and the Strategic Plan.
- B. The amount of Measure L funds available for Regional Projects, or project phase, are those listed in the Strategic Plan. The amount of Measure L funds available for Community Connections and Rail Services projects are those awarded by StanCOG through periodic calls for projects.
- C. A cooperative agreement must be signed by the project applicant/lead agency and StanCOG before Measure L funds will be available for the project or project phase.

#### **2. Cooperative Agreement Application**

- A. The local project sponsor/lead agency will contact StanCOG and request an application for a Measure L Regional Project Cooperative Agreement.
- B. The application asks for a description of the project that Measure L funds will pay for, schedule and cost information for the entire project, and other funds that will match the Measure L allocation.

---

<sup>1</sup> In this cooperative agreement “phase” generally refers to phases of project development such as environmental studies, design, right of way or construction.

- C. Applications will not be considered unless the project sponsor/lead agency can demonstrate 100% funding for the project phase<sup>2</sup> to be funded by the cooperative agreement.
- D. Once an application is submitted, StanCOG staff will need approximately two months to review the draft, negotiate with the sponsor/lead agency, and have each party's legal counsel review the cooperative agreement.
- E. The Management & Finance Committee will be notified, for information purposes, when an application has been submitted or when cooperative agreement negotiations have been completed. Pertinent information will be shared at those milestones with the Committee including, but not limited to, the phase to be funded, scope, estimated cost, schedule, and matching funds. If the cooperative agreement requires an exception to the Measure L Regional Control Policies herein or a substantial deviation from the cooperative agreement template due to a policy issue, the matter will be placed on the Management & Finance Committee agenda for recommendation to the StanCOG Policy Board.
- F. Once negotiations are complete, the cooperative agreement should be approved by the sponsor/lead agency's governing body before it is presented to the StanCOG Policy Board.
- G. Upon approval by the StanCOG Policy Board, the cooperative agreement will be circulated for signatures by the sponsor/lead agency and StanCOG.

### 3. Reimbursement Procedure

- A. Once a cooperative agreement has been signed by both parties, the project sponsor/lead agency is required to submit all reports as set forth in the cooperative agreement and this policy.
- B. Expenses are reimbursed in arrears.
- C. Expenses incurred prior to the execution of a Measure L Cooperative Agreement are not reimbursable.

### 4. Items NOT Eligible for Reimbursement Under Measure L

- A. Activities relating to obtaining matching funds for a project.
- B. Activities relating to another project not covered in the cooperative agreement, even if it is a Measure L project.

---

<sup>2</sup> Cooperative Agreements limited to Right-of-way acquisition and/or support will be considered by the Policy Board without requiring the project applicant to demonstrate funding for the construction phase of the project.

Activities conducted prior to executing a Measure L cooperative agreement.

### **III. Regional Projects – “On State Highway System”**

1. Lead Agency. StanCOG, the local agency or an agency designated by StanCOG, will be the lead agency for Regional Projects on the state highway system. Caltrans may serve as the alternate lead agency at the discretion of StanCOG and with the approval of Caltrans, as determined on a case-by-case basis, and as identified in the cooperative agreement.
2. Cooperative Agreement with Caltrans. StanCOG, or an agency designated by Caltrans, and Caltrans will execute a Caltrans project cooperative agreement for one or more phases of project development defining the roles and responsibilities of the respective agencies.
3. Local Agency Participation. The staff of local agencies that are stakeholders in the project will be invited to participate in the selection of consultants retained for project delivery and project development team meetings.

### **IV. Regional Projects – “Off State Highway System”**

1. Lead Agency. For regional projects “off the state highway system”, StanCOG or the local jurisdiction where the project is located (the “local agency”) will be the project lead agency. In situations where the project is located within more than one local jurisdiction, the determination of the lead agency will be made on a case-by-case basis through consultation between StanCOG and the local agencies in which the project is located.
2. Cooperative Agreement. If a local agency is the lead agency or is contributing funding to a project phase, the local agency and StanCOG will execute a Measure L Regional Project Cooperative Agreement defining the roles and responsibilities of the respective agencies. An approved and fully executed project cooperative agreement is required before Measure L funds are allocated for a project and reimbursable work by the local agency may commence.
3. Measure L Not to Replace Other Funds. Measure L funds will not be utilized as a replacement fund source for any funds that have been programmed or allocated previously to the project, including local funds. A project applicant must show 100% project phase funding<sup>2</sup> as part of the Measure L cooperative agreement application.

### **V. All Regional Projects, Community Connections, and Rail Services.**

1. Reimbursement. All project eligible costs shall be invoiced on a reimbursable basis (*i.e.*, actual costs incurred). In all cases, the local agency will be reimbursed within the amount of project funds stated in the approved Measure L Cooperative Agreement. Measure L funds must be expended concurrently and proportionally to other matching fund

sources, including local funds, and in accordance with the terms that are included in the cooperative agreement.

2. Staff Costs. The local agency's staff costs for participating in the development and delivery of the project are eligible for reimbursement, provided (i) the staff costs are directly related to the project tasks specified in the cooperative agreement; (ii) all local agency personnel for which reimbursement of staff costs are sought are identified by name and department in the cooperative agreement; and (iii) the staff costs do not exceed the dollar amount budgeted in the cooperative agreement. Reimbursable local agency staff costs shall include the actual salary and fringe benefits directly related to the project only. StanCOG's staff costs for participating in the development and delivery of the project are eligible to be reimbursed from the project's Measure L funds but will not be billed against funds committed and allocated to a local agency for project delivery.
3. Indirect Costs. An overhead rate for indirect costs can be assessed on direct staff costs (salary and fringe benefit costs) only. The overhead rate shall be calculated by multiplying total labor cost by the local agency's overhead rate as approved in its OMB Circular A-87 standard or an equivalent rate accepted in the local agency's Indirect Cost Allocation Plan approved by Caltrans. The overhead rate effective July 1 of each year shall be applied for the entire fiscal year. Local agencies may update the rate as of July 1 of each fiscal year. The amount reimbursable for the overhead rate shall not exceed 50% of the direct staff costs and shall not be leveraged on consultant contracts or equipment costs.
4. Use of Consultants. Consultant services directly responsible for delivering the project are eligible for reimbursement, provided either the task, category, or consultant contract is identified in the cooperative agreement. Consultant services shall be listed separately and supported in the invoice submittal to StanCOG.
5. StanCOG Participation. StanCOG staff will be invited to participate in the local agency's selection of consultants and in project development team meetings. The extent of StanCOG staff participation will be defined in the respective cooperative agreement.
6. Fees. The costs of fees from other agencies, including permit fees, reimbursement for review or oversight costs needed for the project are eligible costs. [For example, if the project impacts or affects a rail line and the railroad charges a fee to review the project design plans, that review cost is eligible for reimbursement.] However, the cost of permits or fees from the local agency implementing the project will not be eligible.
7. Utility Costs. Utility relocation costs may be eligible for reimbursement. Reimbursement of utility relocation costs will be determined according to any agreements which establish the rights and obligations, including identifying the party responsible for relocation, of those utilities. If another party, not a party to the cooperative agreement, is responsible for utility relocation and any associated costs, those costs will not be eligible for reimbursement.

8. Right of Way Costs. Measure L funds can be allocated for right of way acquisition and support. To the extent the project has identified construction capital funds that are available, committed, programmed, allocated or apportioned for the project or project phase subject to the cooperative agreement<sup>2</sup>, those construction funds should be identified as part of the cooperative agreement application. If StanCOG approves an allocation of Measure L funds for advance acquisition of right of way or right of way support, the cooperative agreement will set forth the local agency's reimbursement obligations should the project not be approved, or approved and not completed. If the project is not approved, or if approved and not completed, StanCOG and the local agency will determine the best manner and method to reimburse the Measure L program for all funds used for right of way acquisition and support. This may include the local agency reimbursing the Measure L program with proceeds acquired from the sale of the real property and/or reimbursement using other funds available to the local agency. Notwithstanding the foregoing, any project that has received an allocation of Measure L funds for right of way acquisition and/or support must begin construction within six (6)<sup>3</sup> years of the Measure L allocation for right of way acquisition or support. If the project has not begun construction within the six years, the local agency will be required to reimburse the Measure L program consistent with this paragraph. The local agency may request the Policy Board grant one-year extensions to begin construction provided the local agency can (i) demonstrate construction will begin within that additional year, and (ii) identify committed, programmed, allocated or apportioned construction funds for the project.
9. Maintenance Costs. It is the obligation of the local agency to arrange for all costs to operate and maintain the improvement constructed using Measure L funds. No costs will be considered as eligible for reimbursement out of Measure L regional funds to operate or maintain a facility or any portion of the facility.
10. Reimbursement Limits. Measure L funding for any individual project shall be limited to the amount designated in the cooperative agreement.
  - A. A pre-requisite to obtaining a Measure L Cooperative Agreement is submission of an application which demonstrates 100% funding for the project phase<sup>2</sup>. If at any time during the project, it is determined that funding beyond the Measure L amounts identified in the cooperative agreement are required to complete the project or phase of the project, the local agency is responsible for securing the additional funding prior to allocation of any Measure L funds.
  - B. In cases where funding sources in addition to Measure L funds are needed to complete a project or phase for which a cooperative agreement is sought, it is the responsibility of the local agency to secure the additional funding necessary. If state or federal funds are being sought to complete the project or phase, the local agency

---

<sup>3</sup> This time-frame was chosen to be consistent with state and federal funding cycles. Appropriations represent three years of funding which means a project applicant has the equivalent of two funding cycles in which to begin construction. Utilization of funds during this time frame is intended to minimize the potential of state or federal fund rescission.

will consult and coordinate with StanCOG prior to any request for state or federal funds being made by the local agency. In the event that the local agency cannot secure additional funding, and/or the project cannot be segmented or phased, the local agency will notify StanCOG at the earliest opportunity, and the two agencies will meet and confer. The local agency and StanCOG may consider modifying the project's or program's scope only if it has been determined by the staff of both agencies that any changes in project or program scope will not affect, impact or jeopardize project delivery (e.g., project funding, regional conformity, environmental analysis, air quality analysis, etc.). The StanCOG Policy Board may also consider decreasing its level of Measure L funding or reassigning all of the Measure L funds to another Regional Control project. The StanCOG Policy Board may determine that the Expenditure Plan should be amended to omit the project given the financial infeasibility of the project. If the project is removed from the Measure L Expenditure Plan, eligible costs incurred to date will be reimbursed from the balance of unexpended Measure L funds included in the cooperative agreement.

11. Change Orders. Contract amendments, change orders or cost increases that arise once the contract for a project or phase has been awarded that exceed the percentage of the project or phase cost or specified dollar amount, as set forth in the cooperative agreement, shall be noticed to StanCOG as soon as those increases have been identified. The local agency will be required to provide assurances that the project or phase to which StanCOG has allocated Measure L funding is still deliverable based on the current Measure L allocation for the project. A revised financial plan for the project or phase shall be included as part of the submitted Progress Report.
  - A. At the time of bid opening for the construction phase, the responsible low bid may exceed the funding commitment of Measure L funds as well as other committed fund sources for the project. In the event the lowest responsible bid exceeds the construction budget, the local agency may seek an allocation of any available Measure L funds not yet allocated to the project only if other funds for construction are committed in proportionate amounts to deliver the construction phase of the project. If all available fund sources are not sufficient to award the project, the local agency shall consult with StanCOG on suitable measures to enable the project to proceed, including but not limited to down-scoping the project and rebidding (only if such action will not affect, impact or jeopardize project delivery), providing additional clarity to enable a more cost-effective bid, or seeking additional revenues. The local agency shall be responsible for seeking and securing additional funding sources. Local agency activities pertaining to the activities described in this Paragraph 11.A. are not reimbursable under Measure L. In utilizing all available funding from all sources for contract award, the local agency shall consult with StanCOG staff on the likelihood of cost increases during construction and what contingencies are available to address these costs, including the presentation of a risk management plan for constraining construction expenditures to available revenues.
  - B. In the event of projected cost savings at bid opening, the proportional share of Measure L funds will be rescinded and may be available to the local agency for any

cost increases associated with the project after construction award until the time of final close-out of the bid phase, including the settlement of all claims, only if the local agency sufficiently demonstrates prudent efforts to constrain and manage costs during construction. Any requests for exceptions will be considered by the StanCOG Policy Board on a case-by-case basis.

12. Annual Allocation Requests. On an annual basis, a local agency may be asked to notify StanCOG of anticipated allocation requests for subsequent fiscal years (12 months). StanCOG's capacity to allocate Measure L funds depends in part on the information provided by the local agencies implementing regional projects and the failure to comply may result in the local agency's allocation request being deferred until such time when Measure L funds become available.
13. Semi-Annual Progress Report. As directed by StanCOG, a local agency will provide StanCOG with a Semi-Annual Progress Report. Semi-annual periods begin on July 1 and January 1 of any given fiscal year. These reports are meant to update StanCOG on the project's scope, cost, and schedule. Failure to provide the report and required information shall be grounds for StanCOG to withhold reimbursements until a report is submitted and accepted by StanCOG. These reports shall include the following:
  - A. Status: the phase currently underway and the progress since the last report; major meetings and decisions on the project; any significant accomplishments; any setbacks to the project. The local agency should note whether they anticipate any problems, what area these problems exist in, and how the agency intends to address it. Financial commitments and funding shortfalls should be presented in detail.
  - B. Expenditures to date: All expenditures since the prior reporting should be detailed, and should include all project funding sources including Measure L. Expenditures will be presented in sufficient detail to determine that they are eligible expenses.
  - C. Schedule changes: any changes in the project schedule and the consequences of those changes, particularly related to project costs will be presented in sufficient detail to provide assurances that schedule changes and the financial implications are being sufficiently managed and minimized by the local agency. If the schedule has been modified, a revised schedule must be attached.
  - D. Cost changes: all changes should be noted in the Progress Report; changes that exceed the percentage of the project or phase cost or specified dollar amount, as set forth in the cooperative agreement, must be accompanied by a detailed explanation of what options the local agency has considered to manage the change. If project costs have changed, a revised funding plan and cash flow schedule must be attached.
  - E. Potential Claims: If Measure L funds are utilized for the construction phase of the project, then the local agency must certify if there are any Notices of Potential Claim. If such notices exist, a summary of each notice as well as the likely cost or schedule impact shall be included.

F. Status of Project Specific Conditions: If project specific conditions were approved as part of the allocation, the local agency must address the status of meeting the condition(s).

14. Project Close Out. The local agency will be responsible for notifying StanCOG of the completion of the project or the respective phase of the project that is the subject of a cooperative agreement, prior to submitting the final invoice for the project or phase. After notification, StanCOG staff will provide the local agency with the appropriate forms to close out the project or phase, specific to the project type. The final close-out procedure for a project or phase may include local agency provided documentation verifying the completion of the project or phase, summarizing project costs and expenditures with a reconciliation of balances remaining on the project or phase, transmittal of final deliverables, and on-site field visits. For projects that expend all of the Measure L funds before completing the overall project or phase, StanCOG has the discretion to continue requesting progress reports on the project.

15. Cooperative Agreement Amendments. Cooperative Agreement Amendments will be considered as follows:

a. Scope Changes – StanCOG will only consider changes to the scope of the project that:

- i. will not result in a loss of matching funds;
- ii. will not jeopardize conformity status;
- iii. will not negatively impact the project benefit; and
- iv. are necessary to ensure the deliverability of the project.

b. Cost Changes – As discussed throughout this policy, if there is a change in the project cost estimate, StanCOG should be notified in writing as soon as possible. The written notification should explain the change and the local agency’s plan to cover the increase. The local agency should identify funding sources in addition to Measure L funds to cover the cost increases.

c. Schedule Changes - Schedule changes to a project will not be considered unless the change is due to unforeseen circumstances or circumstances outside of the control of the lead agency.

d. Funding Changes. Unanticipated funding secured for a project or project phase after execution of a Cooperative Agreement could displace other funding reflected in the Cooperative Agreement or otherwise result in a budget surplus. To the extent possible or practicable, the cost savings will be proportionately split between the contributing funding sources for the project or phase.

**STANISLAUS COUNCIL OF GOVERNMENTS  
RESOLUTION 18-39  
ADOPTING MEASURE L REGIONAL CONTROL PROJECT AND  
PROGRAM DELIVERY POLICIES**

WHEREAS, the Stanislaus Council of Governments (StanCOG) is a Regional Transportation Planning Agency and a Metropolitan Planning Organization (MPO), pursuant to State and Federal designation; and

WHEREAS, on November 8, 2016 the voters of Stanislaus County, approved Measure L thereby authorizing StanCOG, acting as the Local Transportation Authority, to administer the proceeds from the one-half cent transaction and use tax ("Measure L"); and

WHEREAS, the duration of the Measure L sales tax will be 25 years from the initial year of collection, which began April 1, 2017, with the tax to expire on March 31, 2042; and

WHEREAS, Measure L authorizes StanCOG to adopt implementing rules and administrative procedures to carry out its responsibilities in implementing Measure L; and

WHEREAS, StanCOG has drafted Policies & Procedures for Measure L Regional Control Project and Program Delivery Policies; and

NOW, THEREFORE BE IT RESOLVED that the Measure L Regional Control Project and Program Delivery Policies, attached hereto as Exhibit "A", are hereby adopted by the StanCOG Policy Board acting in its capacity as the Local Transportation Authority.

BE IT FURTHER RESOLVED that the Executive Director is authorized to make administrative changes to the scope or budget of the executed contract, as needed, to ensure that the project is implemented in the most efficient and cost-effective manner possible.

The foregoing Resolution was introduced at a regular meeting of the Stanislaus Council of Governments, on the 19th day of June, 2019. A motion was made and seconded to adopt the foregoing Resolution. Motion carried and the Resolution was adopted.

MEETING DATE: June 19, 2019

  
\_\_\_\_\_  
JEREMY YOUNG, CHAIR

ATTEST:  
  
\_\_\_\_\_  
ROSA DE LEÓN PARK, EXECUTIVE DIRECTOR