

**MEMORANDUM**

**TO:** TAM Board of Commissioners  
**FROM:** Jenna Brady, Deputy County Counsel *JB/BL*  
**DATE:** June 13, 2019  
**RE:** Reserve Fund Analysis

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**Issue:** The TAM Board of Commissioners (“Board”) has requested our office’s opinion on TAM’s reserve options under the Measure AA Expenditure Plan, and specifically, whether the Board may set aside reserve funds from only some fund categories. If the answer is yes, the Board further seeks an opinion as to whether fund categories that did not contribute to the reserve fund could access the reserve fund if needed.

**Short Answer:** The 2018 Final Expenditure Plan suggests that the reserve fund should be allocated from the gross revenue generated by the transportation sales tax, and therefore, would be set aside from each fund category. If the Board decides to set aside the reserve funds from only certain categories, those categories would be the only ones that could access the reserve funds.

**Analysis:** The 2018 Final Expenditure Plan provides for the funding of four categories or strategies: Highways, Local Transit, Local Streets and Safe Routes to Schools, and allocates a percentage of the sales tax funds to each. The Expenditure Plan states that “TAM will have the ability to set aside a reserve fund of up to 10% of the annual transportation sales tax receipts for contingencies, to ensure a cushion if economic decline occurs that adversely affects the collection of the sales tax.”

The Expenditure Plan’s statement that the reserve fund will be set aside from the annual transportation sales tax receipts suggests that the percentage would be set aside from total receipts, not just certain fund categories, and we understand that this is the general practice. However, the Plan does not mandate that a reserve fund exist; therefore, the Board likely has the discretion to decide not to have a reserve fund, or to only have a reserve fund for certain categories.

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If the Board decides to set aside funds from only certain categories, then only those categories should be able to draw on the reserve funds. The Expenditure Plan provides that “the distribution will not change over the life of the plan, unless the plan is specifically amended.” By allowing a category to receive its full distribution, not allocate a percentage to the reserve fund and still receive reserve funds, would in essence change the distribution of that category without properly amending the Expenditure Plan. Accordingly, if only certain categories had funds allocated to the reserve fund, then only those categories would be able to access those funds.