Master Agreement
State Funded Transit Projects

California Department of Transportation

DIVISION OF RAIL AND MASS TRANSPORTATION
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Revised December 23,2020

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF RAIL AND MASS TRANSPORTATION

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STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF RAIL AND MASS TRANSPORTATION

MASTER AGREEMENT
STATE FUNDED TRANSIT PROJECTS

Effective Date of this Agreement: **July 12, 2021**

Termination Date of this Agreement: **July 12, 2031**

Recipient: **Transportation Agency for Monterey County**

APPLICABLE FUNDING SOURCES COVERED BY THIS AGREEMENT WILL BE IDENTIFIED IN EACH SPECIFIC PROGRAM SUPPLEMENT ADOPTING THE TERMS OF THIS AGREEMENT

- **General Fund**
- **State Highway Account**
- **Public Transportation Account**
- **Clean Air and Transportation Improvement Act of 1990 (PROP. 116) Bond Fund**
- **Traffic Congestion Relief Fund (TCR), GC 14556.40**
- **Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act**
- **Road Repair and Accountability Act of 2017, Senate Bill 1**
- **Other State Funding Sources (Existing and Future), except the Transit and Intercity Rail Program (TIRCP)**

This AGREEMENT, entered into effective as of the date set forth above, is between the signatory public entity identified hereinabove, hereinafter referred to as **RECIPIENT**, and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter referred to as **STATE**.

ARTICLE I - PROJECT ADMINISTRATION

Section 1. Program Supplement

A. *General*

(1) This AGREEMENT shall have no force and effect with respect to any PROJECT unless and until a separate PROJECT specific "PROGRAM SUPPLEMENT – STATE FUNDED TRANSIT PROJECT(S)," hereinafter referred to as "PROGRAM SUPPLEMENT," adopting all of the terms and conditions of this AGREEMENT has been fully executed by both **STATE** and **RECIPIENT**.

(2) **RECIPIENT** agrees to complete each defined PROJECT, or the identified PROJECT Phase/Component thereof, described in the PROGRAM SUPPLEMENT adopting all of the terms and conditions of this AGREEMENT.

(3) A financial commitment of actual PROJECT funds will only occur in each detailed and separate PROGRAM SUPPLEMENT. No funds are obligated by the prior execution of this AGREEMENT alone.

(4) **RECIPIENT** further agrees, as a condition to the release and payment of the funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all the agreed-upon Special Covenants and Conditions attached to or made a part of the PROGRAM SUPPLEMENT identifying and defining the nature of that specific PROJECT.

(5) The PROGRAM SUPPLEMENT shall include: a detailed Scope of Work conforming to the included Project Description, a Project Schedule, an Overall Funding Plan, and a Project Financial Plan as required by the applicable Program Guidelines.

a. The Scope of Work shall include a detailed description of the PROJECT and will itemize the major tasks and their estimated costs.
b. The Project Schedule shall include major tasks and/or milestones and their associated beginning and ending dates and duration.
c. The Overall Funding Plan shall itemize the various PROJECT Components, the committed funding program(s) or source(s), and the matching funds to be provided by **RECIPIENT** and/or other funding sources, if any [these Components include Environmental and Permits; Plans, Specifications and Estimates (PS&E); Right-of-Way (ROW); and Construction (including transit vehicle acquisition)].
d. The Project Financial Plan shall identify estimated expenditures for each PROJECT Component by funding source.

(6) Adoption and execution of the PROGRAM SUPPLEMENT by **RECIPIENT** and **STATE**, incorporating the terms and conditions of this AGREEMENT into the PROGRAM SUPPLEMENT as though fully set forth therein, shall be sufficient to bind **RECIPIENT** to these terms and conditions when performing the PROJECT. Unless otherwise expressly delegated to a third-party in a resolution by **RECIPIENT**'s governing body, which delegation must be expressly assented to and concurred in by **STATE**, the PROGRAM SUPPLEMENT shall be managed by **RECIPIENT**.

(7) The estimated cost and scope of each PROJECT will be as described in the applicable PROGRAM SUPPLEMENT. **STATE** funding participation for each PROJECT is limited to those amounts actually encumbered by **STATE** as evidenced in that applicable PROGRAM SUPPLEMENT. A contract awarded by **RECIPIENT** for PROJECT work in an amount in excess of said approved estimate or the PROGRAM SUPPLEMENT funding limit may exceed any said PROGRAM SUPPLEMENT cost estimate and the limits of **STATE**'s participation provided:

a. **RECIPIENT** provides the necessary additional funding, or
b. A cost increase in **STATE**'s share of PROJECT funding is first requested by **RECIPIENT** (before the cost overrun occurs) and that increase is approved by **STATE** in the form of an Allocation Letter comprising the encumbrance document for that increased **STATE** funding level.

(8) State programmed fund amounts may be increased to cover PROJECT cost increases only if:

a. Such funds are available;
b. **STATE** concurs with that proposed increase; and
c. **STATE** issues an approved Allocation Letter, Fund Shift Letter, or a Time Extension Letter with additional funding as stated in an executed amendment to that PROGRAM SUPPLEMENT.

(9) When additional State programmed funds are not available, **RECIPIENT** agrees that reimbursements of invoiced PROJECT costs paid to **RECIPIENT** will be limited to, and shall not exceed, the amounts already approved in the PROGRAM SUPPLEMENT containing the **STATE** approved encumbrance documents and that any increases in PROJECT costs above that **STATE** supported funding level must be defrayed by **RECIPIENT** with non-State funds.

(10) For each approved PROGRAM SUPPLEMENT, **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of appropriate matching funds (other than State funds) if any matching funds are specified within the PROGRAM SUPPLEMENT, or any attachment thereto, toward the actual cost of the PROJECT or the amount, if any, specified in an executed SB 2800 (Streets and Highways Code section 164.53) Agreement for local match fund credit, whichever is greater. **RECIPIENT** shall contribute not less than the required match amount toward the cost of the PROJECT in accordance with a schedule of payments as shown in a Project Financial Plan prepared by **RECIPIENT** as part of a PROGRAM SUPPLEMENT.

(11) Upon the stated expiration date of this AGREEMENT, any PROGRAM SUPPLEMENTS executed under this AGREEMENT for a PROJECT with work yet to be completed pursuant to the approved Project Schedule shall be deemed to extend the term of this AGREEMENT only to conform to the specific PROJECT termination or completion date contemplated by the applicable PROGRAM SUPPLEMENT to allow that uncompleted PROJECT to be administered under the extended terms and conditions of this AGREEMENT.

(12) Total project cost includes the cost of a project for all phases (Plans, Specifications, and Estimates (PS&E), Project Approval and Environmental Document (PA&ED) Right-of-Way (ROW), and Construction (CON) including rolling stock) of a Project from start to finish.

B. *Project Overrun*

(1) If **RECIPIENT** and **STATE** determine, at any time during the performance of a PROJECT, that the PROJECT budget may be exceeded, **RECIPIENT** shall take the following steps:

a. Notify the designated **STATE** representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential cost savings or other measures which **RECIPIENT** will institute to bring the Project Budget into balance; and

b. Schedule the projected overrun for discussion at the next Quarterly Review meeting; and

c. Identify the source of additional **RECIPIENT** or other third party funds that can be made available to complete PROJECT.

C. *Scope of Work*

(1) **RECIPIENT** shall be responsible for complete performance of the work described in the approved PROGRAM SUPPLEMENT for the PROJECT related to the commitment of encumbered funds. All work shall be accomplished in accordance with the applicable provisions of the Public Utilities Code, the Streets and Highways Code, the Government Code, and other applicable statutes and regulations.

(2) **RECIPIENT** acknowledges and agrees that **RECIPIENT** is the sole control and manager of each PROJECT and its subsequent employment, operation, repair and maintenance for the benefit of the public. **RECIPIENT** shall be solely responsible for complying with the funding and use restrictions established by (a) the statutes from which these funds are derived, (b) the California Transportation Commission (CTC), (c) the State Treasurer, (d) the Internal Revenue Service, (e) the applicable PROGRAM SUPPLEMENT, and (f) this AGREEMENT.

D. *Program Supplement Amendments*

PROGRAM SUPPLEMENT amendments will be required whenever there are CTC-approved changes to the cost, scope of work, or delivery schedule of a PROJECT from those specified in the original PROJECT Application and the original PROGRAM SUPPLEMENT. Those changes shall be mutually binding upon the Parties only following the execution of a PROGRAM SUPPLEMENT amendment.

Section 2. Allowable Costs and Payments

A. *Allowable Costs and Progress Payment Vouchers*

(1) Not more frequently than once a month, but at least quarterly, **RECIPIENT** will prepare and submit to **STATE** (directed to the attention of the appropriate State District

Transit Representative) signed Progress Payment Vouchers for actual PROJECT costs incurred and paid for by **RECIPIENT** consistent with the Scope of Work document in the PROGRAM SUPPLEMENT and **STATE** shall pay those uncontested allowable costs once the voucher is approved. If no costs were incurred during any given quarter, **RECIPIENT** is exempt from submitting a signed Progress Payment Voucher; but is still required to present a progress report at each Quarterly Review.

(2) **STATE** shall not be required to reimburse more funds, cumulatively, per quarter of any fiscal year greater than the sums identified and included in the PROJECT Financial Plan. However, accelerated reimbursement of PROJECT funds in excess of the amounts indicated in the Project Financial Plan, cumulatively by fiscal year, may be allowed at the sole discretion of **STATE** if such funds are available for encumbrance to fulfill that need.

(3) Each such voucher will report the total of PROJECT expenditures from all sources (including those of **RECIPIENT** and third parties) and will specify the percent of State reimbursement requested and the fund source. The voucher should also summarize State money requested by PROJECT component (environmental and permits, plans specifications, and estimates (PS&E); right of way; construction; rolling stock; or--if bond funded--private activity usage) and phase, and shall be accompanied by a report describing the overall work status and progress on PROJECT tasks. If applicable, the first voucher shall also be accompanied by a report describing any tasks specified in the PROGRAM SUPPLEMENT which were accomplished prior to the Effective Date of this AGREEMENT or the PROGRAM SUPPLEMENT with costs to be credited toward any required local contribution described in Article II, Section 1 of this Agreement (but only if expended pursuant to any applicable prior executed Agreement for Local Match Fund Credit between **RECIPIENT** and **STATE)**.

(4) An Indirect Cost Rate Proposal and/or Central Service Cost Allocation plan and related documentation approved under cognizant agency regulations are to be provided to **STATE** (Caltrans Audits & Investigations) annually for their review, and approval and filing prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for reimbursement.

B. *Advance Payments (TCR Projects Only)*

(1) Advance reimbursements or payments by **STATE** are not allowed except in the case of TCR funded Projects, and only then when expressly authorized by the CTC.

(2) In order to receive a CTC approved TCR payment advance, **RECIPIENT** must provide duplicate signed invoices to **STATE** requesting payment of that authorized advance.

(3) For TCR Projects approved for advanced payment allocation by the CTC, said advance payment shall be deposited by **RECIPIENT** in an interest bearing account held by institutions with long-term credit ratings of "AA" or better from at least two nationally recognized credit rating agencies, or in instruments issued by and secured by the full faith and credit of the U.S. Government or by an agency of the U.S. Government. No

TCR interest earnings may be spent on the PROJECT. Interest earned shall be recorded and documented from the time the TCR funds are first deposited in **RECIPIENT**'s account until all the approved TCR advance funds have been expended or returned to **STATE** together with all accrued interest. Interest earned shall be reported to **STATE**'s Project Coordinator on an annual basis and upon the final PROJECT payment when interest earnings, overpayments, and unexpended advanced TCR funds shall be returned to **STATE** no later than thirty (30) days after PROJECT completion or termination of the PROGRAM SUPPLEMENT, whichever is first in time.

(4) Advanced funds are to be expended only as indicated in the approved TCR Application. **RECIPIENT** must be able to document the expenditures/disbursement of funds advanced to only pay for actual allowable PROJECT costs incurred.

(5) Except as expressly allowed hereinbelow, non-TCR funds and TCR project funds not authorized for advance payment can only be released by **STATE** as reimbursement of actual allowable PROJECT costs already incurred and paid for by **RECIPIENT** no earlier than the effective date of this AGREEMENT and not incurred beyond the AGREEMENT/PROGRAM SUPPLEMENT Termination Date.

(6) Where advance payments are authorized in a PROGRAM SUPPLEMENT, **RECIPIENT** must report and document the expenditure/disbursement of funds advanced to pay for actual eligible PROJECT costs incurred, at least quarterly, using a Progress Payment Voucher to be approved by **STATE**'s District Project Administrator.

C. *Expedited Payments*

Should **RECIPIENT** have a valid Memorandum of Understanding (MOU) for "Expedited Payment" on file with **STATE**'s Accounting Service Center, **RECIPIENT** will, not more frequently than as authorized by that MOU, prepare and submit to **STATE** an Expedited Payment Invoice for reimbursements that are consistent with that MOU, this AGREEMENT, and the applicable PROGRAM SUPPLEMENT. Expedited Payments are subject to policies established in the Caltrans Accounting Manual. One time payments and final payments eligible for expedited pay pursuant to this Section will have ten percent (10%) of each invoice amount withheld until PROJECT completion and **STATE** has evaluated **RECIPIENT**'s performance and made a determination that all requirements assumed under this AGREEMENT and the relevant PROGRAM SUPPLEMENT have been satisfactorily fulfilled by **RECIPIENT**.

D. *Advance Expenditure of Local Funds*

Government Code section 14529.17 (AB 872) allows public agencies to expend their own funds on certain programmed projects prior to the CTC's allocation of funds, and, upon receipt of CTC approval, to then seek reimbursement for those allowable prior expenditures following execution of a PROGRAM SUPPLEMENT wherein **STATE** acknowledges and accepts those statutorily authorized prior expenditures as a credit towards a required **RECIPIENT** match, (if any) or as eligible PROJECT expenditures for reimbursement.

E. *Travel Reimbursement*

Payments to **RECIPIENT** for PROJECT related travel and subsistence expenses of **RECIPIENT** forces and its subcontractors claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid rank and file State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by **RECIPIENT** are in excess of those authorized DPA rates, then **RECIPIENT** is responsible for the cost difference, and any overpayments inadvertently paid by **STATE** shall be reimbursed to **STATE** by **RECIPIENT** on demand.

F. *Final Invoice*

The PROGRAM SUPPLEMENT Termination Date refers to the last date for **RECIPIENT** to incur valid PROJECT costs or credits and is the date that the PROGRAM SUPPLEMENT expires. **RECIPIENT** has one hundred and eighty (180) days after that Termination Date to make already incurred final allowable payments to PROJECT contractors or vendors, prepare the PROJECT Closeout Report, and submit the final invoice to **STATE** for reimbursement of allowable PROJECT costs before those remaining State funds are unencumbered and those funds are reverted as no longer available to pay any PROJECT costs. **RECIPIENT** expressly waives any right to allowable reimbursements from **STATE** pursuant to this AGREEMENT for costs incurred after that termination date and for costs invoiced to RECIPIENT for payment after that one hundred and eightieth (180th) day following the PROJECT Termination Date.

ARTICLE II – GENERAL PROVISIONS

Section 1. Funding

A. *Local Match Funds*

Subparagraphs "(1) and (2)" within this Section 1.A. apply only to those PROJECTS where the PROJECT funding is programmed to require a local match. (See individual Program Guidelines for specific funding requirements).

(1) Except where specifically allowed by the applicable PROGRAM SUPPLEMENT, reimbursement of and credits for local matching funds will be made or allowed only for work performed after the Effective Date of a PROGRAM SUPPLEMENT and prior to the Termination Date unless permitted as local match PROJECT expenditures made prior to the effective date of the PROGRAM SUPPLEMENT pursuant to Government Code section 14529.17 or by an executed SB 2800 Agreement for Local Match Fund Credit.

(2) **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of matching funds (other than State or federal funds), if any is specified within the PROGRAM SUPPLEMENT or any attachment thereto, toward the actual cost of the PROJECT or the amount, if any, specified in any executed SB 2800 (Streets and Highways Code Section 164.53) Agreement for local match fund credit, whichever is greater.

RECIPIENT shall contribute not less than its required match amount toward the PROJECT cost in accordance with a schedule of payments as shown in the Project Financial Plan prepared by **RECIPIENT** and approved by **STATE** as part of a PROGRAM SUPPLEMENT.

B. *Funding Contingencies*

Delivery by **STATE** of all funds encumbered to reimburse allowable PROJECT costs pursuant to this AGREEMENT is contingent upon prior budget action by the Legislature, fund allocation by the CTC or the United States Department of Transportation, and submittal by **RECIPIENT** and approval by **STATE** of all PROJECT documentation, including, without limitation, that required by Government Code section 14085. In the event of the imposition of additional conditions, delays, or a cancellation or reduction in funding, as approved by the Legislature, the CTC or the United States Department of Transportation, **RECIPIENT** shall be excused from meeting the time and expenditure constraints set forth in the Project Financial Plan and the Project Schedule to the extent of such delay, cancellation or reduction and the PROGRAM SUPPLEMENT will be amended to reflect the resultant necessary changes in PROJECT funding, scope, or scheduling.

C. *Funds Movement*

RECIPIENT shall not make any proposed changes in any of the four PROJECT expenditure Components (Environmental and Permits, PS&E, Right-of-Way and Construction), including major equipment acquisitions without prior written **STATE** approval. **STATE** will also determine whether those proposed changes are significant enough to warrant CTC review. Specific rules and guidelines regarding this process may be detailed in the applicable CTC Resolutions, including, but not limited to, numbers G-06-04 and G-06-20 or their successors.

Section 2. Audits and Reports

A. *Cost Principles*

(1) **RECIPIENT** agrees to comply with Title 2 Code of Federal Regulations 200 (2 CFR 200), Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

(2) **RECIPIENT** agrees, and will assure that its contractors and subcontractors will be obligated to agree to follow 2 CFR 200 and it shall be used to determine the allowability of individual Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this agreement shall comply with 2 CFR 200.

(3) Any PROJECT costs for which **RECIPIENT** has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by **RECIPIENT** to **STATE**. Should **RECIPIENT** fail to reimburse moneys due **STATE** within thirty (30) days of demand, or within such other period as

may be agreed in writing between the Parties hereto, **STATE** is authorized to intercept and withhold future payments due **RECIPIENT** from **STATE** or any third-party source, including but not limited to, the State Treasurer, the State Controller and the CTC.

B. *Record Retention*

(1) **RECIPIENT** agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of **RECIPIENT**, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **RECIPIENT**, its contractors and subcontractors connected with PROJECT performance under this AGREEMENT and each PROGRAM SUPPLEMENT shall be maintained for a minimum of three (3) years from the date of final payment to **RECIPIENT** under a PROGRAM SUPPLEMENT and shall be held open to inspection, copying, and audit by representatives of **STATE**, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by **RECIPIENT**, its contractors, and subcontractors upon receipt of any request made by **STATE** or its agents. In conducting an audit of the costs and match credits claimed under this AGREEMENT, **STATE** will rely to the maximum extent possible on any prior audit of **RECIPIENT** pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by **RECIPIENT**'s external and internal auditors may be relied upon and used by **STATE** when planning and conducting additional audits.

(2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of **RECIPIENT**'s contracts with third parties pursuant to Government Code section 8546.7, **RECIPIENT**, **RECIPIENT**'s contractors and subcontractors and **STATE** shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to **RECIPIENT** under any PROGRAM SUPPLEMENT. **STATE**, the California State Auditor, or any duly authorized representative of **STATE** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions, and **RECIPIENT** shall furnish copies thereof if requested.

(3) **RECIPIENT**, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other

pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **STATE**, for the purpose of any investigation to ascertain compliance with this AGREEMENT.

C. *Quarterly Review*

(1) Subject to the discretion of **STATE**, **RECIPIENT** and **STATE** agree to conduct, on a quarterly basis, on-site reviews of all aspects of the progress of each PROJECT. **RECIPIENT** agrees, during each quarterly progress review, to inform **STATE** regarding:

a. Whether the PROJECT is proceeding on schedule and within budget;
b. Any requested changes to the Project Description, Scope of Work, Project Schedule, Overall Funding Plan, or Project Financial Plan contained in a PROGRAM SUPPLEMENT;
c. Major construction accomplishments during the quarter;
d. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties;
e. The status of the PROJECT budget; and
f. The status of critical elements of PROJECT.

(2) Quarterly reviews of **RECIPIENT** progress will include consideration of whether reported implementation activities are within the scope of the PROJECT PROGRAM SUPPLEMENT and in compliance with State laws, regulations, and administrative requirements.

Section 3. Special Requirements

A. *California Transportation Commission (CTC) Resolutions*

(1) **RECIPIENT** shall adhere to applicable CTC policies, as may be adopted or amended from time to time, governing eligibility, project management, use of funds including, but not limited to the "Timely Use of Funds" as stated in Resolution G-06-04, adopted April 26, 2006, addressing the expenditure and reimbursement of TCR funds and Resolution G-09-11, adopted October 14, 2009, to provide guidance for the use of Proposition 116 and STIP funds. All CTC resolutions, and/or successor resolutions in place at the time a PROGRAM SUPPLEMENT is executed, shall be applicable to all state funded projects including, but not limited to Prop 116, STIP, TCR funds, Proposition 1A, and the Road Repair and Accountability Act of 2017, respectively.

(2) **RECIPIENT** shall be bound to the terms and conditions of this AGREEMENT; the PROJECT application contained in the PROGRAM SUPPLEMENT (as applicable); and CTC Resolutions G-06-04, G-09-11 and/or their respective successors in place at the time the PROGRAM SUPPLEMENT is signed (as applicable) and all restrictions, rights, duties and obligations established therein on behalf of **STATE** and CTC shall

accrue to the benefit of the CTC and shall thereafter be subject to any necessary enforcement action by CTC or **STATE**. All terms and conditions stated in the aforesaid CTC Resolutions and CTC-approved Guidelines in place at the time the PROGRAM SUPPLEMENT is signed (if applicable) shall also be considered to be binding provisions of this AGREEMENT.

(3) **RECIPIENT** shall conform to any and all permit and mitigation duties associated with PROJECT as well as all environmental obligations established in CTC Resolution G-91-2 and/or its successors in place at the time a PROGRAM SUPPLEMENT is signed, as applicable, at the expense of **RECIPIENT** and/or the responsible party and without any further financial contributions or obligations on the part of **STATE** unless a separate PROGRAM SUPPLEMENT expressly provides funding for the specific purpose of hazardous materials remediation.

(4) **RECIPIENT** acknowledges when the PROGRAM SUPPLEMENT is executed the **RECIPIENT** is to comply with all CTC resolutions as adopted or currently amended as well as the guidelines, and policies applicable to state funded programs (or projects) including, but not limited to, Prop 116, STIP, TCR, Proposition 1A, and the Road Repair and Accountability Act of 2017.

B. ***RECIPIENT*** *Resolution*

(1) **RECIPIENT** has executed this AGREEMENT pursuant to the authorizing **RECIPIENT** resolution, attached as Attachment II to this AGREEMENT, which empowers **RECIPIENT** to enter into this AGREEMENT and which may also empower **RECIPIENT** to enter into all subsequent PROGRAM SUPPLEMENTS adopting the provisions of this AGREEMENT.

(2) If **RECIPIENT** or **STATE** determines that a separate Resolution is needed for each PROGRAM SUPPLEMENT, **RECIPIENT** will provide information as to who the authorized designee is to act on behalf of the **RECIPIENT** to bind **RECIPIENT** with regard to the terms and conditions of any said PROGRAM SUPPLEMENT or amendment and will provide a copy of that additional Resolution to **STATE** with the PROGRAM SUPPLEMENT or any amendment to that document.

C. *Termination*

(1) **STATE** reserves the right to terminate funding for any PROGRAM SUPPLEMENT upon written notice to **RECIPIENT** in the event that **RECIPIENT** fails to proceed with PROJECT work in accordance with the PROGRAM SUPPLEMENT, the bonding requirements, if applicable, or otherwise violates the conditions of this AGREEMENT and/or the PROGRAM SUPPLEMENT or the funding allocation such that substantial performance is significantly endangered.

(2) No such termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, **RECIPIENT** either cures the default involved or, if not reasonably susceptible of cure within said thirty (30)-day period, **RECIPIENT** proceeds thereafter to complete the cure in a manner and time line acceptable to **STATE**. Any such termination shall be accomplished by delivery to **RECIPIENT** of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, **RECIPIENT** and **STATE** shall meet to attempt to resolve any dispute.

(3) Following a fund encumbrance made pursuant to a PROGRAM SUPPLEMENT, if **RECIPIENT** fails to expend TCR/GENERAL FUND monies by June 30 of any applicable Fiscal Year that those funds would revert, those funds will be deemed withdrawn and will no longer be available to reimburse PROJECT work unless those funds are specifically made available beyond the end of that Fiscal Year through re-appropriation or other equivalent action of the Legislature and written notice of that action is provided to **RECIPIENT** by **STATE**.

(4) In the event **STATE** terminates a PROGRAM SUPPLEMENT for convenience and not for a default on the part of **RECIPIENT** as is contemplated in C (1) and (2) above of this Section 3, **RECIPIENT** shall be reimbursed its authorized costs up to **STATE**'s proportionate and maximum share of allowable PROJECT costs incurred to the date of **RECIPIENT**'s receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by **RECIPIENT** to effect such termination following receipt of that termination notice.

D. *Third Party Contracting*

(1) **RECIPIENT** shall not award a construction contract over $10,000 or other contracts over $25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of **STATE**. Contracts awarded by **RECIPIENT**, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

(2) Any subcontract entered into by **RECIPIENT** as a result of this AGREEMENT shall contain the provisions of ARTICLE II – GENERAL PROVISIONS, Section 2. Audits and Reports and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.

(3) To be eligible for local match credit, **RECIPIENT** must ensure that local match funds used for the PROJECT meet the General Provisions requirements outlined in this ARTICLE II in the same manner as required of all other PROJECT expenditures.

(4) In addition to the above, the preaward requirements of third party contractor/consultants with local transit agencies should be consistent with Local Program Procedures (LPP-00-05).

E. *Change in Funds and Terms/Amendments*

This AGREEMENT and the resultant PROGRAM SUPPLEMENTS may be modified, altered, or revised only with the joint written consent of **RECIPIENT** and **STATE**.

F. *Project Ownership*

(1) Unless expressly provided to the contrary in a PROGRAM SUPPLEMENT, subject to the terms and provisions of this AGREEMENT, **RECIPIENT**, or a designated subrecipient acceptable to **STATE**, as applicable, shall be the sole owner of all improvements and property included in the PROJECT constructed, installed or acquired by **RECIPIENT** or subrecipient with funding provided to **RECIPIENT** under this AGREEMENT. **RECIPIENT**, or subrecipient, as applicable, is obligated to continue operation and maintenance of the physical aspects of the PROJECT dedicated to the public transportation purposes for which PROJECT was initially approved unless **RECIPIENT**, or subrecipient, as applicable, ceases ownership of such PROJECT property; ceases to utilize the PROJECT property for the intended public transportation purposes; or sells or transfers title to or control over PROJECT and **STATE** is refunded the Credits due **STATE** as provided in paragraph (4) herein below.

(2) Should State bond funds be encumbered to fund any part of a PROJECT under this AGREEMENT, then, at **STATE**'s option, before **RECIPIENT** will be permitted to make any proposed change in use, **RECIPIENT** shall be required to first obtain a determination by Bond Counsel acceptable to the State Treasurer's Office and **STATE** that a change in the operation, proportion, or scope of PROJECT as originally proposed by **RECIPIENT** will not adversely affect the tax exempt status of those bonds.

(3) PROJECT right-of-way, PROJECT facilities constructed or reconstructed on a PROJECT site and/or PROJECT property (including vehicles and vessels) purchased by **RECIPIENT** (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this AGREEMENT) shall remain permanently dedicated to the described public transit use in the same proportion and scope, and to the same extent as mandated in the PROGRAM SUPPLEMENT and related Bond Fund Certification documents, if applicable, unless **STATE** agrees otherwise in writing. Vehicles acquired as part of PROJECT, including, but not limited to, buses, vans, rail passenger equipment and ferry vessels, shall be dedicated to that public transportation use for their full economic life cycle, which, for the purpose of this AGREEMENT, will be determined in accordance with

standard national transit practices and applicable rules and guidelines, including any extensions of that life cycle achievable by reconstruction, rehabilitation or enhancements.

(4) (a) Except as otherwise set forth in this Section 4, **STATE**, or any other **STATE-**assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit (collectively the Credit), at **STATE**'s sole option, equivalent to the proportionate PROJECT funding participation received by **RECIPIENT** from **STATE** if **RECIPIENT,** or a sub-recipient, as applicable, (i) ceases to utilize PROJECT for the original intended public transportation purposes or (ii) sells or transfers title to or control over PROJECT. If federal funds (meaning only those federal funds received directly by **RECIPIENT** and not federal funds derived through or from the State) have contributed to the PROJECT, **RECIPIENT** shall notify both **STATE** and the original federal source of those funds of the disposition of the PROJECT assets or the intended use of those sale or transfer receipts.

(b) **STATE** shall also be entitled to an acquisition Credit for any future purchase or condemnation of all or portions of PROJECT by **STATE** or a designated representative or agent of **STATE**.

(c) The Credit due **STATE** will be determined by the ratio of **STATE**'s funding when measured against the **RECIPIENT**'s funding participation (the Ratio). For purposes of this Section 4, the State's funding participation includes federal funds derived through or from **STATE**. That Ratio is to be applied to the then present fair market value of PROJECT property acquired or constructed as provided in (d) and (e) below.

(d) For Mass Transit vehicles, this Credit [to be deducted from the then remaining equipment value] shall be equivalent to the percentage of the full extendable vehicle economic life cycle remaining, multiplied by the Ratio of funds provided for that equipment acquisition. For real property, this same funding Ratio shall be applied to the then present fair market value, as determined by **STATE**, of the PROJECT property acquired or improved under this AGREEMENT.

(e) Such Credit due **STATE** as a refund shall not be required if **RECIPIENT** dedicates the proceeds of such sale or transfer exclusively to a new or replacement **STATE** approved public transit purpose, which replacement facility or vehicles will then also be subject to the identical use restrictions for that new public purpose and the Credit ratio due **STATE** should that replacement project or those replacement vehicles cease to be used for that intended described pre-approved public transit purpose.

(1) In determining the present fair market value of property for purposes of calculating **STATE**'s Credit under this AGREEMENT, any real property portions of a PROJECT site contributed by **RECIPIENT** shall not be included. In determining **STATE**'s proportionate funding participation, **STATE**'s

contributions to third parties (other than **RECIPIENT**) shall be included if those contributions are incorporated into the PROJECT.

(2) Once **STATE** has received the Credit as provided for above because **RECIPIENT**, or a sub-recipient, as applicable**,** has (a) ceased to utilize the PROJECT for the described intended public transportation purpose(s) for which **STATE** funding was provided and **STATE** has not consented to that cessation of services or (b) sold or transferred title to or control over PROJECT to another party (absent **STATE** approval for the continued transit operation of the PROJECT by that successor party under an assignment of **RECIPIENT**'s duties and obligations), neither **RECIPIENT**, subrecipient, nor any party to whom **RECIPIENT** or subrecipient, as applicable, has transferred said title or control shall have any further obligation under this AGREEMENT to continue operation of PROJECT and/or PROJECT facilities for those described public transportation purposes, but may then use PROJECT and/or any of its facilities for any lawful purpose.

(3) To the extent that **RECIPIENT** operates and maintains Intermodal Transfer Stations as any integral part of PROJECT, **RECIPIENT** shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code section 99317.8). Upon request of **STATE**, **RECIPIENT** shall also authorize State-funded bus services to use those stations and appurtenances without any charge to **STATE** or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the State-funded bus service (for the purpose of this paragraph, "State-funded bus service" means any bus service funded pursuant to Public Utilities Code section 99316).

(4) Special conditions apply to any proposed sale or transfer or change of use as respects PROJECT property, facilities or equipment acquired with tax free State bond funds and **RECIPIENT** shall conform to those restrictions as set forth herein and in said bonds.

G. *Disputes*

STATE and **RECIPIENT** shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, **RECIPIENT** shall submit to the **STATE's** District Contract Manager or designee a written demand for a decision regarding the disposition of any dispute arising under this agreement. The District Contract Manager shall make a written decision regarding the dispute and will provide it to the fund **RECIPIENT**. The fund **RECIPIENT** shall have an opportunity to challenge the District Contract Manager's determination but must make that challenge in writing within ten (10) working days to the Mass Transportation Program Manager or his/her designee. [If the fund **RECIPIENT** challenge is not made within the ten (10) day period, the District Contract Manager's decision shall become the final decision of the **STATE**.] **STATE** and **RECIPIENT** shall submit written, factual information and supporting

data in support their respective positions. The decision of the Mass Transportation Program Manager or his/her designee shall be final, conclusive and binding regarding the dispute, unless **RECIPIENT** commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

H. *Hold Harmless and Indemnification*

(1) Neither **STATE** nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by **RECIPIENT**, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this AGREEMENT or any PROGRAM SUPPLEMENT or as respects environmental clean-up obligations or duties of **RECIPIENT** relative to PROJECT. It is also understood and agreed that, **RECIPIENT** shall fully defend, indemnify and hold the CTC and **STATE** and their officers and employees harmless from any liability imposed for injury and damages or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by **RECIPIENT** under or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this AGREEMENT and all PROGRAM SUPPLEMENTS.

(2) **RECIPIENT** shall indemnify, defend and hold harmless **STATE**, the CTC and the State Treasurer relative to any misuse by **RECIPIENT** of State funds, PROJECT property, PROJECT generated income or other fiscal acts or omissions of **RECIPIENT**.

I. *Labor Code Compliance*

RECIPIENT shall include in all subcontracts awarded using PROJECT funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of Contract award by the **RECIPIENT**.

J. *Non-Discrimination*

(1) In the performance of work under this AGREEMENT, **RECIPIENT**, its contractor(s) and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, family and medical care leave, pregnancy leave, and disability leave. **RECIPIENT**, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. **RECIPIENT**, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations,

Title 2, section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of **RECIPIENT**'s contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

(2) Should federal funds be constituted as part of PROJECT funding or compensation received by **RECIPIENT** under a separate Contract during the performance of this AGREEMENT, **RECIPIENT** shall comply with this AGREEMENT and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.

(3) **RECIPIENT** shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

K. *State Fire Marshal Building Standards Code*

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, **RECIPIENT** shall request that the State Fire Marshal review PROJECT PS&E to ensure PROJECT consistency with State fire protection standards.

L. *Americans with Disabilities Act*

By signing this Master Agreement, **RECIPIENT** assures **STATE** that **RECIPIENT** shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).

M. *Access for Persons with Disabilities*

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. RECIPIENT will award no construction contract unless **RECIPIENT**'s plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

N. *Disabled Veterans Program Requirements*

(1) Should Military and Veterans Code sections 999 et seq. be applicable to **RECIPIENT**, **RECIPIENT** will meet, or make good faith efforts to meet, the 3% Disabled Veterans

Business Enterprises goals (or **RECIPIENT**'s applicable higher goals) in the award of every contract for PROJECT work to be performed under these this AGREEMENT.

(2) **RECIPIENT** shall have the sole duty and authority under this AGREEMENT and each PROGRAM SUPPLEMENT to determine whether these referenced code sections are applicable to **RECIPIENT** and, if so, whether good faith efforts asserted by those contractors of **RECIPIENT** were sufficient as outlined in Military and Veterans Code sections 999 et seq.

O. *Environmental Process*

Completion of the PROJECT environmental process ("clearance") by **RECIPIENT** (and/or **STATE** if it affects a State facility within the meaning of the applicable statutes) is required prior to requesting PROJECT funds for right-of-way purchase or construction. No State agency may request funds nor shall any State agency, board or commission authorize expenditures of funds for any PROJECT effort, except for feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied with all appropriate documentation of compliance with or exemption from the California Environmental Quality Act (CEQA) (including, if as appropriate, an environmental impact report, negative declaration, or notice of exemption) under California Public Resources Code section 21080(b) (10), (11), and (12) provides an exemption for a passenger rail project that institutes or increases passenger or commuter services on rail or highway rights-of-way already in use.

P. *Force Majeure*

Each party will be excused from performance of its obligations where such non-performance is caused by any extraordinary event beyond its reasonable control, such as any non-appealable order, rule or regulation of any federal or state governmental body, fire, flood, earthquake, storm, hurricane or other natural disaster, epidemic, pandemic, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, provided that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

Should a force majeure event occur which renders it impossible for a period of forty-five (45) or more consecutive days for either party to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the existing Master Agreement or Supplemental Agreement to deal with such event and to seek additional sources of funding to continue the operation of the Service.

ARTICLE III – SPECIAL PROVISIONS

Section 1. Bond Provisions (Applicable only to State Bond Funding encumbered against a specific Program Supplement).

A. *General Bond Provisions*

(1) If **RECIPIENT** enters into a management contract with a private party (including AMTRAK) for operation of rail, ferry or other transportation services in connection with PROJECT, **RECIPIENT** will obtain prior approval from Bond Counsel acceptable to **STATE** that the terms of that management contract meet the requirements of Internal Revenue Service Revenue Procedure 97-13 (as supplemented or amended) or any successor thereto (dealing generally with guidelines for when management contracts may be deemed not to create a "private use" of bond-financed property) or are otherwise acceptable. **RECIPIENT** must also be prepared to certify, upon request of **STATE**, that the revenues which **RECIPIENT** (or its manager) will receive directly from the operation of transportation services in connection with PROJECT (but not including any subsidy of the transportation operation from taxes or other outside fund sources) are, for any fiscal year, less than the ordinary and necessary expenses directly attributable to the operation and maintenance of the transportation system (excluding any overhead or administrative costs of **RECIPIENT**).

(2) Except as provided in this Article III, A (1), **STATE** and **RECIPIENT** agree that any costs of PROJECT acquired or constructed by **RECIPIENT** allocable to portions of PROJECT which are subject to any property interests held by a non-governmental person(s) in connection with business activities, such as easements, leases, or fee interests, not generally enjoyed by the public (hereinafter referred to as "Non-Governmentally Used Property" or "NUP") shall require the prior approval of **STATE** and the State Treasurer, as applicable. If **RECIPIENT** receives any revenues or profits from any NUP activities allowed pursuant to this Article (whether approved at this time or hereafter approved by **STATE**), **RECIPIENT** agrees that such revenues or profits shall be used exclusively for the public transportation services for which PROJECT was initially approved, either for capital improvements or operating costs. If **RECIPIENT** does not so dedicate those revenues or profits, a proportionate share shall (unless disapproved by Bond Counsel) be paid to **STATE** equivalent to the Ratio of **STATE**'s percentage of participation in PROJECT.

(3) Notwithstanding the foregoing, **RECIPIENT** may be authorized to receive an allocation of bond proceeds for NUP activity, in an amount not to exceed the amount specified in the PROGRAM SUPPLEMENT, if **RECIPIENT** submits a certified bond certification questionnaire to the **STATE**, and both the **STATE** and the State Treasurer approve the private activities contained therein.

(4) **RECIPIENT** shall not loan any portion of bond proceeds funding PROJECT to any private (including nonprofit) person or business. For this purpose, a "loan" includes

any arrangement that is the economic equivalent of a loan, regardless of how it is named.

(5) Delivery by **STATE** of any bond funds is contingent on the sale of bonds by the State Treasurer. **STATE** shall not be held liable for any resulting damage or penalty to **RECIPIENT** in the event bond sales are delayed, canceled, or downsized or other AGREEMENT funds are restricted, limited or otherwise conditioned by acts of Congress, the Internal Revenue Service, the United States Department of Transportation, the Legislature, or the CTC.

(6) **RECIPIENT** shall, for the purposes of any State bond funded right of way acquisition which will become a permanent part of PROJECT (such acquisitions exclude temporary construction easements, property allocated to matching funds, and excess property purchased with State funds whose resale proceeds are returned or credited to **STATE**), maintain ownership of such PROJECT property for a minimum of twenty years or until the bonds have matured, whichever occurs first, before transferring or selling such property (subject to all refunds or Credits due **STATE** as provided hereinabove).

(7) Where **RECIPIENT**'s PROJECT includes a commuter rail PROJECT within the meaning of Proposition 116, **RECIPIENT** shall coordinate and share with other public transit operators any rail rights-of-way, common maintenance services and station facilities used for intercity and commuter rail. Intercity and commuter rail services shall be coordinated with each other, with other providers and with freight traffic to provide integrated rail passenger and freight services with minimal conflict.

(8) **RECIPIENT** agrees that all passenger vehicles, rail, and water borne ferry equipment, and all facilities acquired or constructed with Proposition 116 bond funds shall be accessible to persons with physical disabilities, including wheelchair users, at all stops, stations and terminals, whether or not staffed.

(9) NUP shall, for accounting and bookkeeping purposes, first be allocated to funding sources other than the State bond funds. For purposes of making such allocations, the costs attributable to NUP involving a sale, easement, lease or similar arrangement shall be determined on the basis of a fair allocation of value, which may include determinations based upon square meters/feet of the area encumbered by the NUP lease or easement relative to the total area acquired or constructed if all such area is of approximately equal value.

(10) NUP will include, but is not limited to, property which is sold (including sales of air and subsurface rights), and property subject to easements, leases or similar rights. A rail right of way will not be treated as NUP solely as a result of a Freight Use Easement retained by the seller of the right of way to **RECIPIENT**, provided that the sales agreement appropriately excludes the Freight Use Easement from the property or rights being acquired. Further, notwithstanding anything in this Article III to the contrary, **RECIPIENT** may allocate grant funds to the cost of any NUP if (a) neither **RECIPIENT** nor any other governmental entity will receive, directly or indirectly, any

payments from or on behalf of the non-governmental user of the NUP, or (b) the payment from such user does not exceed the operation and maintenance costs fairly attributable or allocable to the non-governmental use of the NUP.

(11) **RECIPIENT** shall request, in writing, **STATE**'s advance approval if PROJECT funds are to be allocated to any NUP except "incidental use" property described below. If property, the costs of which have previously been allocated to PROJECT funds, is to become NUP before the State bond funds are fully paid or redeemed, then **RECIPIENT** may allocate the costs of such property to another funding source as provided or obtain **STATE**'s approval that the allocation of the costs of such property to the bond funds may remain. It is anticipated that **STATE**'s approval will be granted if, taking into account the existing and expected uses of the proceeds of the State bonds, **STATE** determines that the continued tax-exempt status of the State bonds will not be adversely affected and that the use of the property is consistent with PROJECT and its described purpose.

(12) For purposes of these fund source allocations, **RECIPIENT** does not have to consider NUP as including those "incidental uses" of PROJECT (for example, advertising billboards, vending machines, telephones, etc.) which meet the applicable requirements of federal tax regulations (IRS Notice 87-69 or any successor thereto). In general, such Notice requires that the incidental use not be physically separated from the rest of PROJECT and not comprise, in the aggregate, more than 2-1/2% of the total costs of PROJECT.

Section 2. TCRP PROJECTS

The TRAFFIC CONGESTION RELIEF (TCR) ACT OF 2000 (the "ACT"), was added (in Chapter 4.5, commencing with section 14556) to part 5.3 of Division 3 of Title 2 of the Government Code by AB 2928 and SB 406, as amended by SB 1662 and AB 1705. As directed by the ACT and the CTC established Guidelines (as set out in CTC Resolution G-06-04), and as those Guidelines may be amended prior to the execution of a future PROGRAM SUPPLEMENT, said Guidelines shall apply to each TCRP funded PROJECT. By this reference, those Guidelines are made an express part of this AGREEMENT and shall apply to each TCRP funded PROJECT. **RECIPIENT** will cause its specific TCRP mandated Resolution to be attached as part of any TCRP funded PROGRAM SUPPLEMENT as a condition precedent to the acceptance of TCR ACT funds for that PROJECT.

Section 3. PROJECT MANAGEMENT

(1) **STATE's** PROJECT administrator for this AGREEMENT shall be the chief of the State Transit Grants Branch of the Division of Rail and Mass Transportation. **RECIPIENT**'s General Manager, Executive Director or a Designee as named in writing to **STATE** following execution of this AGREEMENT shall be the administrator acting for **RECIPIENT**.

(2) PROGRAM SUPPLEMENT administrators for **STATE** shall be the applicable District Division Chief for Planning and for **RECIPIENT**, the designee named in the applicable PROGRAM SUPPLEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF RAIL AND MASS TRANSPORTATION

BY: Timothy Coyne
W. KYLE GRADINGER, Chief
Division of Rail and Mass Transportation

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

BY: DL Hale
DEBRA L. HALE,
Executive Director

APPROVED AS TO FORM AND PROCEDURE

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY: Monica Blanco
Attorney, California Department of Transportation

APPROVED AS TO FORM:

BY: Katherine A. Hansen
TAMC COUNSEL

DATED:
June 9, 2021

ATTACHMENT I

CTC RESOLUTION G-91-2

Passed by the CTC on February 21, 1991

CALIFORNIA TRANSPORTATION COMMISSION RESOLUTION G-9l-2 Commission Policy Resolution for Hazardous Waste Identification and Cleanup for Rail Right-of-Way

WHEREAS, the Commission has programmed funding for rail right-of-way acquisition in the 1990 State Transportation Improvement Program and may allocate funds for rail right-of-way acquisition from the Clean Air and Transportation Improvement Act; and

WHEREAS, hazardous wastes, based upon federal and state statutes and regulations, include but are not limited to such categories as heavy metals, (e.g., lead), inorganic (e.g., excessive mineral levels) and organic compounds (e.g., petroleum products), and can occur on a property's surface and subsurface; and

WHEREAS, rail properties often have hazardous wastes exceeding State of California and federal hazardous waste standards; and

WHEREAS, such properties contaminated with hazardous wastes require mitigation prior to using them for rail purposes; and

WHEREAS, hazardous wastes discovered on rail property may significantly impact property value, project scheduling and future liability for the grant applicant; and

WHEREAS, the Commission must be assured that acquisition of rail properties have been fully reviewed by the grant applicant, and if warranted, the grant applicant has tested for hazardous wastes; and

WHEREAS, if hazardous wastes exist, the Commission must be assured that the hazardous wastes identified has either been cleaned up, or financial responsibility for the cleanup has been determined prior to title transfer to the grant applicant, or easement has been secured in lieu of purchasing the property, and the subsurface rights and liability for hazardous wastes remain with the property seller; and

WHEREAS, hazardous wastes identified subsequent to title transfer to the grant applicant will be cleaned up by the seller or a mechanism to recover clean-up-costs is established and executed as a condition prior to title transfer; and

WHEREAS, full due diligence is necessary in discovering hazardous waste and is an essential element in acquiring rail right-of-way properties by the grant applicant; and

NOW THEREFORE BE IT RESOLVED, that acquisition of all rail right-of-way properties will be fully investigated by the grant applicant to determine the absence/presence of hazardous wastes. Investigations shall be conducted in accordance to the standards and practices of the local, state and/or federal regulatory agencies having jurisdiction and by personnel adequately trained in hazardous waste investigation; and

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BE IT FURTHER RESOLVED, that all properties, discovered with hazardous wastes, which exceed the federal/state standards, will be cleaned up to the satisfaction of the responsible local, state and/or federal regulatory agency. The appropriate regulatory agency shall certify to grant applicant that the cleanup has been completed; and

BE IT FURTHER RESOLVED, that the grant applicant will certify by formal resolution to the Commission that all reasonable steps have been completed to assure full due diligence in the discovery of hazardous waste has been achieved during the acquisition of rail right-of-way and the state is held harmless from cleanup liability or damages, both present and future; and

BE IT FURTHER RESOLVED, that the grant applicant will certify by formal resolution that it will not seek further state funding, for cleanup, damages, or liability cost associated with hazardous wastes on or below acquired property's surface; and

BE IT FURTHER RESOLVED, that the grant applicant will certify to the Commission:

- that all rail right-of-way acquisition properties have been investigated and have been found clean;
- or that the cleanup of discovered hazardous waste has been completed prior to acquisition of the property;
- or that the grant applicant has obtained permanent easement and the subsurface rights and liability and full responsibility to pay for and remove such hazardous waste remains with the seller in conformance with applicable State and Federal law;
- or if hazardous wastes are known to exist prior to acquisition and if the applicant determines that time is of the essence for acquisition, then and in that event, an enforceable agreement will be entered into requiring the responsible party(ies) to clean all hazardous wastes by a date certain, with the option of funds sufficient for the clean-up costs deposited in escrow by the seller.

In the event of failure to clean up by the date determined, the recipient of the grant will make full restitution to the **STATE** for its participation. This resolve does not preclude the recipient from requesting re-allocation not to exceed the refunded amount after the hazardous waste(s) have been fully removed from the subject site; and

BE IT FURTHER RESOLVED, that the grant applicant will certify to the Commission that the seller from whom properties have been acquired retain liability for any hazardous waste investigation and/or cleanup, and damages discovered subsequent to the transfer of title; and

BE IT FURTHER RESOLVED, the Commission declares all future liability resulting from hazardous wastes remain with the seller or the grant applicant, not the state, and the grant applicant has been indemnified by the seller for any costs resulting from failure to eliminate hazardous wastes; and

BE IT FURTHER RESOLVED, no state funds will be made available for any future costs associated with cleanup; damages, or liability costs associated with hazardous wastes on or below the acquired property's surface.

ATTACHMENT II

(INSERT AGENCY BOARD RESOLUTION)

TAMC
TRANSPORTATION AGENCY FOR MONTEREY COUNTY

RESOLUTION NO. 2021-08 OF THE
TRANSPORTATION AGENCY FOR MONTEREY COUNTY (TAMC)

AUTHORIZATION FOR THE EXECUTION OF A MASTER AGREEMENT AND PROGRAM SUPPLEMENTS FOR STATE FUNDED TRANSIT PROJECTS

WHEREAS, the Transportation Agency for Monterey County may receive state funding from the California Department of Transportation (Department) now or sometime in the future for transit projects; and

WHEREAS, substantial revisions were made to the programming and funding process for the transportation projects programmed in the State Transportation Improvement Program by Chapter 622 (SB 45) of the Statutes of 1997; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to execute an agreement with the Department before it can be reimbursed for project expenditures; and

WHEREAS, the Department utilizes Master Agreements for State-Funded Transit Projects, along with associated Program Supplements, for the purpose of administering and reimbursing state transit funds to local agencies; and

WHEREAS, the Transportation Agency for Monterey County wishes to delegate authorization to execute these agreements and any amendments thereto to the Executive Director or Deputy Executive Director.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transportation Agency for Monterey County that the fund recipient agrees to comply with all conditions and requirements set forth in this agreement and applicable statutes, regulations and guidelines for all state-funded transit projects.

NOW THEREFORE, BE IT FURTHER RESOLVED that the Executive Director or Deputy Executive Director be authorized to execute the Master Agreement and all Program Supplements for State-Funded Transit Projects and any Amendments thereto with the California Department of Transportation.

PASSED AND ADOPTED by the Transportation Agency for Monterey County, State of California this 26th day of May 2021, by the following vote:

AYES: Alejo, L; Anderson, Y; Blackwelder, J; Chavez, A; Courtney, C; Craig, K; Dirksen, C; Poduri, C; Kerr, A; LeBarre, M; Lopez, C; M; Oglesby, I; Phillips, J; Potter, D; Smith, E; and Untalon, A.

NOES: None

ABSENT: Rios, J

EDWIN D. SMITH, CHAIR
TRANSPORTATION AGENCY FOR MONTEREY COUNTY

ATTEST:

DEBRA L. HALE, EXECUTIVE DIRECTOR
TRANSPORTATION AGENCY FOR MONTEREY COUNTY