

Attachment A for Agenda File 2018-0284

**Master Agreement Administering  
Agency State Agreement for State  
Funded Projects**



**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**

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

**MASTER AGREEMENT  
STATE FUNDED PROJECTS**

**Effective Date of this Agreement:** JULY 1, 2018

**Termination Date of this Agreement:** JUNE 30, 2023

**Recipient:** SAN DIEGO UNIFIED PORT DISTRICT

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

- ◆ **General Fund**
- ◆ **Section 190**
- ◆ **State Highway Account**
- ◆ **Public Transportation Account**
- ◆ **Proposition 1B, Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006**
- ◆ **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)**

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

**RECITALS:**

1. WHEREAS, the Legislature of the State of California has enacted legislation by which certain State funds are made available for use on local transportation related projects of public entities qualified to act as recipients of these state funds; and
2. WHEREAS, **ADMINISTERING AGENCY** has applied to the California Transportation Commission (CTC) and/or STATE for funding from either the State Transportation Improvement Program (STIP), Proposition 1B, Highway Safety, Traffic Reduction, Air

Quality, and Port Security Bond Act of 2006, Road Repair and Accountability Act of 2017, Senate Bill 1, Section 190 program, or other State-funded programs (herein referred to as STATE FUNDS), as defined in the Local Assistance Program Guidelines (LAPG), for use on local authorized transportation related projects as a local administered project(s), hereinafter referred to as PROJECT; and

3. WHEREAS, before STATE FUNDS will be made available for PROJECT, **ADMINISTERING AGENCY** and **STATE** are required to enter into an agreement to establish terms and conditions applicable to the **ADMINISTERING AGENCY** when receiving STATE FUNDS for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

## ARTICLE I - PROJECT ADMINISTRATION

### 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 RAIL 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 **ADMINISTERING AGENCY**.
- (2) The **STATE** approved project specific allocation letter designate the party responsible for implementing PROJECT, type of work and location of PROJECT.
- (3) The PROGRAM SUPPLEMENT sets out special covenants as a condition for the **ADMINISTERING AGENCY** to receive STATE FUNDS from/through **STATE** for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these STATE FUNDS that have been initially encumbered for PROJECT along with the matching funds to be provided by **ADMINISTERING AGENCY** and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause **ADMINISTERING AGENCY** to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of **ADMINISTERING AGENCY**, and with written concurrence by **STATE**, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of **ADMINISTERING AGENCY**.
- (4) **ADMINISTERING AGENCY** agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that **STATE** may suspend future allocations, encumbrances and invoice payments for any on-going or future STATE FUNDED PROJECT performed by **ADMINISTERING AGENCY** if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.

- (5) **ADMINISTERING AGENCY** further agrees, as a condition to the release and payment of STATE FUNDS encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.
- (6) **ADMINISTERING AGENCY** 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.
- (7) 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.
- (8) 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 **ADMINISTERING AGENCY** 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.
  - d. The Project Financial Plan shall identify estimated expenditures for each PROJECT Component by funding source.
- (9) Adoption and execution of the PROGRAM SUPPLEMENT by **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** to these terms and conditions when performing the PROJECT. Unless otherwise expressly delegated to a third-party in a resolution by **ADMINISTERING AGENCY** governing body, which delegation must be expressly assented to and concurred in by **STATE**, the PROGRAM SUPPLEMENT shall be managed by **ADMINISTERING AGENCY**.
- (10) 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 **ADMINISTERING AGENCY** 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. **ADMINISTERING AGENCY** provides the necessary additional funding, or
  - b. A cost increase in **STATE** share of PROJECT funding is first requested by **ADMINISTERING AGENCY** (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.
- (11) 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, Additional funds Letter by reprogramming and/or savings from another project, or a Time Extension Letter with additional funding as stated in an executed amendment to that PROGRAM SUPPLEMENT.
- (12) When additional State programmed funds are not available, **ADMINISTERING AGENCY** agrees that reimbursements of invoiced PROJECT costs paid to **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** with non-State funds.
- (13) For each approved PROGRAM SUPPLEMENT, **ADMINISTERING AGENCY** 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. **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** as part of a PROGRAM SUPPLEMENT.
- (14) 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.



### B. *Project Overrun*

- (1) If **ADMINISTERING AGENCY** and **STATE** determine, at any time during the performance of a **PROJECT**, that the **PROJECT** budget may be exceeded, **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** or other third party funds that can be made available to complete **PROJECT**.

### C. *Scope of Work*

- (1) **ADMINISTERING AGENCY** 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) **ADMINISTERING AGENCY** acknowledges and agrees that **ADMINISTERING AGENCY** is the sole control and manager of each **PROJECT** and its subsequent employment, operation, repair and maintenance for the benefit of the public. **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** will prepare and submit to **STATE** signed Progress Payment Vouchers/Invoices for actual PROJECT costs incurred and paid for by **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** is exempt from submitting a signed Progress Payment Voucher/Invoices; but is still required to present a progress report Quarterly (Calendar).
- (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 Progress Payment will report the total of PROJECT expenditures from all sources (including those of **ADMINISTERING AGENCY** and third parties) and will specify the percent of State reimbursement requested and the fund source. The Progress Payment should also summarize State money requested by PROJECT component (Project Approval and Environmental Document (PA&ED) and Permits, Plans Specifications, and Estimates (PS&E); Right of Way (ROW); Construction (CON); 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 Progress Payment 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 **ADMINISTERING AGENCY** 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. *Expedited Payments*

Should **ADMINISTERING AGENCY** have a valid Memorandum of Understanding (MOU) for "Expedited Payment" on file with **STATE** Accounting Service Center,

**ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** performance and made a determination that all requirements assumed under this AGREEMENT and the relevant PROGRAM SUPPLEMENT have been satisfactorily fulfilled by **ADMINISTERING AGENCY**.

*C. Advance Expenditure of Local Funds*

Government Code section 14529.17, subdivision (a) (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 **ADMINISTERING AGENCY** match, (if any) or as eligible PROJECT expenditures for reimbursement.

*D. Travel Reimbursement*

Payments to **ADMINISTERING AGENCY** for PROJECT related travel and subsistence expenses of **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** are in excess of those authorized DPA rates, then **ADMINISTERING AGENCY** may be responsible for the cost difference, and any overpayments inadvertently paid by **STATE** shall be reimbursed to **STATE** by **ADMINISTERING AGENCY** on demand.

*E. 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. **ADMINISTERING AGENCY** 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 Final 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. **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** for payment after that one hundred and eightieth (180<sup>th</sup>) 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 Senate Bill (SB) 2800 Agreement for Local Match Fund Credit.
- (2) **ADMINISTERING AGENCY** 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. **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** 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*

**ADMINISTERING AGENCY** shall not make any proposed changes in any of the four PROJECT expenditure Components (PA&ED, PS&E, ROW, and CON), 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.

## **Section 2. Audits and Reports**

### *A. Cost Principles*

- (1) **ADMINISTERING AGENCY** 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) **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by **ADMINISTERING AGENCY** to **STATE**. Should **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** 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) **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY**, 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 and/or bond requirements from the date of final payment to **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY**, 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 **ADMINISTERING AGENCY** pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** contracts with third parties pursuant to Government Code section 8546.7, **ADMINISTERING AGENCY** 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 and/or bond requirements from the date of final payment to **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** shall furnish copies thereof if requested.
- (3) **ADMINISTERING AGENCY**, 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**, **ADMINISTERING AGENCY** and **STATE** agree to conduct, on a monthly and/or quarterly basis, on-site reviews of all aspects of the progress of each PROJECT. **ADMINISTERING AGENCY** agrees, during each monthly and/or 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 month and/or 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) Monthly and/or Quarterly reviews of **ADMINISTERING AGENCY** 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) **ADMINISTERING AGENCY** 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”. 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 Section 190, State Highway Account, Public Transportation Account, Proposition 1B, Proposition 1A, and the Road Repair and Accountability Act of 2017, respectively.
- (2) **ADMINISTERING AGENCY** shall be bound to the terms and conditions of this AGREEMENT; the PROJECT application contained in the PROGRAM SUPPLEMENT (as applicable); and CTC Resolutions 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) **ADMINISTERING AGENCY** shall conform to any and all permit and mitigation duties associated with PROJECT as well as all environmental obligations established in CTC Resolution and/or its successors in place at the time a PROGRAM SUPPLEMENT is signed, as applicable, at the expense of **ADMINISTERING AGENCY** 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) **ADMINISTERING AGENCY** acknowledges when the PROGRAM SUPPLEMENT is executed the **ADMINISTERING AGENCY** 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, Section 190, State

Highway Account, Public Transportation Account, Proposition 1B, Proposition 1A, and the Road Repair and Accountability Act of 2017, respectively.

*B. Administering Agency Resolution*

- (1) **ADMINISTERING AGENCY** has executed this AGREEMENT pursuant to the authorizing **ADMINISTERING AGENCY** resolution, attached as Attachment II to this AGREEMENT, which empowers **ADMINISTERING AGENCY** to enter into this AGREEMENT and which may also empower **ADMINISTERING AGENCY** to enter into all subsequent PROGRAM SUPPLEMENTS adopting the provisions of this AGREEMENT.
- (2) If **ADMINISTERING AGENCY** or **STATE** determines that a separate Resolution is needed for each PROGRAM SUPPLEMENT, **ADMINISTERING AGENCY** will provide information as to who the authorized designee is to act on behalf of the **ADMINISTERING AGENCY** to bind **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** in the event that **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** either cures the default involved or, if not reasonably susceptible of cure within said thirty (30)-day period, **ADMINISTERING AGENCY** proceeds thereafter to complete the cure in a manner and time line acceptable to **STATE**. Any such termination shall be accomplished by delivery to **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** and **STATE** shall meet to attempt to resolve any dispute.
- (3) In the event **STATE** terminates a PROGRAM SUPPLEMENT for convenience and not for a default on the part of **ADMINISTERING AGENCY** as is contemplated in C (1) and (2) above of this Section 3, **ADMINISTERING AGENCY** shall be reimbursed its



authorized costs up to **STATE** proportionate and maximum share of allowable **PROJECT** costs incurred to the date of **ADMINISTERING AGENCY** receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by **ADMINISTERING AGENCY** to effect such termination following receipt of that termination notice.

*D. Third Party Contracting*

- (1) **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY**, 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 **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** 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 pre-award requirements of third party contractor/consultants with local agencies should be consistent with Local Program Procedures (LPP-00-05), a copy of which is attached hereto as Attachment III.

*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 **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY**, 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 **ADMINISTERING AGENCY** or subrecipient with funding provided to **ADMINISTERING AGENCY** under this AGREEMENT. **ADMINISTERING AGENCY**, 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 **ADMINISTERING AGENCY**, 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 **ADMINISTERING AGENCY** will be permitted to make any proposed change in use, **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** (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 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. The Rail PROJECT shall be dedicated to that public use for their full economic life cycle, which, for the purpose of this AGREEMENT, will be determined in accordance with standard national rail 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 **ADMINISTERING AGENCY** from **STATE** if **ADMINISTERING AGENCY**, or a sub-recipient, as applicable, (i) ceases to utilize PROJECT for the original intended public use transportation purposes or (ii) sells or transfers title to or control over PROJECT. If federal funds (meaning only those federal funds received directly by **ADMINISTERING AGENCY** and not federal funds derived through or from the State) have contributed to the PROJECT, **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** 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 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 **ADMINISTERING AGENCY** dedicates the proceeds of such sale or transfer exclusively to a new or replacement **STATE** approved public purpose, which replacement **PROJECT** 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.
- (1) In determining the present fair market value of property for purposes of calculating **STATE** Credit under this **AGREEMENT**, any real property portions of a **PROJECT** site contributed by **ADMINISTERING AGENCY** shall not be included. In determining **STATE**'s proportionate funding participation, **STATE**'s contributions to third parties (other than **ADMINISTERING AGENCY**) shall be included if those contributions are incorporated into the **PROJECT**.
  - (2) Once **STATE** has received the Credit as provided for above because **ADMINISTERING AGENCY**, 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 operation of the **PROJECT** by that successor party under an assignment of **ADMINISTERING AGENCY** duties and obligations), neither **ADMINISTERING AGENCY**, subrecipient, nor any party to whom **ADMINISTERING AGENCY** 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) 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 **ADMINISTERING AGENCY** shall conform to those restrictions as set forth herein and in said bonds.

### G. *Disputes*

**STATE** and **ADMINISTERING AGENCY** shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Division of Rail and Mass Transportation (DRMT) Project Program Manager shall submit to the **STATE** DRMT Branch Manager or designee a written demand for a decision regarding the disposition of any dispute arising under this agreement. DRMT Branch Manager shall make a written decision regarding the dispute and will provide it to the fund **ADMINISTERING AGENCY**. The fund **ADMINISTERING AGENCY** shall have an opportunity to challenge DRMT Branch Manager's determination, but must make that challenge in writing within ten (10) working days to DRMT Branch Manager or his/her designee. [If the fund **ADMINISTERING AGENCY** challenge is not made within the ten (10) day period, DRMT Branch Manager's decision shall become the final decision of the **STATE**.] **STATE** and **ADMINISTERING AGENCY** shall submit written, factual information and supporting data in support their respective positions. The decision of DRMT Branch Manager or his/her designee shall be final, conclusive and binding regarding the dispute, unless **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY**, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to **ADMINISTERING AGENCY** under this AGREEMENT or any PROGRAM SUPPLEMENT or as respects environmental clean up obligations or duties of **ADMINISTERING AGENCY** relative to PROJECT. It is also understood and agreed that, **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** under or in connection with any work, authority, or jurisdiction delegated to **ADMINISTERING AGENCY** under this AGREEMENT and all PROGRAM SUPPLEMENTS.
- (2) **ADMINISTERING AGENCY** shall indemnify, defend and hold harmless **STATE**, the CTC and the State Treasurer relative to any misuse by **ADMINISTERING AGENCY** of State funds, PROJECT property, PROJECT generated income or other fiscal acts or omissions of **ADMINISTERING AGENCY**.

### *I. Labor Code Compliance*

**ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY**.

### *J. Non-Discrimination*

- (1) In the performance of work under this AGREEMENT, **ADMINISTERING AGENCY**, 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. **ADMINISTERING AGENCY**, 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. **ADMINISTERING AGENCY**, 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 4.1 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 **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** under a separate Contract during the performance of this AGREEMENT, **ADMINISTERING AGENCY** shall comply with this AGREEMENT and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.
- (3) **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** assures **STATE** that **ADMINISTERING AGENCY** 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. **ADMINISTERING AGENCY** will award no construction contract unless **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY**, **ADMINISTERING AGENCY** will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or **ADMINISTERING AGENCY** applicable higher goals) in the award of every contract for PROJECT work to be performed under these this AGREEMENT.
- (2) **ADMINISTERING AGENCY** shall have the sole duty and authority under this AGREEMENT and each PROGRAM SUPPLEMENT to determine whether these referenced code sections are applicable to **ADMINISTERING AGENCY** and, if so, whether good faith efforts asserted by those contractors of **ADMINISTERING AGENCY** were sufficient as outlined in Military and Veterans Code sections 999 et seq.

*O. Environmental Process*

Completion of the PROJECT environmental process ("clearance") by **ADMINISTERING AGENCY** (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.

### 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 **ADMINISTERING AGENCY** enters into a management contract with a private party (including AMTRAK) for operation of rail, ferry or other transportation services in connection with PROJECT, **ADMINISTERING AGENCY** 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. **ADMINISTERING AGENCY** must also be prepared to certify, upon request of **STATE**, that the revenues which **ADMINISTERING AGENCY** (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 **ADMINISTERING AGENCY**).
- (2) Except as provided in this Article III, A (1), **STATE** and **ADMINISTERING AGENCY** agree that any costs of PROJECT acquired or constructed by **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** receives any revenues or profits from any NUP activities allowed pursuant to this Article (whether approved at this time or hereafter approved by **STATE**), **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** 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, **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** submits a certified bond certification questionnaire to the **STATE**, and both the **STATE** and the State Treasurer approve the private activities contained therein.

- (4) **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** 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) **ADMINISTERING AGENCY** 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** 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) 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.
- (9) 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 **ADMINISTERING AGENCY**, 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, **ADMINISTERING AGENCY** may allocate grant funds to the cost of



any NUP if (a) neither **ADMINISTERING AGENCY** 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.

- (10) **ADMINISTERING AGENCY** 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 **ADMINISTERING AGENCY** 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.
- (11) For purposes of these fund source allocations, **ADMINISTERING AGENCY** 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 2.5 percent of the total costs of **PROJECT**.

## Section 2. PROJECT MANAGEMENT

- (1) **STATE**'s **PROJECT** administrator for this **AGREEMENT** shall be DRMT Railroad Crossing Safety Programs Branch Manager. **ADMINISTERING AGENCY** General Manager, Executive Director or a Designee as named in writing to **STATE** following execution of this **AGREEMENT** shall be the administrator acting for **ADMINISTERING AGENCY**.
- (2) **PROGRAM SUPPLEMENT** administrators for **STATE** shall be the applicable Division of Rail and Mass Transportation and for **ADMINISTERING AGENCY**, 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**

**RECIPIENT NAME**

**BY:** \_\_\_\_\_  
CARLOS RUIZ, Chief  
Railroad Crossing Safety Programs

**BY:** \_\_\_\_\_  
EXECUTIVE NAME  
Title

APPROVED AS TO FORM AND PROCEDURE

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**BY:** \_\_\_\_\_  
Attorney, California Department of  
Transportation

Attachments:

- (1) Attachment I: CTC Resolution G-91-2
- (2) Attachment II: Local Resolution
- (3) Attachment III: LPP 00-05

**ATTACHMENT I****CTC RESOLUTION G-91-2**

Passed by the CTC on February 21, 1991

**CALIFORNIA TRANSPORTATION COMMISSION  
RESOLUTION G-91-2****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.

*(The following is sample language that could be included in your Board Resolution, necessary for execution of a Master Agreement and Program Supplements with the Department)*

## ATTACHMENT II

### RESOLUTION #\_\_\_\_\_

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

**WHEREAS**, the \_\_\_\_\_ *(Agency)* may receive state funding from the California Department of Transportation (Department) now or sometime in the future for transportation 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 transportation 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 Transportation Projects, along with associated Program Supplements, for the purpose of administering and reimbursing state transportation funds to local agencies; and

**WHEREAS**, the \_\_\_\_\_ *(Agency)* wishes to delegate authorization to execute these agreements and any amendments thereto to the *(Manager, Chief Executive Officer, etc.)*

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the \_\_\_\_\_ *(Agency)* 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 transportation projects.

**NOW THEREFORE, BE IT FURTHER RESOLVED** that the *(Manager, Chief Executive Officer, etc.)* be authorized to execute the Master Agreement and all Program Supplements for State-Funded Transportation Projects and any Amendments thereto with the California Department of Transportation.

**AGENCY BOARD DESIGNEE:**

**BY:** \_\_\_\_\_

**ATTACHMENT III**

**LOCAL PROGRAM PROCEDURES – LPP00-05**

PAGES 1-77

On Website

<http://www.dot.ca.gov/hq/LocalPrograms/lpp/98-09/LPP00-05.pdf>