

0170010
TAMC

Master Agreement State Funded Transit Projects



California Department Of Transportation

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

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

**MASTER AGREEMENT
STATE FUNDED TRANSIT PROJECTS**

EFFECTIVE DATE OF THIS AGREEMENT: July 11, 2001

TERMINATION DATE OF THIS AGREEMENT: July 11, 2011

RECIPIENT: Transportation Agency for Monterey County (TAMC)

**FUNDING SOURCES COVERED BY THIS AGREEMENT AS IDENTIFIED IN EACH
PROGRAM SUPPLEMENT**

- ◆ PASSENGER RAIL AND CLEAN AIR BOND ACT OF 1990 (PROP. 108),
- ◆ CLEAN AIR AND TRANSPORTATION IMPROVEMENT ACT OF 1990 (PROP. 116) BOND FUNDS
- ◆ PUBLIC TRANSPORTATION ACCOUNT FUNDS
- ◆ STATE HIGHWAY ACCOUNT
- ◆ TRAFFIC CONGESTION RELIEF FUND (TCR), GC 14556.40
- ◆ GENERAL FUND
- ◆ OTHER STATE FUNDING SOURCES

This AGREEMENT, entered into effective as of the date set forth above, is between the public entity identified above, 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 the terms and conditions of this AGREEMENT, has been fully executed by both STATE and the RECIPIENT.
- (2) RECIPIENT agrees to complete each defined PROJECT, or the identified PROJECT Phase/Component thereof, as described in the PROGRAM SUPPLEMENT, adopting all of the terms and conditions of this AGREEMENT.

- (3) A financial commitment of **STATE** funds will occur only following the prior execution of this **AGREEMENT** together with the subsequent execution of a detailed and separate **PROGRAM SUPPLEMENT** applicable to each described **PROJECT** being funded.
- (4) **RECIPIENT** further agrees, as a condition to the release and payment of **STATE** funds encumbered for the **PROJECT** described in the **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 generally include: a detailed Scope of Work, including Project Description, Project Schedule, Overall Funding Plan and Project Financial Plan as required by the applicable program guidelines.
 - a. The Scope of Work shall include a detailed description of the **PROJECT** and 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 **STATE** funding program(s) or source(s), the matching funds to be provided by **RECIPIENT** and/or other funding sources, if any. (Project 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 provide estimated expenditures for each 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 fully set forth therein, shall be sufficient to bind the **RECIPIENT** to these terms and conditions when performing the **PROJECT**. Unless otherwise expressly delegated in a resolution by the **RECIPIENT'S** governing body, which delegation is expressly assented to and concurred in by **STATE**, the **PROGRAM SUPPLEMENT** shall be managed by the **RECIPIENT's** governing body.
- (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 the 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 may exceed any said **PROGRAM SUPPLEMENT** cost estimate and the limits of **STATE** 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** and that increase is approved by **STATE** in the form of an Allocation Letter comprising the fund encumbrance document.
- (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 Time Extension Letter as stated in the executed amended **PROGRAM SUPPLEMENT**.
- (9) When additional funds are not available, the **RECIPIENT** agrees that the payment to **STATE** of **PROJECT** invoiced costs will be limited to, and shall not exceed, the amounts already approved in the **PROGRAM SUPPLEMENT** containing **STATE** approved encumbrance documents and that any increases in **PROJECT** costs must be defrayed with non-**STATE** funds.
- (10) For each approved **PROGRAM SUPPLEMENT**, **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of 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 of this **AGREEMENT**, any **PROGRAM SUPPLEMENTS** executed under this **AGREEMENT** for a **PROJECT** with work yet to be completed shall be deemed to extend the term of this Agreement only to the specific Project termination or completion date contemplated by the applicable **PROGRAM SUPPLEMENT** in force at the time the **PROGRAM SUPPLEMENT** was first executed to allow that uncompleted **PROJECT** to be administered under the terms and conditions of this **AGREEMENT**.

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 will bring the Project Budget into balance;

- b. Schedule the projected overrun for discussion at the next Quarterly Review meeting; *and*
- c. Identify the source of additional **RECIPIENT** or other funds, which 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 STATE 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, and repair and maintenance for the benefit of the public. **RECIPIENT** shall be solely responsible for complying with the funding and use restrictions established by statutes from which these funds are derived, the California Transportation Commission (CTC), the State Treasurer, the Internal Revenue Service, the applicable PROGRAM SUPPLEMENT, and this AGREEMENT.

D. *Program Supplement Amendments*

PROGRAM SUPPLEMENT amendments will be required when there are CTC-approved changes to the cost, scope of work, or delivery schedule of a PROJECT from that specified in the original PROJECT Application and 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. 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 STATE funds for PROJECT 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 or phase (environmental and permits, PS&E, right of way, construction, rolling stock, or--if bond funded--private activity usage) and 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**, and which costs are to be credited toward any required local contribution described in Article II, Section 1 of this Agreement pursuant to any applicable prior executed agreement for Local Match Fund Credit between **RECIPIENT** and **STATE**.

B. Advance Payments (TCR Projects Only)

- (1) Advance reimbursement or payments by **STATE** are not allowed except in the case of TCR funded Projects when expressly authorized by CTC.
- (2) For TCR Projects approved for advanced payment allocation by CTC, said advance payment shall be deposited in a prevailing interest rate bearing trust account held by a **STATE** approved FDIC insured financial institution. No interest earned shall 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 together with accrued interest to **STATE**. Interest earned shall be reported to **STATE'S** Project Coordinator on an annual basis and upon final **PROJECT** payment. All interest earned and all unexpended advanced TCR funds shall be returned to **STATE** within 30 days of **PROJECT** completion.
- (3) Advanced payment 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 **PROJECT** costs incurred and paid.
- (4) Payments of non-TCR funds and TCR project funds not authorized for advance payment must be based upon reimbursement for actual allowable **PROJECT** costs already incurred and paid for by **RECIPIENT**. 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 the District Project Administrator.

C. *Expedited Payments (Excludes TCR Projects)*

- (1) Should **RECIPIENT** have a valid Memorandum of Understanding (MOU) for "Expedited Payment" on file with **STATE**'s Accounting Service Center, the **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 and the applicable PROGRAM SUPPLEMENT. Expedited Payments are subject to policies established in the Caltrans Accounting Manual (Expedited Payment is not available for TCR funding). One time payments and final payments eligible for expedited pay pursuant to this Section will have ten percent (10%) of each invoice amount withheld pending approval from **STATE** until **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 CTC approval, to then seek reimbursement for those expenditures following execution of a PROGRAM SUPPLEMENT. **STATE** acknowledges and accepts these 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 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 a PROGRAM SUPPLEMENT expires. **RECIPIENT** has 180 days after that Termination Date to make final payment to PROJECT contractors or vendors, prepare the PROJECT Closeout Report, and submit the final invoice to **STATE** for reimbursement for allowable PROJECT costs.

ARTICLE II – GENERAL PROVISIONS**SECTION 1. FUNDING****A. Local Match Funds**

Paragraphs “A (1) and A (2)” within this Section 1 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 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** as part of a PROGRAM SUPPLEMENT.

B. Funding Contingencies

Delivery by **STATE** of all funds provided pursuant to this AGREEMENT is contingent upon prior budget action by the Legislature, fund allocation by the CTC or the 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 **STATE** funding, as approved by the CTC or the 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 necessary changes in PROJECT funding, scope, or scheduling.

C. Funds Movement

RECIPIENT shall notify **STATE** of any proposed changes in any of the four PROJECT phase expenditure components -- Environmental and Permits, PS&E, Right-of-Way and Construction (including major equipment acquisitions). **STATE** approval must be obtained in writing and **STATE** will also determine whether the proposed change is significant enough to warrant CTC review. Specific rules and guidelines regarding this process may be detailed in the applicable

CTC Resolution, including, but not limited to, numbers G-00-20, and G-00-23 or their successors.

SECTION 2. AUDITS AND REPORTS

A. *Cost Principles*

- (1) **RECIPIENT** agrees to comply with Office of Management and Budget Circular A-87, Cost Principles for State and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (2) **RECIPIENT**'s contractors and subcontractors agree that (a) the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items and (b) they shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT, shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (3) Any PROJECT costs for which **RECIPIENT** has received payment or credit that are determined by subsequent audit to be unallowable under Office of Management and Budget Circular A-87, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by **RECIPIENT** to **STATE**. Should **RECIPIENT** fail to reimburse moneys due **STATE** within 30 days of demand, or within such other period as may be agreed 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.
- (4) **RECIPIENT** agrees to include all PROGRAM SUPPLEMENT(s) adopting the terms of this AGREEMENT in the schedule of projects to be examined in **RECIPIENT**'s annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with Office of Management and Budget Circular A-133.

B. *Record Retention*

- (1) **RECIPIENT**, 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 of 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 years from the date of final payment to **RECIPIENT** under a PROGRAM SUPPLEMENT and shall be held open to inspection and audit by representatives of **STATE**, the California State Auditor, and the auditors of 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 will 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 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 a PROJECT period and for three years from the date of final payment to **RECIPIENT** under any PROGRAM SUPPLEMENT. **STATE**, the California State Auditor, the Federal Highway Administration, or any duly authorized representative of the Federal Government, 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 Section 1 of this ARTICLE II.

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 activities are within the scope of the PROJECT and in compliance with State laws, regulations, administrative requirements, and implementation of the PROJECT under a PROGRAM SUPPLEMENT.

SECTION 3. SPECIAL REQUIREMENTS

A. *California Transportation Commission (CTC) Resolutions*

- (1) **RECIPIENT** shall adhere to applicable CTC policies on “Timely Use of Funds” as stated in Resolutions G-99-25, adopted August 18, 1999, and G-00-20, adopted July 19, 2000, to provide guidance for the use of Proposition 116 and STIP funds, respectively; and Resolution G-00-23 to provide direction on “Timely Use of Funds” addressing the expenditure and reimbursement of TCR funds. These resolutions, and/or successor resolutions in place at the time a PROGRAM SUPPLEMENT is executed, shall be applicable to all Prop 116, STIP and TCR funds (these resolutions do not apply to General Fund money [see Section 3.C.(3)].
- (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-99-25, G-00-20, G-00-23 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 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 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 further financial contribution or obligation of STATE unless a separate PROGRAM SUPPLEMENT expressly provides funding for the specific purpose of hazardous materials remediation.

B. *RECIPIENT Resolution*

- (1) **RECIPIENT** has executed this AGREEMENT pursuant to the authorizing blanket **RECIPIENT** resolution, attached as Attachment I to this Master Agreement, which

empowers **RECIPIENT** to enter into this AGREEMENT and may also empower **RECIPIENT** to enter into all subsequent PROGRAM SUPPLEMENTS adopting the provisions of this AGREEMENT.

- (2) If **RECIPIENT** determines that a 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.

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 30 days after receipt of a Notice of Termination, **RECIPIENT** either cures the default involved or, if not reasonably susceptible of cure within said 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 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 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 fund encumbrance 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 unless specifically made available beyond the end of that Fiscal Year through reappropriation or other equivalent action of the Legislature.
- (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 (1) and (2) above of this Part C of ARTICLE III, **RECIPIENT** shall be reimbursed its authorized costs up to **STATE**'s proportionate and maximum share of allowable PROJECT costs incurred prior to the date of termination.

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 SECTION 3, D (1) of ARTICLE II and Section 1, A (1) and A (2) of ARTICLE I regarding local match funds.

- (2) Any subcontract entered by **RECIPIENT** as a result of this AGREEMENT shall contain all of the provisions of ARTICLE II – GENERAL PROVISIONS and the travel reimbursement provision under ARTICLE I, Section 2, E and state the reimbursement shall be based on actual allowable PROJECT costs already incurred and paid for by the subcontractor.

E. *Change in Funds and Terms/Amendments*

This AGREEMENT and funding for 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 the PROGRAM SUPPLEMENT, subject to the terms and provisions of this AGREEMENT, **RECIPIENT** shall be the sole owner of all improvements and property included in the PROJECT constructed, installed or acquired by **RECIPIENT** with funding provided to **RECIPIENT** under this AGREEMENT. **RECIPIENT** is obligated to continue operation and maintenance of PROJECT dedicated to the public transportation purposes for which PROJECT was initially approved, unless **RECIPIENT** ceases ownership of such PROJECT property; or ceases to utilize PROJECT for the intended public transportation purposes; or sells or transfers title to or control over PROJECT, and **STATE** is refunded the Credits due as provided in this paragraph (4) below.
- (2) Should **State** bond funds be encumbered to fund PROJECT under this AGREEMENT, then at **STATE**'s option, **RECIPIENT** shall be required to first obtain a determination by Bond Counsel acceptable to the State Treasurer's Office that a change in operation, proportion, or scope of PROJECT as proposed by **RECIPIENT** will not adversely affect the tax-exempt status of those bonds before **RECIPIENT** will be permitted to make that change.
- (3) PROJECT right-of-way, PROJECT facilities constructed or reconstructed on a PROJECT site and/or PROJECT property 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 public transit use in the same proportion and scope, and to the same extent as described 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 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 achieved by reconstruction, rehabilitation or enhancements.

- (4) Except as otherwise set forth in this Section 3, **STATE**, or any other assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit (Credit), at **STATE**'s sole option, equivalent to the proportionate **PROJECT** funding participation offered **RECIPIENT** by **STATE** and third parties in the event that **RECIPIENT** ceases to utilize **PROJECT** for the intended public transportation purposes or sells or transfers title to or control over **PROJECT**. **STATE** shall also be entitled to an equivalent acquisition credit for any future purchases or condemnation of all or portions of **PROJECT** by **STATE** or a designated agent of **STATE**. The refund or Credit due **STATE** will be measured by the funding ratio of **STATE** and other third party funding [unless that 3rd Party contributing **PROJECT** funding is also contractually entitled to a similar refund (Credit)] to **RECIPIENT**'s funding participation applied to the then present fair market value of **PROJECT** property acquired or constructed. For vehicles, this refund shall be equivalent to the proportion of the full economic life cycle remaining, multiplied by the non-**RECIPIENT** funds provided for the equipment acquisition. For real property, this credit shall be measured by the funding ratio of **STATE** and other third party funding [unless that 3rd Party is also contractually entitled to a similar refund (Credit)] to **RECIPIENT**'s funding participation applied to the then present fair market value, as determined by **STATE**, of the **PROJECT** property acquired under this AGREEMENT. "Such refund or Credit due **STATE** shall not be required, subject to **STATE** and CTC approval of that intended use, if **RECIPIENT** dedicates the proceeds of such sale or transfer exclusively to **STATE** approved public transportation purposes which are also then converted to being subject to this Credit due **STATE**..."
- (5) In determining the present fair market value of the property for purposes of calculating **STATE**'s Credit under this AGREEMENT, any portions of **PROJECT** site contributed by **RECIPIENT** shall not be included. In determining **STATE**'s proportionate funding participation, **STATE**'s contributions to parties other than **RECIPIENT** shall be included, if made a part of the **PROJECT**.
- (6) Once **STATE** receives the Credit as provided for above because **RECIPIENT** has ceased to utilize **PROJECT** for the described intended public transportation purpose(s), or sold or transferred title to, or control over **PROJECT** to another party, neither **RECIPIENT**, nor any party to whom **RECIPIENT** 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.
- (7) 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 the station and its 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).

- (8) Special conditions apply to any proposed sale or transfer or change of use as respects **PROJECT** property, facilities or equipment acquired with State bond funds and **RECIPIENT** shall conform to those restrictions as set forth in **ARTICLE III, A (1) and B (1)** hereinbelow.

G. *Disputes*

The remedy for the resolution of any claims brought by **RECIPIENT** against **STATE** under this **AGREEMENT** shall be by arbitration. Unless otherwise agreed by **STATE** and **RECIPIENT**, an arbitration shall be conducted by a single arbitrator selected by the parties from the certified list created by the Public Works Contract Arbitration Committee per Public Contract Code Section 10240.

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, pursuant to Government Code Section 895.4, **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 (as defined by Government Code Section 810.8) 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, 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 at the date of Contract award by the **RECIPIENT**.

J. Non-Discrimination

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, or denial of pregnancy 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 7285.0 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 the **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. During performance of this AGREEMENT, **RECIPIENT** shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are applicable to this AGREEMENT by reference. **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

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, the State Fire Marshal shall ensure 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. No construction contract will be awarded by **RECIPIENT** 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 to determine whether these referenced code sections are applicable to **RECIPIENT** and, if so, whether good faith efforts asserted by those contractors were sufficient as outlined in the Military and Veterans Code Sections 999 et seq.

O. Environmental Process

Completion of the environmental process ("clearance") for PROJECT 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 shall 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 by an environmental impact report as mandated by the California Environmental Quality Act (CEQA). California Public Resources Code Section 21080(b)(10), does provide an exemption for a passenger rail PROJECT which 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

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 82-14 (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", if **RECIPIENT** receives any revenues or profits from any NUP 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 **STATE**'s non-**RECIPIENT** percentage of participation in **PROJECT**.
- (3) Notwithstanding the foregoing, **RECIPIENT** may be authorized a private activity allocation of bond proceeds, not to exceed the amount specified in the **PROGRAM SUPPLEMENT**, once **RECIPIENT** submits to **STATE** a completed bond certification questionnaire and the State Treasurer and **STATE** approve that private activity as described 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, which 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. 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 CTC, the Legislature, the Internal Revenue Service or the Federal Transit Administration, **STATE** shall not be held liable for any resulting damage or penalty to **RECIPIENT**.
- (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 the Credits due STATE as provided in Article III, Section A (2) above.

- (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 rail and water borne ferry equipment and all facilities acquired or constructed pursuant to this **AGREEMENT** shall be accessible to persons with physical disabilities, including wheelchair users. All passenger vehicles and vessels acquired pursuant to this **AGREEMENT** shall be accessible to wheelchair users at all stops, stations and terminals, whether or not staffed.
- (9) **RECIPIENT** (other than the transit operator identified in Sections 99633 and 99634 of the Public Utilities Code) shall require that all intercity and commuter rail cars purchased with **PROJECT** funding conform to the California Rail car specifications developed by **STATE** as specified in the Clean Air and Transportation Improvement Act.
- (10) **NUP** shall, for accounting and bookkeeping purposes, 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 or cubic footage/acreage of the area encumbered by the lease or easement relative to the total area acquired or constructed if all such area is of approximately equal value.
- (11) **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 (i) 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 (ii) 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**.
- (12) **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, the **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.

- (13) For purposes of these fund source allocations **RECIPIENT** does not have to take into account as NUP those "incidental uses" of **PROJECT** (for example, advertising billboards, vending machines, telephones, etc.) which meet 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**.

[Prop. 116 Bond Section was combined into the General Bond Section as the various provisions apply to all bond funds.]

SECTION 2. TCRP PROJECTS

A. California Transportation Commission (CTC) Resolutions

The TRAFFIC CONGESTION RELIEF (TCR) ACT OF 2000 (the "ACT"), in Chapter 4.5, was added (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. As directed by the ACT and the CTC established Guidelines, **RECIPIENT** will cause its Resolution to be attached as part of any TCRP funded PROGRAM SUPPLEMENT as a condition precedent to the acceptance of TCR ACT funds.

SECTION 3. PROJECT MANAGEMENT


- (1) The **PROJECT** administrators for this **AGREEMENT** for the **STATE** shall be the Chief, Office of State Transit Program Management of the Mass Transportation Program for TCR projects, and the Chief, Office of State Transit Project Delivery for all other projects, and for **RECIPIENT**, its General Manager, Executive Director or a Designee as named in writing to **STATE** following execution of this **AGREEMENT**.
- (2) **PROGRAM SUPPLEMENT** administrators for **STATE** shall be the 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 MASS TRANSPORTATION**

**TRANSPORTATION AGENCY FOR
MONTEREY COUNTY**

BY: 
PETER J. STEINERT, Chief
Office of State Transit Program Management

BY: 
Lee Yarborough, Executive Director
Transportation Agency for Monterey County

2-15-02
(Please type or print the date here)

10/4/01
(Please type or print the date here)

APPROVED AS TO FORM AND PROCEDURE

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

BY:  02/15/02
(Enter the signee's name here), ATTORNEY (Please type or print the date here)

ATTACHMENT 1

TAMC BOARD RESOLUTION

RESOLUTION # 2001-24

**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 funding from the State of California now or sometime in the future for transit related 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 Traffic Congestion Relief Act of 2000 (the Act) was established by Chapters 91 (AB) 2928) and 92 (SB 496), as amended by SB 1662, of the statutes of 2000, creating the Traffic Congestion Relief Program (TCRP); and

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

WHEREAS, the California Transportation Commission (CTC) guidelines for the Traffic Congestion Relief Program, encourages Caltrans and the implementing agency to maximize the use of existing agreements such as Master Agreements and Program Supplements to expedite development and execution of cooperative agreements; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Transportation Agency for Monterey County that the Agency 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.

WHEREAS, the CTC, who governs the administration of transit related projects, requires a cooperative agreement, for TCRP projects to include a certification, by resolution of the governing board of a local or regional agency, as required by statutes, that it will sustain its level of expenditures for transportation purposes at a level that is consistent with the average of its annual expenditures during the 1997-98, 1998-99, and 1999-2000 fiscal years, including funds reserved for transportation purposes, during the fiscal years that the allocation is available for use; and

**ATTACHMENT II
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.