



**Los Angeles County Service Authority for Freeway Emergencies**  
**Kenneth Hahn Call Box System**

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**SAFE BOARD**  
**OCTOBER 26, 2000**

**SUBJECT: AGREEMENT BETWEEN THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (MTA) AND THE LOS ANGELES COUNTY SERVICE AUTHORITY FOR FREEWAY EMERGENCIES (SAFE) FOR THE RECEIPT OF FEDERAL GRANT FUNDS**

**ACTION: EXECUTE AN AGREEMENT BETWEEN THE MTA AND SAFE FOR THE RECEIPT OF FEDERAL GRANT FUNDS**

**RECOMMENDATION**

Authorize the Chief Executive Officer to enter into an Agreement between the MTA and SAFE to allow the MTA to act as the designated grant recipient for Federal Highway Administration (FHWA) funds on behalf of SAFE.

**ISSUE**

Through the 1999 Call for Projects, SAFE received a Statewide Transportation Improvement Program (STIP) allocation of \$7.5 million. The funds assigned are federal Regional Surface Transportation Program (RSTP) funds. These funds are distributed from FHWA through Caltrans to local agencies. The allocation of federal funds requires local agencies to have certain policies, procedures and capabilities in place before obtaining authorization to receive and use the funds. As this is the first time SAFE will be receiving federal funds, SAFE does not currently have all the requisite administrative policies, procedures and capabilities established to allow SAFE to receive federal funds in a timely manner. Potentially, SAFE could lose the opportunity to receive and use these allocated funds.

**POLICY IMPLICATIONS**

Authorization to execute this Agreement will enable SAFE to receive the \$7.5 million RSTP fund allocation through the MTA. The Agreement will allow SAFE to use approved MTA policies, procedures and programs to satisfy federal funding requirements. Executing this Agreement will not relieve SAFE of its responsibility to properly manage the project being funded with RSTP funds or to adhere to federal guidelines required as a condition of receipt of federal funds.

The Agreement will indicate clearly that any responsibility or liability over the management and operation of the call box system cannot be transferred to the MTA. SAFE will continue to retain all responsibility and liability regarding the operation, maintenance and management of the call box system. The Agreement also will not impose any financial obligation upon the MTA to fund or support the SAFE other than acting as the designated grant recipient for the \$7.5 million RSTP funds allocated to SAFE.

## **OPTIONS**

The Board has the option of not authorizing the execution of this Agreement. This option is not recommended, as it will jeopardize the ability of SAFE to obtain the \$7.5 million RSTP fund allocation. Without the Agreement, SAFE will be required to either: 1) become certified by the FHWA; 2) attempt to trade the federal funds with another agency for nonfederal funds; or 3) forgo the federal funds. Due to the timeline requirements of the *Thalheimer Settlement Agreement*, SAFE would be unable to either become certified by the FHWA or trade the federal funds for nonfederal funds. SAFE, therefore, would have to forgo the federal fund allocation.

## **FINANCIAL IMPACT**

Executing the Agreement will enable SAFE to receive \$7.5 million in federal RSTP funds in a timely manner. Without the Agreement, SAFE may not receive the federal funds in time and may be required to forgo the federal funds. SAFE is also required to provide 11.47% in local match funds, which equates to \$971,705, to receive the federal funds. Without the federal funds, SAFE will be required to fully absorb the cost of the required mobility impaired accessibility system improvements and will be faced with a deficit in the near future.

Any direct costs that MTA incurs in administering the federal grant are reimbursable by SAFE. The costs may include fees, labor, administration and other direct or indirect costs. SAFE will reimburse the MTA through the existing MOU between SAFE and the Public Transportation Services Corporation.

## **BACKGROUND**

SAFE currently receives its funding from a dedicated annual surcharge of \$1.00 for every vehicle registered within Los Angeles County. SAFE has never received any other source of funds beyond the dedicated registration surcharge since its formation in 1988. With the recent allocation of \$7.5 million in federal RSTP funds, SAFE is now required to adhere to federal funding guidelines to receive the RSTP funds. These requirements include establishing and maintaining labor protection, civil rights, financial, procurement and drug-free workplace programs. SAFE currently does not have the capability to fully adhere to the requirements and administer federal funds.

In the past, the MTA has assumed a designated recipient role for federal transit funds on behalf of others. The most recent example is MTA's agreement with Catellus Corporation for the Union Station Pedestrian Improvement Project. Additionally, to address a separate yet similar situation, MTA staff, with the encouragement of the Federal Transit Administration, has

proposed to have the MTA act as the grantee on behalf of cities and local agencies that previously have not received federal transit funds. This will enable the cities and local agencies in question to obtain the federal funds through the MTA.

MTA staff has agreed, pending approval by both the SAFE and MTA Board of Directors, to act as the designated grant recipient for SAFE. This will enable SAFE to continue to receive the federal RSTP funds and fulfill the schedule/timeline requirements of the *Thalheimer Settlement Agreement*.

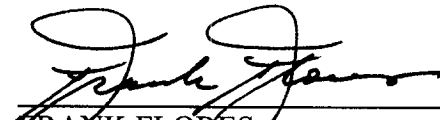
**NEXT STEPS**


Upon approval of the Agreement by both the MTA and SAFE Board of Directors, staff will complete the execution of the Agreement between the MTA and SAFE. The MTA Board is expected to approve the execution of the Agreement at its September 28, 2000 Board meeting. Staff will also work closely with MTA and Caltrans to complete the funding authorization process and to ensure that SAFE can proceed with the required call box system improvements on a timely basis and still receive the RSTP funds.


**ATTACHMENT**

- A. Agreement between the Los Angeles County Service Authority for Freeway Emergencies and the Los Angeles County Metropolitan Transportation Authority

Prepared by: Kenneth Coleman  
Program Manager

  
FRANK FLORES  
Deputy Executive Officer  
Capital Development and Programming

  
JAMES L. de la LOZA  
Executive Officer  
Countywide Transportation Planning  
and Development

  
ALLAN G. LIPSKY  
Office of the Chief Executive Officer

GRANT NO. \_\_\_\_\_

AGMT NO. \_\_\_\_\_

**AGREEMENT**

This Agreement is dated as of October 1, 2000 and is by and between the Los Angeles County Service Authority for Freeway Emergencies (“SAFE”) and the Los Angeles County Metropolitan Transportation Authority (“MTA”).

**RECITALS**

Whereas, SAFE was allocated \$7,500,000 in federal Regional Surface Transportation Program (“RSTP”) funds;

Whereas, SAFE is currently not an eligible recipient of these federal funds;

Whereas, the MTA is an eligible recipient of federal funds and is willing to submit a grant application to the Federal Highway Administration (“FHWA”) on SAFE’s behalf and to enter into a grant agreement with FHWA (the “Grant”) for receipt of these federal RSTP funds.

Whereas, upon award, the Grant will include the Grant Agreement (Exhibit “A-1”), the FHWA Master Agreement (Exhibit “A-2”) and the Certifications and Assurances (Exhibit “A-3”) and will refer to this Agreement to serve as the pass-through agency for the Federal Funds;

Whereas, the total cost for the Call Box Site Improvements (the “Project”) described in the Scope of Work attached as Exhibit “B” hereto is estimated to be \$8,471,705 (“Estimated Cost”), inclusive of the federal RSTP funds and local funds;

Whereas, SAFE has agreed to provide all funding in excess of the federal funds (the “Match”);

Whereas, MTA assumes no responsibility for the funding of any portion of the Project;

Whereas, the MTA Board action of September 28, 2000 authorized the execution of this Agreement with SAFE to carry out the Call Box Site Improvements;

Whereas, the SAFE Board action of September 28, 2000 authorized the execution of this Agreement with MTA to carry out the Call Box Site Improvement;

Whereas, SAFE understands federal funds provided herein are contingent upon the FHWA’s approval of the grant application for each year of congressional appropriations;

NOW, THEREFORE, SAFE and MTA hereby agree as follows:

**AGREEMENT****1. PAYMENT OF FUNDS**

- 1.1. To the extent MTA receives federal RSTP funds pursuant to the Grant, MTA shall forward such federal funds to SAFE pursuant to the Grant and this Agreement.
- 1.2. Payments to SAFE will be processed by MTA within 60 days after receipt of an invoice meeting the requirements of Section 3 of this Agreement.
- 1.3. SAFE shall be subject to, and comply with, all applicable requirements of the Grant and other requirements of the Federal Department of Transportation, FHWA and of the MTA as required by MTA to fulfill its responsibilities as the grantee under the Grant, and as a pass-through agency.

**2. TERM**

The term of this Agreement shall commence upon execution, by MTA and the FHWA, of the Grant for the federal funds and shall terminate upon termination of the Grant.

**3. INVOICE BY SAFE**

SAFE shall submit invoices to the MTA in the form, manner, and schedule specified by the applicable requirements of the MTA and the FHWA. The invoices shall include all supporting information regarding the work performed during the invoicing period. SAFE will be reimbursed federal funds, in an amount not to exceed 88.53% of the total project cost, (less 10% retention) and only up to the amount of actual work completed as indicated in the scope of work schedule and actual inspection. Upon request by MTA, SAFE will provide documentation showing expenditure of the Match amount (not less than 11.47% of the total project cost). The total Project shall include the Estimated Cost, plus or minus overruns or under runs, respectively. Overruns will be funded solely from the Match. In the event of an under run, the maximum amount of federal funds payable will be 88.53% of the total Project Cost, not to exceed the total amount in the Grant.

**4. USE OF FUNDS**

- 4.1. SAFE shall utilize the federal funds and Match to complete the Project as described in the Scope of Work and in accordance with the Grant requirements of the FHWA and this Agreement.
- 4.2. All FHWA guidelines are incorporated by reference herein as part of this Agreement.
- 4.3. The MTA shall not be responsible to provide any funding to substitute for the federal funds in the event the Grant of Federal Funds is withdrawn, recalled or not appropriated for any reason.

**5. REPORTING AND AUDIT REQUIREMENTS**

- 5.1. SAFE shall be subject to and comply with all applicable requirements of the MTA regarding Project reporting and audit requirements. SAFE shall use the FHWA Grant number on all correspondence.
- 5.2. SAFE shall submit the following Reports and Certifications to the MTA for the duration of the Project:
  - Quarterly Narrative and Financial Report on Project Progress
  - Monthly Invoices and Summary of Work Performed in the Billing Period (with all supporting documentation for expenses incurred)
- 5.3. MTA, and/or its designee, in order to fulfill its responsibilities as grantee of the Grant and as the pass-through agency, shall have the right to conduct audits of the Project, as needed, such as financial and compliance audits and performance audits. SAFE shall establish and maintain proper accounting procedures and cash management records and documents in accordance with Generally Accepted Accounting Principles (GAAP). SAFE shall reimburse MTA for any expenditures not in compliance with the Scope of Work or other terms and conditions of this Agreement, other applicable requirements of the MTA or requirements of the Grant or other applicable requirements of the FHWA. MTA shall use the Federal Acquisition Regulations (FAR) standards in determining the reasonableness of costs incurred. MTA shall have the right to conduct a final MTA audit using an outside auditing firm. The findings of that MTA audit will be final.

**6. FUNDS AVAILABILITY**

This Grant is a pass-through Agreement of FHWA grant funds. The Grant consists of a three (3) year allocation, and is subject to the terms and conditions of this Agreement and the Grant and the applicable requirements of the MTA and FHWA. The Grant does not imply nor obligate any future funding commitment on the part of FHWA or the MTA.

**7. EXPENDITURE AND DISPOSITION OF FUNDS**

- 7.1. The expenditure and disposition of the federal funds by SAFE shall be subject to and in accordance with the terms and conditions of this Agreement, the Grant and the applicable requirements of the MTA and FHWA. SAFE shall not utilize the federal funds in any way or on any project other than that specified in this Agreement and the Grant.
- 7.2. Programmed Budget (the "Programmed Budget") for the sources of funds for the Project is attached to this Agreement as Exhibit "C".

- 7.3. At the substantial completion of the Project, SAFE will submit to MTA a Notice of Substantial Completion when (1) the contractor has completed all of the Work, except punch list items, and (2) SAFE has ensured that the Work was performed in accordance with all applicable Project requirements. Within a reasonable time thereafter, SAFE and MTA will inspect the Project Work to ascertain substantial completion and to agree on the punch list. SAFE shall ensure that all punch list items are completed and shall submit a Request for Final Acceptance. Within 30 days thereafter MTA will inspect the Project Work. If accepted, SAFE shall obtain and submit to MTA releases from its contractors and subcontractors. Upon approval of the releases, MTA will release any retention and make final payment. If the Work or releases are not accepted or approved by MTA, SAFE shall perform, or have its contractors perform, such acts as are necessary to obtain acceptance of the Work or releases.
- 7.4. SAFE shall be responsible for any and all cost overruns for the Project as specified in the grant application submitted by MTA.
- 7.5. Upon completion of the Project described in the Scope of Work and disposition of the 10% retention, any unused federal funds shall revert back to the FHWA.
- 7.6. SAFE shall address all correspondence to the FHWA regarding this Project through the MTA Project Manager.
- 7.7. No material changes, as determined by the MTA in its reasonable discretion and subject to the final discretion of the FHWA, to the Programmed Budget or the Scope of Work shall be funded or allowed without an amendment to this Agreement approved and signed by the MTA Chief Executive Officer or his designee. SAFE shall give advance notice to the MTA of all proposed changes to the Programmed Budget or Scope of Work that SAFE submits to the MTA.

## **8. TIMELY USE OF FUNDS.**

- 8.1. SAFE shall obligate federal funds programmed under this Agreement within two (2) years from the first day of the Fiscal Year in which federal funds were appropriated, unless otherwise stated in this Agreement.
- 8.2. SAFE must execute this Agreement within 90 days after MTA Board approval and demonstrate evidence of timely obligation of federal funds programmed for the Project within the time period described in section 8.1 of this Agreement. Evidence of timely obligation will be a signed "Request for Approval/To Proceed."
- 8.3. In the event this Agreement is not executed and/or evidence of timely obligation of Federal Funds is not provided as described in sections 8.1 and 8.2 of this Agreement, the Project will be reevaluated by MTA and the federal funds may be deobligated consistent with FHWA requirements. In the event the federal funds are deobligated, this Agreement shall automatically terminate.

**9. DEFAULT**

A Default under this Agreement is defined as any one or more of the following: (i) SAFE fails to comply with the terms and conditions contained in this Agreement or the Grant; (ii) SAFE fails to perform satisfactorily or to make sufficient progress toward completion, or in breach of Section 7.6 makes a material change to the Scope of Work or the Programmed Budget without MTA's prior written consent or approval; or (iii) SAFE is in default of any other applicable requirements of the MTA or the FHWA.

**10. REMEDIES**

- 10.1. In the event of a Default by SAFE, MTA shall provide written notice of such Default to SAFE with a 30-day period to cure the Default. In the event SAFE fails to cure the Default, or commit to cure the Default and commence the same, within such 30 day period and to the satisfaction of MTA, MTA shall have the following remedies: (i) MTA may terminate this Agreement; (ii) MTA may make a determination to make no further disbursements of Federal Funds to SAFE; and/or (iii) MTA may recover from SAFE any Federal Funds disbursed to SAFE prior to and after the Default.
- 10.2. Effective upon receipt of written notice of termination from MTA, SAFE shall not undertake any new work or obligation with respect to this Agreement unless so approved by MTA in writing, in which case the disbursement of funds shall continue in accordance with this Agreement.
- 10.3. The remedies described herein are non-exclusive. MTA shall have the right to enforce any and all rights and remedies herein or which may be now or hereafter available at law or in equity.

**11. OTHER TERMS AND CONDITIONS**

- 11.1. This Agreement, along with the applicable requirements of the FHWA, MTA and the Grant, constitutes the entire understanding between the parties, with respect to the subject matter herein. The Agreement shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties who agreed to the original Agreement or the same level of authority.
- 11.2. In the event that there is any legal court (e.g. Superior Court of the State of California, County of Los Angeles, or the U.S. District Court for the Central District of California) proceeding between the parties to enforce or interpret this Agreement, or the applicable requirements of the MTA, to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees.
- 11.3. SAFE shall retain all original records and documents related to the work herein for a period of three (3) years after Project Completion or in accordance with the applicable requirements of the MTA, whichever time period is greater.



- 11.4. Neither the MTA nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or committed to be done by SAFE under or in connection with any work performed by and or service provided by SAFE, its officers, agents, employees and subcontractors under this Agreement. SAFE shall fully indemnify, defend and hold the MTA, and its officers, agents and employees harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever arising out of: (i) misuse of the Funds by SAFE, or its officers, agents, employees or subcontractors; (ii) breach of the SAFE obligations under this Agreement; or (iii) any act or omission of SAFE, or its officers, agents, employees or subcontractors in the performance of the work or the provision of the services, including, without limitation, the Scope of Work, described in this Agreement.
- 11.5. Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, floods, earthquake, fires, acts of a public enemy, strike and/or work stoppages, and government acts beyond the control and without fault or negligence of the affected party. Each party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder, or prevent performance of any obligations under this Agreement.
- 11.6. SAFE shall comply with and ensure that work performed under this Agreement is done in compliance with Generally Accepted Accounting Principles (GAAP), all applicable provisions of federal, state, and local laws, statutes, ordinances, rules, regulations, and procedural requirements and the applicable requirements and regulations of the MTA.
- 11.7. SAFE shall not assign this Agreement, or any part thereof, without written consent and prior approval of the MTA Chief Executive Officer or his designee, and any assignment without said consent shall be void and unenforceable.
- 11.8. Subject to all requirements of this Agreement and the Grant, and all other applicable requirements of the MTA and FHWA, including without limitation the requirement that design and construction services be competitively procured, SAFE may contract with other entities, including its affiliates in a project management role, to implement this Project.
- 11.9. This Agreement shall be governed by California law and applicable federal law. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- 11.10. The terms of this Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.

- 11.11. Notice will be given to the parties at the address specified below unless otherwise notified in writing of change of address:

MTA's Address:

Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

SAFE's Address:

Los Angeles County Service Authority for Freeway Emergencies  
One Gateway Plaza, Mail Stop 99-13-12  
Los Angeles, CA 9012  
Attention: Mr. Kenneth Coleman

- 11.12. SAFE in the performance of the work required by this Agreement is an independent contractor and not an agent or employee of the MTA and attests to no organizational or personal conflicts of interest and agrees to notify the MTA immediately in the event that a conflict, or the appearance thereof, arises. SAFE shall not represent itself as an agent or employee of the MTA and shall have no powers to bind the MTA in contract or otherwise.
- 11.13. Notwithstanding, MTA's role as the federal RSTP grant fund recipient, nothing contained in this Agreement nor required in the performance of this Agreement transfers any responsibility or liability from SAFE to the MTA for the management, operation, maintenance or administration for the programs and projects managed and operated by SAFE. This includes any responsibility to fund, manage, maintain or operate the Call Box Site Improvements project being funded under this Agreement.

Grant Number \_\_\_\_\_

AGMT # \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the dates indicated below:

LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION  
AUTHORITY

LOS ANGELES COUNTY  
SERVICE AUTHORITY FOR  
FREEWAY EMERGENCIES

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Lloyd W. Pellman  
County Counsel

By: \_\_\_\_\_  
Nina Webster  
Deputy County Counsel

Date: \_\_\_\_\_