



Los Angeles County

Service Authority for Freeway Emergencies

AGENDA

**LOS ANGELES COUNTY
SERVICE AUTHORITY FOR FREEWAY EMERGENCIES
(SAFE)**

**REGULAR BOARD MEETING
BOARD OF DIRECTORS
MTA Headquarters
3rd Floor - Board Room
One Gateway Plaza
Los Angeles**

Thursday, February 24, 2000 - 9:30 AM

Call to order:

Directors:

Yvonne Brathwaite Burke, Chair
James Cragin, First Vice Chair
Richard Riordan, Second Vice Chair
Michael Antonovich
Hal Bernson
Jaime de la Vega
John Fasana
Don Knabe
Jose Legaspi
Gloria Molina
Jenny Oropeza
Frank Roberts
Zev Yaroslavsky
Tony V. Harris, Ex Officio

SERVICE AUTHORITY FOR FREEWAY EMERGENCIES BOARD RULES (ALSO APPLIES TO BOARD COMMITTEES)

PUBLIC INPUT

The meetings of the Service Authority for Freeway Emergencies Board are open to the public. A member of the public may address the Board on the subject of one or more agenda items and/or other items of interest which are within the subject matter jurisdiction of the Service Authority for Freeway Emergencies. The total presentation for any combination of agenda items and non-agenda items addressed shall not exceed two minutes in length. **A request to address the Board must be submitted in person at the meeting to the Board Secretary prior to the start of the meeting.**

All Public Comment will be heard at the end of each meeting. Each individual will have the opportunity to speak only once at the time Public Comment is heard and should include all comments for all items. The Public Comment period will last thirty minutes maximum in length. Speakers will be called according to the order in which the speaker request forms are received until the thirty minute period has expired. The Chair may limit the public input on any item or the total amount of time allocated for public testimony based on the number of people requesting to speak and the business of the Board. **If you are a party to a specific item, you will be called upon to speak at the time that issue is being considered.**

In accordance with Government Code Section 54954.3(a) the Chair may from time to time dispense with public comment on items previously considered by a committee composed exclusively of Board members.

In accordance with State Law (Brown Act), all matters to be acted on by the SAFE Board must be posted at least 72 hours prior to the Board meeting. In case of emergency, or when a subject matter arises subsequent to the posting of the agenda, upon making certain findings, the Board may act on an item that is not on the posted agenda.

CONDUCT IN THE BOARD ROOM The following rule pertains to conduct at Service Authority for Freeway Emergencies meetings:

REMOVAL FROM THE BOARD ROOM The Chair shall order removed from the Board Room any person who commits the following acts with respect to any meeting of the SAFE Board:

Disorderly behavior toward the Board or any member of the staff thereof, tending to interrupt the due and orderly course of said meeting.

A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due and orderly course of said meeting.

Disobedience of any lawful order of the Chair, which shall include an order to be seated or to refrain from addressing the Board; and

Any other unlawful interference with the due and orderly course of said meeting.

INFORMATION RELATING TO AGENDAS AND ACTIONS OF THE BOARD

Agendas for the Regular SAFE Board meetings are prepared by the Board Secretary and are available prior to the meeting in the SAFE Records Management Department and on the Internet.

Every meeting of the SAFE Board of Directors is recorded on cassette tapes, and duplicate tapes are available for a nominal charge. A Spanish language translator is available at all Board Meetings. Translators for other languages must be requested 72 hours in advance.

After each Board meeting, a record is prepared which indicates the actions taken by the Board. This record is available on the second business day following the meeting.

DISCLOSURE OF CONTRIBUTIONS

The State Political Reform Act (Government Code Section 84308) requires that a party to a proceeding before an agency involving a license, permit, or other entitlement for use, including all contracts (other than competitively bid, labor, or personal employment contracts), shall disclose on the record of the proceeding any contributions in an amount of more than \$250 made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. Persons required to make this disclosure shall do so by filling out a "Disclosure of Contribution" form which is available at the LACSAFE Board and Committee Meetings. Failure to comply with this requirement may result in the assessment of civil or criminal penalties.

ADA REQUIREMENTS

A cordless microphone is available for those persons with mobility impairments who cannot access the public speaking area. Sign language interpreter services are available by giving notice at least three business days in advance of the meeting. Please telephone (213) 922-4600 between 8 a.m. and 5 p.m., Monday through Friday. Our TDD line is (800)252-9040.

HELPFUL PHONE NUMBERS

Copies of Agendas/Record of Board Action/Cassette Tapes of Meetings - (213) 922-2335 (Records Management Department)

General Information/Rules of the Board - (213) 922-4600

Internet Access to Agendas - www.SAFE.net

TDD line (800) 252-9040

NOTE: ACTION MAY BE TAKEN ON ANY ITEM IDENTIFIED ON THE AGENDA.

1. AUTHORIZE the CEO to execute the following **interagency agreements for 1999 STIP funds**:
 - A. Letter of Agreement (LOA) with the Los Angeles County Metropolitan Transportation Authority (MTA); and
 - B. Administering Agency-State Master Agreement with the California Department of Transportation (Caltrans).

Consideration of items not on the posted agenda, including: items to be presented and (if requested) referred to staff; items to be placed on the agenda for action at a future meeting of the Board; and/or items requiring immediate action because of an emergency situation or where the need to take immediate action came to the attention of the Board subsequent to the posting of the agenda.

COMMENTS FROM THE PUBLIC ON ITEMS OF PUBLIC INTEREST WITHIN
COMMITTEE'S SUBJECT MATTER JURISDICTION

ADJOURNMENT



Los Angeles County

Service Authority for Freeway Emergencies

**SAFE BOARD
FEBRUARY 24, 2000**

**SUBJECT: STATE TRANSPORTATION IMPROVEMENT PROGRAM (STIP)
ALLOCATION AGREEMENTS**

**ACTION: AUTHORIZE THE EXECUTION OF INTERAGENCY AGREEMENTS
WITH THE LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY AND THE CALIFORNIA
DEPARTMENT OF TRANSPORTATION REQUIRED AS A CONDITION
TO RECEIVE STIP FUNDING**

RECOMMENDATION

Authorize the SAFE Chief Executive Officer to execute the following interagency agreements for 1999 STIP funds:

- A) Letter of Agreement (LOA) with the Los Angeles County Metropolitan Transportation Authority (MTA);
- B) Administering Agency-State Master Agreement with the California Department of Transportation (Caltrans).

ISSUE

The execution of the LOA and Master Agreement is required as a condition for SAFE to obtain the \$7.5 million allocation programmed in the 1999 Amended STIP for mobility impaired accessibility improvements to the call box system.

OPTIONS

The SAFE Board has the option of not authorizing the execution of these agreements. This option is not recommended as it will negate the ability of SAFE to obtain the \$7.5 million allocation.

FINANCIAL IMPACT

The \$7.5 million funding allocation from 1999 STIP funds enables SAFE to cover capital costs that will be incurred through the implementation of mobility impaired accessibility improvements

to the Kenneth Hahn Call Box System. The 1999 STIP funding completes the five (5) year capital plan requirements for the SAFE.

BACKGROUND

At the March 1999 SAFE Board meeting, the Board approved the settlement of the *Thalheimer* suit against SAFE. One of the conditions of the *Thalheimer Settlement Agreement* was that SAFE would spend a maximum of \$7.5 million to improve the accessibility of the call box system for individuals who may be mobility impaired. As a result of this requirement, a 10-Year financial forecast projects that with regularly scheduled maintenance and replacement costs, SAFE will be in a deficit without the infusion of the capital funds programmed from the STIP. To continue the operation of the SAFE Call Box System in Los Angeles County the MTA, at its July 1999 Board meeting, programmed STIP funds that will enable SAFE to recover the capital costs of the improvements.

NEXT STEPS

SAFE will continue to adhere to the provisions agreed upon in *the Thalheimer Settlement Agreement*. SAFE anticipates the entire capital improvement project to be completed within 36 months of initiation, per the terms of the settlement agreement.

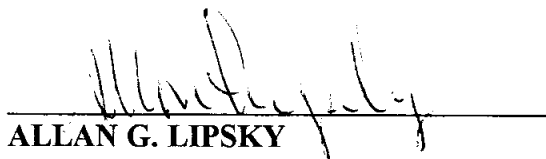
ATTACHMENT

- A. Letter of Agreement with the Los Angeles County Metropolitan Transportation Authority (MTA);
- B. Administering Agency-State Master Agreement with the California Department of Transportation.

Prepared by: Kenneth Coleman
Program Manager



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



ALLAN G. LIPSKY
Office of the Chief Executive Officer

December 29, 1999

Frank Flores
Los Angeles County Service Authority for Freeway Emergencies
One Gateway Plaza
Los Angeles, CA 90012

**RE: LETTER OF AGREEMENT (LOA) FOR PROJECTS PROGRAMMED
THROUGH THE 1998 STATE TRANSPORTATION IMPROVEMENT
PROGRAM (STIP) AND STIP AUGMENTATION**

Dear Mr. Flores:

As part of the MTA 1998 State Transportation Improvement Program (STIP), the Los Angeles County Metropolitan Transportation Authority (MTA), at its meetings of January 14, 1998 and July 29, 1999, and the California Transportation Commission (CTC), at its meeting of June 3, 1998 and December 1999, authorized the programming of funds to the Call Box ADA Retrofit project subject to the terms and conditions contained in the Letter of Agreement (LOA).

The terms and conditions of this LOA consist of the following and each is incorporated by reference herein as if fully set forth herein: Specific Terms of the LOA, General Terms of the LOA, Attachment A - the Programmed Budget, Attachment B - the Financial Plan, Attachment C - the Scope of Work, and any other attachments or documents referenced therein.

Please acknowledge your acceptance and agreement to the terms and conditions of this LOA by signing below.

Very truly yours,

Julian Burke
Chief Executive Officer

Accepted and Agreed to:

By:

Name: Frank Flores

Title: Deputy Executive Officer

Date: _____

For Agency Use Only

LOA # _____

STPL# _____

STATE TRANSPORTATION IMPROVEMENT PROGRAM LETTER OF AGREEMENT

PART I SPECIFIC TERMS OF THE LOA

1. Title of the Project (the "Project"): Call Box ADA Retrofit
2. (a) Amount of Funds Programmed (the "Funds"): \$7,500,000. MTA Board action of January 14, 1998 and July 29, 1999, and California Transportation Commission (the "Commission") approval of June 3, 1998 and December 1999, programmed funds to Project Sponsor for the Project for four (4) years, Fiscal Year(s) (FY) 00/01, 01/02, 02/03 and 03/04.
(b) **This grant is subject to the availability of funds. If at any point in time any portion of the funding identified in this grant has not yet been disbursed, the availability of funds for any further disbursements will depend on a number of factors, including but not limited to, legal proceedings which could affect the MTA's authority or ability to continue to provide such funding. The MTA Board of Directors approved funding for this grant with the condition that such funding is to be considered contingent until actually disbursed. Funding amounts identified in this grant, which at any point in time have not yet been disbursed by the MTA are subject to reconsideration by the MTA Board of Directors if and to the extent that any such funds are legally usable, or could be made legally usable, for bus capital or operating expenses.**
3. The Funding Agency for this Project (the "Agency") is: CALTRANS
4. Reports and Certifications to be submitted to MTA by Project Sponsor:
 - ! Quarterly Narrative Update on Project progress
 - ! Copies of all reports and information submitted to the Agency

STIP - Letter of Agreement (LOA)

5. Pursuant to Part II Section 8, Project Sponsor will submit to MTA copies of Agency Grant Applications, "Request for Approval/To Proceed" documents (Caltrans Form FNM-76), and/or Fund Transfer Agreements.
6. Programmed Budget (the "Programmed Budget") for the sources of funds programmed for the Project is attached to this LOA as Attachment A.
7. Financial Plan (the "Financial Plan") for the Project is attached to this LOA as Attachment B.
8. Scope of Work (the "Scope of Work") for the Project is attached to this LOA as Attachment C.
9. Specific Conditions for the Project, if any, are attached to this LOA as Attachment D.
10. No material changes, as determined by the MTA at its sole discretion, to the Programmed Budget or the Scope of Work shall be funded or allowed without an amendment to the original LOA approved and signed by the MTA Chief Executive Officer or his designee. Project Sponsor shall give advance notice to MTA of all proposed changes to the Programmed Budget or Scope of Work that Project Sponsor submits to the Agency.
11. MTA's Address:
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Attention: Mr. Julian Burke
12. Project Sponsor's Address:
Los Angeles County Service Authority for Freeway Emergencies
One Gateway Plaza
Los Angeles, CA 90012
Attention: Mr. Byron Lee

PART II
GENERAL TERMS OF THE LOA

1. **PAYMENT OF FUNDS.** Project Sponsor shall receive the Funds directly from the Agency pursuant to a separate agreement with the Agency. **Project Sponsor cannot be reimbursed for any cost incurred without prior authorization from the Agency.** Project Sponsor shall be subject to, and comply with, all applicable requirements of the Agency and of the MTA as required by MTA to fulfill its responsibilities as the programming agency. The allowability of expenditures, the cost reimbursement schedule, eligibility issues, resolution of disputes, and all other issues relating to this LOA shall be subject to the rules, regulations, and requirements of the Agency and MTA as the programming agency.

2. **TERM.** The term of this LOA shall commence on July 1, 2000, and shall terminate upon Project Completion unless terminated earlier as provided herein. For purposes of this LOA, Project Completion is defined as the time at which the agreed upon Scope of Work, as more particularly described in Attachment C attached hereto (the "Scope of Work"), has been completed and signed-off by the MTA Project Manager, all MTA and Agency audit and reporting requirements have been satisfied, all applicable requirements of the Agency have been met, and the final disbursement of the Funds has been made to Project Sponsor.

3. **INVOICE BY PROJECT SPONSOR.** Project Sponsor shall submit invoices to the Agency in the form, manner, and schedule specified by the applicable requirements of the Agency.

4. **USE OF FUNDS.**

4.1 Project Sponsor shall utilize the Funds to complete the Project as described in the Scope of Work and in accordance with the applicable requirements of the Agency.

4.2 Attachment C shall constitute the agreed upon Scope of Work between MTA and Project Sponsor for the Project. The Funds, as programmed under this LOA, can only be used towards the completion of this Scope of Work. Project Sponsor shall also be subject to and comply with all applicable requirements of the Agency administering this Project in regards to changes in the Scope of Work and/or Project schedule.

5. **REPORTING AND AUDIT REQUIREMENTS.**

5.1 Project Sponsor shall be subject to and comply with all applicable requirements of the Agency regarding Project reporting and audit requirements.

STIP - Letter of Agreement (LOA)

5.2 MTA, and/or its designee, in order to fulfill its responsibilities as the programming agency, shall have the right to conduct audits of the Project, as needed, such as financial and compliance audits; pre-award audits and performance audits. Project Sponsor agrees to establish and maintain proper accounting procedures and cash management records and documents in accordance with Generally Accepted Accounting Principles (GAAP). Project Sponsor shall reimburse MTA and/or the Agency for any expenditures not in compliance with the Scope of Work and/or not in compliance with other terms and conditions as defined by this LOA or the applicable requirements of the Agency. MTA shall consider the Federal Acquisition Regulations (FAR) in determining the reasonableness of costs incurred. The findings of the MTA audit are final.

6. **ONE TIME GRANT.** This is a one time only grant subject to the terms and conditions agreed to herein and the applicable requirements of the Agency. This grant does not imply nor obligate any future funding commitment on the part of MTA or the Agency.

7. **EXPENDITURE AND DISPOSITION OF FUNDS.**

7.1 The expenditure and disposition of the Funds by Project Sponsor shall be subject to and in accordance with the terms and conditions of this LOA and the applicable requirements of the Agency. Project Sponsor shall not utilize the Funds in any other way or on any other project than that specified in this LOA and the applicable requirements of the Agency.

7.2 Project Sponsor shall be responsible for any and all cost overruns for the Project.

7.3 Project Sponsor shall be eligible for the Funds up to the programmed amount specified in Part I, Section 2 of this LOA subject to the terms and conditions contained herein and in all applicable requirements of the Agency.

7.4 Subject to the requirements and regulations of the Agency, and to the extent allowed by the Agency, any underruns to the Programmed Budget shall be apportioned between MTA and Project Sponsor in the same proportion as the Sources of Funds from each party to this LOA as specified in Attachment A to this LOA. Upon completion of the Project described in the Scope of Work and subject to the requirements and regulations of the Agency, and to the extent allowed by the Agency, any unused allocation of the Funds shall revert back to MTA for future programming at MTA's discretion.

8. **TIMELY USE OF FUNDS / REPROGRAMMING OF FUNDS.**

8.1 Programmed funds are available for allocation by the Commission only until the end of the Fiscal Year (FY) for which they are programmed. After funds are allocated by the Commission for construction or capital purchase, the project sponsor has twelve (12) months to award a contract; otherwise, funds will be rescinded with no adjustment to Los Angeles County STIP shares. After award of a contract, the local agency has up to thirty-six (36) months to complete such contract and expend the funds. Funds allocated by the Commission for project development or right-of-way costs must be expended by the second FY following the year the funds were allocated. The legislation permits the Commission to extend each of these deadlines one time for up to 20 months if it finds that an unforeseen and extraordinary circumstance beyond the control of the project sponsor has occurred that justifies the extension. At the end of the three (3) year period and subject to the requirements and regulations of the Agency and the Commission, and to the extent allowed by the Agency and the Commission, Project Sponsor shall return any Funds not obligated to the State Highway Account for future programming at the Commission's discretion. Funds programmed for FY 1999-00 are subject to lapse on June 30, 2002. Funds programmed for FY 2000-01 are subject to lapse on June 30, 2003. Funds programmed for FY 2001-02 are subject to lapse on June 30, 2004. Prior to an allocation, a STIP amendment reprogramming funds to a later year will postpone the application of the lapsing provision.

8.2 Project Sponsor must execute this LOA by the last day of February of the first Fiscal Year in which the Funds are programmed and demonstrate evidence of timely obligation of Funds programmed for the Project within the time period described in Part II, Section 8.1 of this LOA. Evidence of timely obligation include a signed "Request for Approval/To Proceed" document (Caltrans Form FNM-76) or a signed Grant Application document with the Agency.

9. **DEFAULT.** A Default under this LOA is defined as any one or more of the following: (i) Project Sponsor fails to comply with the terms and conditions contained herein; or (ii) Project Sponsor fails to perform satisfactorily or makes a material change, as determined by MTA at its sole discretion, to the Plan, the Scope of Work, or the Programmed Budget without MTA's prior written consent or approval as provided herein or (iii) Project Sponsor is in default with the Agency.

10. **REMEDIES.**

10.1 In the event of a Default by Project Sponsor, MTA shall provide written notice of such Default to Project Sponsor with a 30-day period to cure the Default. In the event Project Sponsor 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 LOA; (ii) MTA may cause the Agency to make no further disbursements of Funds to Project Sponsor; and/or (iii) MTA may cause Agency to recover from Project Sponsor any Funds disbursed to Project Sponsor prior to and after the Default.

STIP - Letter of Agreement (LOA)

10.2 Effective upon receipt of written notice of termination from MTA, Project Sponsor shall not undertake any new work or obligation with respect to this LOA unless so directed by MTA in writing.

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 LOA, along with the applicable requirements of the Agency, constitutes the entire understanding between the parties, with respect to the subject matter herein. The LOA shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties who agreed to the original LOA 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 LOA, or the applicable requirements of the Agency, 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 Project Sponsor 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 Agency, 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 omitted to be done by Project Sponsor under or in connection with any work performed by and or service provided by Project Sponsor, its officers, agents employees and subcontractors under this LOA or the Guidelines. Project Sponsor 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 Project Sponsor, or its officers, agents, employees or subcontractors; (ii) breach of the Project Sponsor's obligations under this LOA; or (iii) any act or omission of the Project Sponsor, or its officers, agents, employees or subcontractors in the performance of the work or the provision of the services, including, without limitation, described in this LOA.

STIP - Letter of Agreement (LOA)

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, acts of a public enemy, 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 LOA.

11.6 Project Sponsor shall comply with and insure that work performed under this LOA is done in compliance with Federal Agency Regulations (FAR), 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 Agency, the Commission and MTA.

11.7 Project Sponsor shall not assign this LOA, 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 This LOA shall be governed by California law. If any provision of this LOA 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.

11.9 The terms of this LOA shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.

11.10 Project Sponsor agrees that all literature, advertisements, brochures, video, radio and public service announcements, construction site signs, and all other materials relating to the Project and distributed to the public will contain recognition of the MTA's contribution as well as the approved METRO logo. If applicable, Project Sponsor agrees to display the METRO logo on its buses, shuttle buses, vans, and taxis utilized for services provided under this Project. The METRO logo is a copyrighted symbol which shall be reproduced and displayed in accordance with specific graphic guidelines available from the MTA Graphics Department at the address in Part I, Section 10 of this LOA. Project Sponsor agrees to follow directions of the MTA Marketing Department to comply with this Section of the LOA.

11.11 Notice will be given to the parties at the address specified in Part I, Sections 10 and 11 unless otherwise notified in writing of change of address.

11.12 Project Sponsor in the performance of the work required by this LOA 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. Project Sponsor 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.

ADMINISTERING AGENCY - STATE AGREEMENT
FOR
STATE FUNDED PROJECTS

xx xx
District Administering Agency

Agreement No. _____

THIS AGREEMENT, made effective this ____ day of _____, 199__, is by and between (inset AGENCY name), a city, county, or other public entity, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation, hereinafter referred to as "STATE."

WITNESSETH

WHEREAS, the Legislature of the State of California has enacted legislation by which certain State funds are made available for use on local transportation facilities and ADMINISTERING AGENCY has applied to the California Transportation Commission (CTC) and/or STATE for funding from the State Transportation Improvement Program (STIP) or other programs as defined in the *Local Assistance Program Guidelines* for use on those local transportation facilities as local administered PROJECT(s), hereinafter referred to as "PROJECT"; and

WHEREAS, as provided by STATE policy, said PROJECT will not receive any federal funds; and

WHEREAS, STATE is required to enter into an AGREEMENT with ADMINISTERING AGENCY to delineate those certain obligations placed upon ADMINISTERING AGENCY relative to said State funding and the prosecution of said PROJECT by ADMINISTERING AGENCY.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any programmed PROJECT unless and until a PROJECT-specific program supplement, adopting the terms of this AGREEMENT, hereinafter referred to as "PROGRAM SUPPLEMENT," has been fully executed by the parties.
2. The Financial commitment of State funds will occur only following the execution of this AGREEMENT and the subsequent execution of each applicable PROJECT-specific PROGRAM SUPPLEMENT.
3. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of State funds encumbered to the PROJECT described in the PROGRAM SUPPLEMENT, to comply with the terms of this AGREEMENT and all of 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.

4. The PROGRAM SUPPLEMENT shall designate the ADMINISTERING AGENCY responsible for implementing the various phases of the PROJECT, the State funding program, and the matching funds to be provided by ADMINISTERING AGENCY and/or STATE. 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 the ADMINISTERING AGENCY to these terms and conditions when performing the PROJECT. Unless otherwise expressly delegated in a resolution by the ADMINISTERING AGENCY'S governing body and concurred in by STATE, the PROGRAM SUPPLEMENT shall be managed by the ADMINISTERING AGENCY'S governing body.

5. PROJECT shall be acquired, designed, and constructed as required in the *Local Assistance Program Guidelines*, such other STATE procedures as are identified in the PROGRAM SUPPLEMENT, and as is specified in this AGREEMENT.

6. Unless otherwise provided in the PROGRAM SUPPLEMENT, the ADMINISTERING AGENCY shall advertise, award, and administer the PROJECT construction contract or contracts.

7. The estimated cost and scope of PROJECT will be as described in the PROGRAM SUPPLEMENT and State funding participation is limited to the amounts established by STATE. A contract for an amount in excess of said approved estimate may be awarded and expenditures may exceed said estimate provided ADMINISTERING AGENCY provides the necessary additional funding or a PROJECT cost increase in State funding is first requested by ADMINISTERING AGENCY and is approved by STATE in the form of an amended PROGRAM SUPPLEMENT or a STATE approved encumbrance document adding or deleting PROJECT funds.

8. Subsequent to the inclusion of the PROJECT in a plan or program approved by STATE and the ADMINISTERING AGENCY entering into this AGREEMENT and the PROJECT specific PROGRAM SUPPLEMENT, the ADMINISTERING AGENCY may request and receive payment for eligible work as follows:

(a) STATE will reimburse the STATE's share of eligible participating PROJECT costs monthly in arrears upon ADMINISTERING AGENCY'S submittal of signed acceptable monthly progress pay invoices (in duplicate) for expenditures actually made by ADMINISTERING AGENCY.

(b) If PROJECT involves work on the STATE highway system, that PROJECT shall also be the subject of separate standard forms of STATE issued encroachment permits issued to ADMINISTERING AGENCY and any contractors and, where appropriate, an executed cooperative agreement between STATE and ADMINISTERING AGENCY to determine how PROJECT is to be acquired, designed, or constructed and to establish ownership and future maintenance obligations.

(c) State funds will not participate in any portion of PROJECT work performed in advance of either the effective date of the executed PROGRAM SUPPLEMENT for said PROJECT or the effective date of this AGREEMENT.

9. The total of all ADMINISTERING AGENCY invoices (submitted monthly or quarterly in arrears) for reimbursement of participating PROJECT costs, including all required ADMINISTERING AGENCY matching funds, must not exceed the actual total allowable PROJECT costs, including, but not limited to, all completed preliminary engineering work, right of way acquisition, design and construction included within the PROJECT description contained in the PROGRAM SUPPLEMENT.

10. Invoices shall be submitted on ADMINISTERING AGENCY letterhead and shall reference this AGREEMENT number, PROJECT number, and progress billing number for the PROJECT, and shall be formatted and costs reported in accordance with the current version of Chapter 5, "Accounting/Invoices," of the *Local Assistance Procedures Manual* published by STATE.

11. STATE programmed amounts may be increased to cover PROJECT cost increases only if such funds are available, STATE concurs with that proposed increase, and STATE executes an amending PROGRAM SUPPLEMENT or a STATE approved encumbrance document encumbering those funds.

12. When additional State funds are not available, the ADMINISTERING AGENCY agrees that the payment of State funds will be limited to the amounts approved in the PROGRAM SUPPLEMENT, and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY funds.

13. The legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain employment practices with respect to contract and other work financed with State funds. ADMINISTERING AGENCY shall ensure that work performed under this AGREEMENT is done in conformance with the rules and regulations embodying such requirements where they are applicable.

14. ADMINISTERING AGENCY and its subcontractors shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support reimbursement payment vouchers or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching costs, and other expenditures by ADMINISTERING AGENCY.

15. After completion of all work under this AGREEMENT, and after all PROJECT costs are known, ADMINISTERING AGENCY shall contract for a financial audit of PROJECT costs if those costs are in excess of \$300,000. This Audit, to be accomplished at the ADMINISTERING AGENCY'S expense, may be done on an individual PROJECT basis, or PROJECT may be included in the ADMINISTERING AGENCY'S annual Single Audit. If an individual audit of PROJECT is done, the auditor must prepare a Final Audit Report. If ADMINISTERING AGENCY chooses the Single Audit option, an audit report is required for the State funding share. This report should be prepared in accordance with the guidelines set forth in OMB Circular A-133. Compliance testing performed for this audit should determine whether the ADMINISTERING AGENCY has a system that is adequate to accumulate and segregate reasonable, allowable and allocable costs to assure that:

(a) Reimbursement claims submitted to STATE for the PROJECT are supported by payment vouchers and canceled checks.

(b) Charges for the various categories of eligible PROJECT costs incurred by the ADMINISTERING AGENCY are fully supported and recorded in the ADMINISTERING AGENCY'S accounting records in accordance with generally accepted accounting principles.

(c) The ADMINISTERING AGENCY complied with CFR 49 Part 18, Uniform Administrative Requirements for State and Local Governments and OMB A-87, Cost Principles for State and Local Governments. Any instances of noncompliance or costs determined ineligible in accordance with these regulations but claimed for reimbursement should be identified and set forth in the auditor's report.

16. ADMINISTERING AGENCY and all subcontractors shall comply with the Uniform Administrative Requirements for State and Local Governments set forth in the Code of Federal Regulations, Title 49, Part 18. In addition, the ADMINISTERING AGENCY agrees to comply with the cost principles and procedures set forth in Office of Management and Budget Circular A-87. The

ADMINISTERING AGENCY agrees that a reference to either Office of Management and Budget Circular A-87 or the Code of Federal Regulations, Title 49, Chapter 1, Part 31, whichever is applicable and the code of Federal Regulations, Title 49, Part 18, will be included in any subcontracts entered into as a result of this AGREEMENT.

17. The "State Report of Expenditures" must be completed by ADMINISTERING AGENCY within one hundred eighty (180) days of PROJECT completion in the format described for State funded projects in Chapter 17, "Project Completion" of the *Local Assistance Procedures Manual*. The Final Invoice must be submitted with the "State Report of Expenditures. The Audit must be completed by the December 30th following the fiscal year of PROJECT completion. PROJECT completion is defined as when all work identified in the approved PROJECT Application and PROGRAM SUPPLEMENT has been completed and final costs are known. The report documents (State Report of Expenditures and Final Audit Report) will be sent to the appropriate STATE office. Failure to comply with these reporting requirements may result in the withholding of future allocations for other projects.

18. STATE reserves the right to conduct technical and financial audits if it is determined to be necessary. After any financial audit, ADMINISTERING AGENCY shall promptly refund any excess State funds erroneously reimbursed to ADMINISTERING AGENCY.

19. Should ADMINISTERING AGENCY fail to refund all moneys due STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT, then, within thirty (30) days of demand, or within such other period as may be agreed to in writing between the parties hereto, STATE, acting through the State Controller, the State Treasurer, the California Transportation Commission (CTC), or any other public agency, may withhold or demand a transfer of an amount equal to the PROJECT amount paid by STATE from future apportionments or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other funds and/or may withhold approval of future ADMINISTERING AGENCY projects.

20. When PROJECT is not on the STATE highway system but includes work to be performed by a railroad, the contract for such work shall be prepared and administered by ADMINISTERING AGENCY or by STATE, as the parties may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an AGREEMENT with the railroad providing for future maintenance of protective devices or other facilities installed or constructed under that contract.

ARTICLE II - ENGINEERING

1. "Project Development Costs" includes all preliminary work up to contract award for construction and directly related to the PROJECT, including, but not limited to, environmental studies, preliminary surveys and reports, laboratory work, soil investigation, preparation of plans, specifications and estimates, advertising for bids, awarding contract, as well as Project Development Contract Administration.

2. "Construction Engineering" eligible costs include actual inspection and supervision of construction work, construction staking, laboratory and field testing, preparation and processing of field reports, and records, estimates, final reports, and allowable expenses of employees/consultants engaged in such activities.

3. Unless the parties shall otherwise agree in writing, ADMINISTERING AGENCY'S employees or its subcontractor engineering consultant shall be responsible for all PROJECT engineering work. When construction engineering is performed by STATE, charges by STATE invoiced to ADMINISTERING AGENCY shall include an assessment on direct labor costs in accordance with Section 8755.1 of the *State Administrative Manual*. The portion of such STATE charges not contractually absorbed by STATE shall be paid from PROJECT or other funds of ADMINISTERING AGENCY.

4. No reimbursable or matching costs incurred by ADMINISTERING AGENCY in the period prior to the effective date of this AGREEMENT or a later date specified in a PROGRAM SUPPLEMENT are allowable by STATE.

ARTICLE III - RIGHT-OF-WAY

1. All related rights-of-way as are necessary for the construction of PROJECT shall be acquired by ADMINISTERING AGENCY, and no contract for construction of PROJECT or any portion thereof shall be advertised until those necessary rights-of-way have been secured.

2. The furnishing of rights-of-way as provided for herein includes, and is limited to, the following, unless the PROGRAM SUPPLEMENT provides otherwise:

- (a) expenditures to purchase all real property required for PROJECT free and clear of liens, conflicting easements, obstructions and encumbrances, after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY
- (b) the payment of damages to real property not actually taken but injuriously affected by the proposed improvement
- (c) the cost of relocating owners and occupants pursuant to Government Code Sections 7260-7277
- (d) the cost of demolition and sales of all improvements on the right of way
- (e) the cost of all unavoidable utility relocation, protection or removal
- (f) the cost of all necessary hazardous material and hazardous waste clean up for which ADMINISTERING AGENCY is not responsible and the actual generator cannot be identified or recovery made

3. Should ADMINISTERING AGENCY, in acquiring right-of-way for PROJECT, displace an individual, family, business, farm operation or nonprofit organization, the ADMINISTERING AGENCY shall provide relocation payments and services as required by California Government Code, Sections 7260-7277.

4. State funds will not participate in any PROJECT costs arising out of delays to construction or demolition contractor's orderly prosecution of the work because utilities have not been timely removed or relocated or due to the unavailability of rights-of-way.

5. If any protection, relocation or removal of utilities is required within STATE'S right-of-way, such work shall be performed in accordance with STATE policy and procedure. ADMINISTERING AGENCY shall require any utility company performing relocation work in the STATE'S right-of-way to obtain a STATE Encroachment Permit prior to the performance of said relocation work. Any relocated utilities shall be correctly located and identified on the PROJECT as-built plans.

ARTICLE IV - MISCELLANEOUS PROVISIONS

1. The cost of security, protection, or maintenance performed by ADMINISTERING AGENCY or contractor forces during any temporary suspension of the work or at any other time may not be charged to the PROJECT.

2. 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 under or in connection with any work, authority, or jurisdiction delegated to ADMINISTERING AGENCY under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, ADMINISTERING AGENCY shall fully defend, indemnify and hold STATE, its officers and employees harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done 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.

3. Neither ADMINISTERING AGENCY nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reasons of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction delegated to STATE under this AGREEMENT. It is also understood and agreed that pursuant to Government Code Section 895.4, STATE shall fully defend, indemnify and hold ADMINISTERING AGENCY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction delegated to STATE under this AGREEMENT.

4. Auditors of STATE shall be given access to books and records of ADMINISTERING AGENCY and its contractors and subcontractors for the purpose of verifying PROJECT costs and share to be paid. ADMINISTERING AGENCY shall include clauses in its contracts for PROJECT obligating contractors and subcontractors to conform and cooperate in any audit of their PROJECT costs.

5. ADMINISTERING AGENCY will maintain and operate the PROJECT property acquired, developed, rehabilitated, or restored for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the property may transfer this obligation and responsibility to maintain and operate the property to another public entity.

6. Upon ADMINISTERING AGENCY acceptance of the completed PROJECT construction contract or upon contractor being relieved of the responsibility for maintaining and protecting a portion of the work, the ADMINISTERING AGENCY having jurisdiction over the PROJECT shall maintain, repair and restore any damaged portions of the completed work in a manner satisfactory to the authorized representatives of STATE. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, under ADMINISTERING AGENCY'S jurisdiction is not being properly maintained, repaired or restored and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition satisfactory to STATE. The provisions of this section shall not apply to a PROJECT which has been vacated, as preapproved by STATE, through due process of law.

7. The ADMINISTERING AGENCY obligation to maintain, referred to in paragraph 6 above, includes not only the physical condition of the PROJECT but its continued operation as well. PROJECT shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as the PROJECT requires. Said maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under an agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

8. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY, either in whole or in part.

9. No alteration or variation of the terms of this AGREEMENT or the PROGRAM SUPPLEMENT shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

10. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.

11. ADMINISTERING AGENCY agrees to use all PROJECT funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution.

ARTICLE V - CONDITION OF ACCEPTANCE

ADMINISTERING AGENCY shall conform to all State statutes, regulations, and the *Local Assistance Program Guidelines* and *Local Assistance Procedures Manual* including all subsequent approved revisions thereto, hereafter collectively referred to as PROCEDURES, applicable to PROJECT unless otherwise designated in the approved PROGRAM SUPPLEMENT.

This AGREEMENT and any PROGRAM SUPPLEMENT(s) executed under this AGREEMENT shall terminate upon sixty (60) days' prior written notice by STATE.

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

STATE OF CALIFORNIA
Department of Transportation

AGENCY

By _____
Chief, Office of Local Programs
Project Implementation

By _____
(Authorized Representative)

Date _____

Date _____