

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE MEETING AGENDA

TIME: 1:30 p.m.

DATE: Monday, February 27, 2012

LOCATION: **BOARD ROOM**
County of Riverside Administrative Center
4080 Lemon Street, First Floor, Riverside

☞ COMMITTEE MEMBERS ☞

Darcy Kuenzi, **Chair** / Wallace Edgerton, City of Menifee
Adam Rush, **Vice Chair** / Ike Bootsma, City of Eastvale
Bob Botts / Don Robinson, City of Banning
Karen Spiegel / Eugene Montanez, City of Corona
Frank Johnston / Micheal Goodland, City of Jurupa Valley
Marcelo Co / Richard Stewart, City of Moreno Valley
Berwin Hanna / Kathy Azevedo, City of Norco
Daryl Busch / Al Landers, City of Perris
Andrew Kotyuk / Scott Miller, City of San Jacinto
Ben Benoit / Timothy Walker, City of Wildomar
Bob Buster, County of Riverside, District I
Marion Ashley, County of Riverside, District V

☞ STAFF ☞

Anne Mayer, Executive Director
John Standiford, Deputy Executive Director

☞ AREAS OF RESPONSIBILITY ☞

Air Quality, Capital Projects,
Communications and Outreach Programs,
Intermodal Programs,
Motorist Services, New Corridors,
Regional Agencies/Regional Planning,
Regional Transportation Improvement Program (RTIP),
Specific Transit Projects,
State Transportation Improvement Program (STIP),
Transportation Uniform Mitigation Fee (TUMF) Program, and
Provide Policy Direction on Transportation Programs and Projects
related to Western Riverside County and other
areas as may be prescribed by the Commission.

Comments are welcomed by the Committee. If you wish to provide comments to the Committee, please complete and submit a Speaker Card to the Clerk of the Board.

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS
COMMITTEE**

www.rctc.org

AGENDA*

**Actions may be taken on any item listed on the agenda*

1:30 p.m.

Monday, February 27, 2012

BOARD ROOM

**County Administrative Center
4080 Lemon Street, First Floor
Riverside, California**

In compliance with the Brown Act and Government Code Section 54957.5, agenda materials distributed 72 hours prior to the meeting, which are public records relating to open session agenda items, will be available for inspection by members of the public prior to the meeting at the Commission office, 4080 Lemon Street, Third Floor, Riverside, CA, and on the Commission's website, www.rctc.org.

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if you need special assistance to participate in a Committee meeting, please contact the Clerk of the Board at (951) 787-7141. Notification of at least 48 hours prior to meeting time will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting.

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. PUBLIC COMMENTS** – *Each individual speaker is limited to speak three (3) continuous minutes or less. The Committee may, either at the direction of the Chair or by majority vote of the Committee, waive this three minute time limitation. Depending on the number of items on the Agenda and the number of speakers, the Chair may, at his/her discretion, reduce the time of each speaker to two (2) continuous minutes. Also, the Committee may terminate public comments if such comments become repetitious. In addition, the maximum time for public comment for any individual item or topic is thirty (30) minutes. Speakers may not yield their time to others without the consent of the Chair. Any written documents to be distributed or presented to the Committee shall be submitted to the Clerk of the Board. This policy applies to Public Comments and comments on Agenda Items.*

Under the Brown Act, the Board should not take action on or discuss matters raised during public comment portion of the agenda which are not listed on the agenda. Board members may refer such matters to staff for factual information or to be placed on the subsequent agenda for consideration.

5. APPROVAL OF MINUTES – NOVEMBER 28, 2011

6. ADDITIONS/REVISIONS *(The Committee may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Committee subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Committee. If there are less than 2/3 of the Committee members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.)*

7. FISCAL YEAR 2011/12 TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) REGIONAL ARTERIAL PROGRAM – PROGRAMMING REQUESTS

Page 1

Overview

This item is for the Committee to:

- 1) Approve the removal of the Interstate 15/Schleisman Road interchange project from the TUMF Regional Arterial program and replace it with the Interstate 15/Limonite Avenue interchange improvement project in the city of Eastvale, and terminate Agreement No. 06-72-522-00 with the county of Riverside for the I-15/Schleisman Road interchange;
- 2) Approve Agreement No. 12-72-059-00 with the city of Moreno Valley to program \$5,665,000 of TUMF Regional Arterial funds for the Moreno Valley Perris Boulevard (Cactus Avenue to Perris Valley Storm Drain (PVSD) Lateral "B") construction phase;
- 3) Authorize the Executive Director to execute the agreement, pursuant to legal counsel review;
- 4) Approve the removal of the Ramona Expressway extension project, Seventh Street to Cedar Street, and replace it with the Ramona Expressway widening project, Sanderson Avenue to State Street in the city of San Jacinto, and terminate Agreement No. 06-72-520-00 with the city of San Jacinto; and
- 5) Forward to the Commission for final action.

8. TIGER IV DISCRETIONARY GRANTS: STATE ROUTE 91 CORRIDOR IMPROVEMENT PROJECT

Page 22

Overview

This item is for the Committee to:

- 1) Direct staff to prepare a Transportation Investment Generating Economic Recovery (TIGER) grant application and Transportation Infrastructure Finance and Innovation ACT (TIFIA) letter of interest (LOI) submittal package to U.S. Department of Transportation (U.S. DOT) for the SR-91 Corridor Improvement Project (SR-91 CIP);
- 2) Authorize the Executive Director to submit the grant application and TIFIA LOI;
- 3) Authorize the Executive Director to submit future TIGER grant applications and TIFIA LOI for the SR-91 CIP if necessary; and
- 4) Forward to the Commission for final action.

9. AMENDMENT TO COMMISSION'S FY 2007/08 AND FY 2011/12 RAIL PROGRAM SHORT RANGE TRANSIT PLAN

Page 25

Overview

This item is for the Committee to:

- 1) Amend the Commission's Commuter Rail Program FY 2011/12 Short Range Transit Plan (SRTP) to reflect the allocation of \$10 million in Federal Transit Administration (FTA) Section 5309 program funds to the Commuter Rail State of Good Repair project;
- 2) Amend the Commission's Commuter Rail Program FY 2007/08 SRTP to reflect deobligation of \$123,131 in Local Transportation Fund (LTF) funds from the Commission Station Capital Improvement Program; and
- 3) Forward to the Commission for final action.

10. PROPOSITION 1B FISCAL YEAR 2010/11 CALIFORNIA TRANSIT SECURITY GRANT PROGRAM – CALIFORNIA TRANSIT ASSISTANCE FUND AND SUPPORTING RESOLUTION

Page 28

Overview

This item is for the Committee to:

- 1) Adopt Resolution No. 12-008, *“Resolution of the Riverside County Transportation Commission Appointing Individuals to Act on Behalf of the Commission for the Purpose of Applying and/or Accepting Grants Awarded to the Commission’s Rail Program”*; and
- 2) Forward to the Commission for final action.

11. MASTER AGREEMENT AND PROGRAM SUPPLEMENTS FOR STATE FUNDED TRANSIT PROJECTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION

Page 31

Overview

This item is for the Committee to:

- 1) Adopt Resolution No. 12-007, *“Authorization for the Execution of a Master Agreement and Program Supplements for State-Funded Transit Projects”* with California Department of Transportation (Caltrans);
- 2) Approve Agreement No. 12-25-060-00 with Caltrans for state-funded transit projects;
- 3) Authorize the Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission; and
- 4) Forward to the Commission for final action.

12. ELECTION OF OFFICERS

Page 63

Overview

This item is for the Western Riverside County Programs and Projects Committee to conduct an election of officers for 2012 – Chair and Vice Chair.

13. COMMISSIONERS / STAFF REPORT

Overview

This item provides the opportunity for the Commissioners and staff to report on attended and upcoming meeting/conferences and issues related to Commission activities.

14. ADJOURNMENT AND NEXT MEETING

The next Western Riverside County Programs and Projects Committee meeting is scheduled to be held at **1:30 p.m., Monday, March 26, 2012**, Board Chambers, First Floor, County Administrative Center, 4080 Lemon Street, Riverside.

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE

Monday, November 28, 2011

MINUTES

1. CALL TO ORDER

The meeting of the Western Riverside County Programs and Projects Committee was called to order by Chair Darcy Kuenzi at 1:30 p.m., in the Board Room at the County of Riverside Administrative Center, 4080 Lemon Street, First Floor, Riverside, California, 92501.

2. PLEDGE OF ALLEGIANCE

At this time, Commissioner Adam Rush led the Western Riverside County Programs and Projects Committee in a flag salute.

3. ROLL CALL

Members/Alternates Present

Ben Benoit
Bob Botts
Daryl Busch
Bob Buster*
Marcelo Co
Berwin Hanna
Frank Johnston
Andrew Kotyuk
Darcy Kuenzi
Adam Rush
Karen Spiegel*

Members Absent

Marion Ashley

*Arrived after the meeting was called to order

4. PUBLIC COMMENTS

There were no requests to speak from the public.

5. APPROVAL OF MINUTES – AUGUST 22, 2011

M/S/C (Rush/Hanna) to approve the minutes as submitted.

Abstain: Benoit

6. ADDITIONS/REVISIONS

There were no additions or revisions to the agenda.

7. AMENDMENT WITH STV INCORPORATED TO PROVIDE ADDITIONAL ADVANCED PRELIMINARY ENGINEERING AND ENVIRONMENTAL SERVICES, FINAL DESIGN, AND PROCUREMENT AND CONSTRUCTION SUPPORT FOR THE PERRIS VALLEY LINE PROJECT

Cathy Bechtel, Project Development Director, presented a detailed overview on the scope of the amendment with STV Incorporated to provide additional advanced preliminary engineering and environmental services, final design, and procurement and construction support for the Perris Valley Line project.

M/S/C (Kotyuk/Rush) to:

- 1) Approve Agreement No. 07-33-123-07, Amendment No. 7 to Agreement 07-33-123-00, with STV Incorporated (STV) for additional advanced preliminary engineering (APE), final design, bid support, design support during construction, and additional support in the development of the federal supplemental environmental assessment (SEA) and state environmental impact report (EIR) for the Perris Valley Line (PVL) in the amount of \$5,510,668, plus a contingency amount of \$1.6 million, for a total amount not to exceed \$7,110,668;**
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission;**
- 3) Authorize the Executive Director or designee, pursuant to legal counsel review, to approve the use of the contingency as may be required for the project; and**
- 4) Forward to the Commission for final action.**

At this time, Commissioner Bob Buster arrived at the meeting.

8. LOS ANGELES-SAN DIEGO-SAN LUIS OBISPO RAIL CORRIDOR AGENCY UPDATE

Sheldon Peterson, Rail Manager, presented an overview of the Los Angeles-San Diego-San Luis Obispo (LOSSAN) Rail Corridor Agency, its current strategic efforts and governance proposal, and the Commission's membership status.

In response to Commissioner Buster's request, Sheldon Peterson clarified that San Bernardino County has not been involved and is aware of the situation. The challenge is service is not headed east but does impact the Commission's track rights, connecting service, and how Metrolink relates to it, hence why the Commission needs to be part of the LOSSAN Rail Corridor Agency as a voting member.

Anne Mayer, Executive Director, pointed out that if the Commission did not own the track rights for all passenger rail between Fullerton and Los Angeles, staff would not be recommending the Commission's involvement. The Commission's rail track rights are driving the need to be a part of the LOSSAN Rail Corridor Authority.

In response to Commissioner Andrew Kotyuk, Sheldon Peterson clarified that no other ex-officio members are trying to obtain voting rights.

In response to Commissioner Rush, Sheldon Peterson clarified that the Commission is working to obtain a voting member status by this spring. Voting member agencies pay annual dues at the current rate of \$2,000 per year.

Anne Mayer clarified for Commissioner Rush that the legislation is necessary in order for the Southern California entities to take control of the corridor and make decisions.

M/S/C (Kotyuk/Hanna) to:

- 1) Authorize the Chair to execute the Bylaws and the Joint Exercise of Powers Agreement that allow the Commission to be included as an ex-officio member in the Los Angeles-San Diego-San Luis Obispo (LOSSAN) Rail Corridor Agency;**
- 2) Receive an update on the current LOSSAN Strategic Efforts and Governance proposal;**
- 3) Take a modify position of the proposed governance approach with the condition that voting rights for the Commission will be required for both local and legislative support of the effort; and**
- 4) Forward to the Commission for final action.**

9. AGREEMENT FOR REIMBURSEMENT OF CALL ANSWERING CENTER SERVICES

Jillian Edmiston, Staff Analyst, presented a brief overview of the details of the agreement for reimbursement of call answering center services.

M/S/C (Rush/Botts) to:

- 1) Approve Agreement No. 12-45-033-00 (C-12139) with San Bernardino Service Authority for Freeway Emergencies to provide for the reimbursement of call answering center services related to the operation of call boxes in an amount not to exceed \$190,000;**
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement on behalf of the Commission; and**
- 3) Forward to the Commission for final action.**

At this time, Commissioner Karen Spiegel arrived at the meeting.

10. LETTER OF INTEREST – STATE ROUTE 91 CORRIDOR IMPROVEMENT PROJECT

Tanya Love, Goods Movement Manager, presented a brief overview of the details of the letter of interest for the State Route 91 Corridor Improvement Project.

M/S/C (Hanna/Kotyuk) to:

- 1) Direct staff to prepare a Transportation Infrastructure Finance and Innovation ACT (TIFIA) letter of interest (LOI) for credit assistance to the U.S. Department of Transportation (U.S. DOT) for the State Route 91 Corridor Improvement Project (SR-91 CIP);**
- 2) Authorize the Executive Director to submit the TIFIA LOI; and**
- 3) Forward to the Commission for final action.**

11. WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY FUNDING REQUEST

Cathy Bechtel presented the request for funding from the Western Riverside County Regional Conservation Authority (RCA).

Supervisor Jeff Stone, Chairman of the RCA, stated there are critical acquisitions necessary to keep the Multi Species Habitat Conversation Plan (MSHCP) viable and effective. He stated RCA is struggling financially and

needs to take advantage of purchasing these critical properties while prices are low. RCA is requesting the Commission allocate \$3 million per year for eight years. This would satisfy the Commission's \$24 million commitment and push the time period from 10 years to 15 years in which the Commission would be fully vested in the MSHCP. He stated with the Commission vested, this will ensure that it will maintain its master take permit (permit) even if the MSHCP were to stumble or for any reason become invalidated or legally challenged. He discussed the legislation to allow for federal funding assistance. He stressed the importance of acquiring these critical properties because if RCA does not acquire these properties, the MSHCP will be put in significant jeopardy. He then highlighted the letter from the U.S. Department of the Interior to Secretary of Transportation Ray La Hood that was distributed to the Commissioners.

In response to Commissioner Rush's question regarding projects that would be impacted if the Commission were to accommodate RCA's request, Anne Mayer stated staff cannot point to any specific project. However, the Commission has several large projects that are not yet fully funded, which the Commission plans to move forward. Regional arterials may be a category where there may be more difficulty meeting commitments for Measure A and TUMF regional arterial projects. This \$24 million commitment could limit the Commission's flexibility.

Supervisor Stone stated there are significant funding issues within RCA. If funding is not received, there is always the possibility of the permit coming into jeopardy. He stated he views this request as an insurance policy for the Commission so that the Commission's projects between now and 2019 will not have any environmental stumbling blocks that would delay those projects for many years. He expressed his belief that it is in the best interest of the county of Riverside, the Commission, and RCA to fund this request. Additionally, if RCA is successful in gaining a federal loan guarantee, the Commission can postpone its commitment.

Commissioner Kotyuk asked how many jobs have been created from the Commission's current and slated projects, if the funding being requested will provide a safety net for RCA to neutralize the risks to the agency and the MSHCP, and the timeline for a federal loan guarantee.

Supervisor Stone stated the loan guarantee is a two-year process. Once the Commission's commitment to the MSHCP is fulfilled, the Commission has a permit for all of its projects in perpetuity. If the MSHCP were challenged or fell apart due to lack of funding, the Commission would still be protected by the permit since the Commission's commitment was fulfilled. He stated it is an insurance policy for the next 17 years that projects coming through the Commission will have satisfied the take obligations.

At Commissioner Kotyuk's request, Supervisor Stone provided the worst case scenario if the Commission does not allocate this funding to RCA, including losing the permit, the MSHCP would become insolvent, and all agencies and jurisdictions in the county would need to go through an individual federal process to obtain project approval.

Anne Mayer stated every \$1 billion spent on projects generates approximately 16,000 jobs. The Commission has approximately \$2 billion in projects by 2019.

At Supervisor Stone's request, Anne Mayer listed a few projects that have benefited from the MSHCP and the permit.

Commissioner Bob Botts stated he does not want the Commission to lose the permit. In discussing this at his city, the feedback was to do what is best for the Commission. He recalled the prior RCA request for funding with an understanding that the Commission would fund the remaining contribution after 2019. He then asked if other funding sources have been sought. He believes the bottom line is that the Commission will have \$24 million less to spend on highway projects.

Anne Mayer noted that the \$24 million is not outside of the Commission's commitment to the MSHCP. Approximately 37 percent of the Commission's existing debt is related to these land acquisitions. It would not be financially prudent for either agency to take out a loan and pay even more interest. She then explained how staff calculated the \$3 million figure.

Commissioner Botts then asked if that calculation took into consideration the amount the Commission has already contributed and the understanding about the remaining contribution being made after 2019.

Anne Mayer stated those factors were not considered.

At Chair Kuenzi's request, Cathy Bechtel clarified that if the permit were pulled, given that the Commission has already fulfilled approximately 75 percent of its commitment, the Commission would receive recognition for its acquisitions.

Anne Mayer added that Caltrans and the Commission have acquired 8,600 acres of land, which the Commission receives credit for all the acreage previously acquired.

Charles Landry, Executive Director of RCA, discussed the federal, state, and local shares of the MSHCP. He then discussed the process to credit the Commission for its acquisitions based on types of habitat and deductions for a project through the environmental process if the permit were to be pulled.

Commissioner Karen Spiegel suggested funding two years and returning to the Commission for review at that time. She expressed concern for RCA's financial outlook in eight years, even if the Commission fully funded the request.

Supervisor Stone reiterated the importance of purchasing the critical acquisitions for the MSHCP and the benefit to the Commission by fulfilling its obligation. He stated the most important pieces of this plan have been acquired, with maybe one or two pieces remaining. After those acquisitions, RCA can curtail its buying efforts.

In response to Commissioner Botts' question regarding possible assistance from the county of Riverside and the Western Riverside Council of Governments (WRCOG), Supervisor Stone stated WRCOG respectfully declined RCA's request for funding.

Anne Mayer clarified that the Commission's and Caltrans' contributions cover all transportation improvements regardless of which jurisdiction is the sponsor of the project.

Chair Kuenzi stated that this committee is charged with making a recommendation and providing direction to the Commission. She stated she was not comfortable making an eight-year commitment of \$3 million per year with the today's uncertainty in delivering transportation projects at the local level. However, she expressed her willingness to ask the Commission to consider providing \$3 million for two years and revisit at that time, such as Commission Spiegel suggested. She then asked for Commissioner comments on making that recommendation to the Commission.

Commissioner Rush agreed with Chair Kuenzi's suggestion. He expressed his primarily concern about the regional arterial aspect as this conflict does come into practical consideration.

Commissioner Kotyuk stated if a federal loan guarantee will not be secured for two years, he believes the Commission is being asked to be the first one to secure the loan for that property. He asked if it was possible for the Commission to be the back-up guarantee if the federal loan guarantee is not secured. This would give RCA time to pursue the federal loan guarantee and reduces the pressure on the Commission for being the primary source of funding.

Commissioner Spiegel stated this was the direction of her previous comments. The motion language needs to include the two-year funding commitment and also be sufficient for the federal loan guarantee because if the loan does not come through, all agencies and jurisdictions will suffer in the long run.

Commissioner Botts stated that while he shares everyone's concerns and comments, he suggested keeping with the Commission's original decision to fund the remaining contribution after 2019 and revisit this issue in two years.

Commissioner Daryl Busch motioned to fund RCA's request as submitted.

Chair Kuenzi clarified Commissioner Busch's motion and asked if there was a second to the motion. No second to the motion was received. She then asked the Committee if there was another motion to be made.

Commissioner Kotyuk motioned to recommend to the full Commission to commit to two years of payments with the caveat that if a federal loan guarantee is not obtained, the Commission will work with RCA to assist in fulfilling their obligation, and revisit it at that time.

Jennifer Harmon, Clerk of the Board, restated the motion for the Commission to provide funding for two years at \$3 million per year, revisit in two years, and if no federal loan guarantee, the Commission will work with RCA to assist in fulfilling their obligation.

M/S/C (Kotyuk/Rush) to:

- 1) Provide Measure A funding to the Western Riverside County Regional Conservation Authority (RCA) in the amount of \$3 million per year for two years as part of the Commission's Multiple Species Habitat Conservation Plan (MSHCP) funding obligation;**
- 2) Revisit the continuation of this funding amount in two years;**
- 3) Work with RCA to assist in fulfilling the MSHCP funding obligations if a federal loan guarantee program is not in place in two years; and**
- 4) Forward to the Commission for final action.**

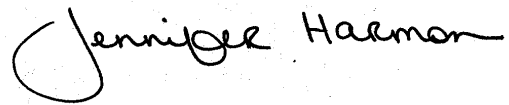
12. COMMISSIONERS / STAFF REPORT

12A. Anne Mayer announced that there will be no Committee meetings in December.

13. ADJOURNMENT

There being no further business for consideration by the Western Riverside County Programs and Projects Committee, the meeting was adjourned at 3:03 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Jennifer Harmon". The signature is written in a cursive style with a large, looped initial "J".

Jennifer Harmon
Clerk of the Board

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	February 27, 2012
TO:	Western Riverside County Programs and Projects Committee
FROM:	Shirley Medina, Programming and Planning Manager
THROUGH:	Cathy Bechtel, Project Development Director
SUBJECT:	Fiscal Year 2011/12 Transportation Uniform Mitigation Fee (TUMF) Regional Arterial Program – Programming Requests

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Approve the removal of the Interstate 15/Schleisman Road interchange project from the TUMF Regional Arterial program and replace it with the Interstate 15/Limonite Avenue interchange improvement project in the city of Eastvale, and terminate Agreement No. 06-72-522-00 with the county of Riverside for the I-15/Schleisman Road interchange;
- 2) Approve Agreement No. 12-72-059-00 with the city of Moreno Valley to program \$5,665,000 of TUMF Regional Arterial funds for the Moreno Valley Perris Boulevard (Cactus Avenue to Perris Valley Storm Drain (PVSD) Lateral "B") construction phase;
- 3) Authorize the Executive Director to execute the agreement, pursuant to legal counsel review;
- 4) Approve the removal of the Ramona Expressway extension project, Seventh Street to Cedar Street, and replace it with the Ramona Expressway widening project, Sanderson Avenue to State Street in the city of San Jacinto, and terminate Agreement No. 06-72-520-00 with the city of San Jacinto; and
- 5) Forward to the Commission for final action.

BACKGROUND INFORMATION:

Over the past few months, staff has been contacted by the cities of Eastvale, Moreno Valley, and San Jacinto to discuss respective programming requests. Staff recently met with an ad hoc committee, consisting of public works staff of local agencies with projects in the TUMF Regional Arterial program, to review FY 2011/12 programming requests. In 2009, the ad hoc committee agreed to direct all programming requests to construction activities as a means of generating jobs due to the economic downturn. Staff and the ad hoc committee also agreed that new projects should not be added to the TUMF Regional Arterial program until all original projects approved by the Commission in 2004 have been completed.

However, because of circumstances occurring during the environmental phase on two TUMF Regional Arterial projects, staff and the ad hoc committee have reconsidered this direction due to the unique circumstances described below.

To date, there are 24 project agreements with local agencies committing \$78.7 million of TUMF Regional Arterial funds. The balance available for programming in FY 2011/12 is \$2.1 million.

Below summarizes the FY 2011/12 TUMF Regional Arterial programming requests and recommended actions by the ad hoc committee and staff.

City of Eastvale

Staff recently met with the cities of Eastvale and Jurupa Valley and the county of Riverside to discuss the status of the I-15/Schleisman Road interchange project. The county of Riverside is the lead agency for the project approval/environmental document (PA&ED) phase and the project specification and estimate phases. Given that this project has experienced challenges at the early stages of its PA&ED phase (e.g. new interstate highway connection, environmental issues, funding, etc.), the cities of Eastvale and Jurupa Valley have expressed interest in removing the I-15/Schleisman Road interchange from the TUMF Regional Arterial program and replacing it with a higher priority project that is included in the TUMF Nexus Study, which is the I-15/Limonite Avenue interchange improvement project.

The I-15/Limonite Avenue interchange improvement project will not require right of way and can move to construction in a short timeframe. The cities are also requesting that, by adding the I-15/Limonite Avenue interchange project to the TUMF Regional Arterial program, the construction amount identified in the TUMF Nexus Study (approximately \$15 million) also is carried over to the program. The request also includes terminating the TUMF agreement between the Commission and the county of Riverside on the I-15/Schleisman Road interchange project and removing it from the TUMF Regional Arterial program. As a result of this action, the agreement balance of \$2 million would revert back to the TUMF Regional Arterial programming balance. The county of Riverside and city of Eastvale would be eligible to request programming TUMF Regional Arterial funds for subsequent phases consistent with the TUMF Nexus Study and programming guidelines (e.g. when the project is ready for construction). The county of Riverside is also the lead agency, on behalf of the city of Eastvale, for the I-15/Limonite Avenue interchange project, which is currently in the PA&ED phase.

As previously stated, substitutions are not normally allowed in the TUMF Regional Arterial program. However, this is a unique situation in that two new cities have recently incorporated and have prioritized transportation projects to address their most critical needs. The I-15/Schleisman Road interchange project is not the

highest priority for these cities and due to the difficulty in delivering the I-15/Schleisman Road interchange project, the ad hoc committee concurred that an exception should be made to acknowledge the priorities of these two newly incorporated cities. More importantly, the substitution of the I-15/Schleisman Road interchange project with the I-15/Limonite Avenue interchange project would result in delivering a regional arterial project in a timely manner. The county of Riverside transportation staff also supports this substitution and termination of Agreement No. 06-72-522-00.

City of Moreno Valley

The city of Moreno Valley has two projects ready for construction this fiscal year. The city has experienced savings in pre-construction phases and is requesting to reprogram the TUMF balances to the construction phase of its respective project. The two projects are:

- Perris Boulevard – Ironwood Avenue to Manzanita Avenue
(balance is approximately \$415,000)
- Perris Boulevard – Cactus Avenue to PVSD Lateral “B”
(balance is approximately \$1.25 million)

After further discussion with the city, it was determined that there are not sufficient TUMF funds available to program construction for both projects. Therefore, the city has requested to fund construction for the Cactus Avenue to PVSD Lateral “B” segment using the pre-construction balances from both projects and additional funds available for programming. With the construction estimate at approximately \$5,665,000 this would still leave construction funding short by approximately \$4 million.

In order to close the \$4 million funding shortfall, it is recommended that the FY 2011/12 programming balance of \$2.1 million be programmed for the Perris Boulevard, Cactus Avenue to PVSD Lateral “B”, widening project. As previously mentioned, by rescinding the I-15/Schleisman Road interchange improvement agreement an additional \$2 million will return to the TUMF programming balance for a total of \$4 million that can be programmed to the Perris Boulevard project. This recommendation is consistent with the committee’s direction to prioritize programming requests for projects ready for construction.

City of San Jacinto

Staff received a request from the city of San Jacinto regarding the need to substitute a project for the Ramona Expressway, Seventh Street to Cedar Street, extension project. This project is in the PA&ED phase and has significant environmental issues that will be difficult and costly to address. The city is

proposing to remove the Seventh Street to Cedar Street extension project from the TUMF Regional Arterial program and replace it with a widening project on Ramona Expressway from Sanderson Avenue to State Street, which is included in the TUMF Nexus Study and has TUMF Zone funds programmed through the Western Riverside Council of Governments. The Sanderson Avenue to State Street project is scheduled for construction later this year. The city is also requesting that the Commission reprogram the balance of funds from the Seventh Street to Cedar Street segment (approx. \$1 million) to the Sanderson Avenue to State Street segment for construction and make the project eligible for an additional \$4.5 million from future revenues.

As previously stated, project substitutions are not normally allowed. The ad hoc committee realizes the environmental issues with the Ramona Expressway extension project may be difficult to overcome. Therefore, staff and the ad hoc committee agreed that an exception should be made so that TUMF Regional Arterial funds can be used on a project that is moving toward construction. Accordingly, staff and the ad hoc committee recommend removing the Ramona Expressway, Seventh Street to Cedar Street, extension project from the TUMF Regional Arterial program, including termination of Agreement No. 06-72-520-00, and replacing it with the Sanderson Avenue to State Street Project.

The city of San Jacinto would be eligible to request programming TUMF regional arterial funds for subsequent phases, including the balance from the Seventh Street to Cedar Street segment, consistent with the TUMF Nexus Study and programming guidelines (e.g. when the project is ready for construction).

Future Programming Requests

With the recommended actions, a significant portion of all available FY 2011/12 TUMF funds will be programmed. Staff will report the TUMF FY 2012/13 programming estimate to the ad hoc committee in July and will report future project programming requests and recommendations in fall 2012.

Financial Information					
In Fiscal Year Budget:	Yes N/A	Year:	FY 2011/12 FY 2012/13 +	Amount:	\$1,000,000 \$1,100,000
Source of Funds:	TUMF Regional Arterial program		Budget Adjustment:	No N/A	
GL/Project Accounting No.:	005106 81301 210 72 81301				
Fiscal Procedures Approved:	<i>Theresa Irwin</i>			Date:	02/16/12

Attachment: Draft Agreement No. 12-79-059-00

**AGREEMENT FOR THE FUNDING OF
TUMF REGIONAL ARTERIAL IMPROVEMENTS
WITH THE CITY OF MORENO VALLEY
FOR THE PERRIS BOULEVARD WIDENING
FROM CACTUS AVE TO PVSD LATERAL “B”
PROJECT 5106**

1. Parties and Date.

1.1 This Agreement is executed and entered into this ___ day of _____, 2012, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION (“RCTC”) and the **CITY OF MORENO VALLEY** (“City”). RCTC and City are sometimes collectively referred to herein as the “Parties”.

2. Recitals.

2.1 RCTC is a county transportation commission created and existing pursuant to California Public Utilities Code Sections 130053 and 130053.5.

2.2 On November 5, 2002 the voters of Riverside County approved Measure A authorizing the collection of a one-half percent (1/2%) retail transactions and use tax to fund transportation programs and improvements within the County of Riverside, and adopting the Riverside County Transportation Improvement Plan (the “Plan”).

2.3 The Plan requires cities and the County in western Riverside County to participate in a Transportation Uniform Mitigation Fee (TUMF) Program to be eligible to receive Local Streets and Roads funds generated by Measure A.

2.4 The Plan further requires that the first \$400 million in revenues from TUMF be made available to RCTC to fund equally the Regional Arterial System and development of New Transportation Corridors identified through the Community and Environmental Transportation Acceptability Process (CETAP). To receive TUMF funding, CETAP corridors must also be designated on the Regional System of Highways and Arterials as established in the October 2002 TUMF Nexus Study, amended in March 2004, and as may be amended in the future.

2.5 The Western Riverside Council of Governments (WRCOG) has been selected to administer the overall TUMF Program pursuant to applicable state laws including Government Code

Sections 66000 *et seq.* and has entered into a Memorandum of Understanding (MOU) with RCTC dated July 10, 2003 regarding the allocation of the \$400 million in TUMF Regional Funds to be made available to RCTC for programming.

2.6 RCTC issued to the cities and the County a “Call for Projects” to be funded with TUMF Regional funds, and in response to the Project Nomination Forms, took action on September 8, 2004 to adopt a five year TUMF Regional Arterial Program which identifies the projects and the maximum funding commitments awarded for specific phases of work. RCTC’s TUMF Regional Arterial Program may be updated from time to time.

2.7 RCTC intends, by this Agreement, to distribute TUMF Regional Funds, subject to the conditions provided herein, and to participate in the joint development of the Project, as defined herein.

3. Terms.

3.1 Description of Work. This Agreement is intended to distribute TUMF Regional Funds to the City for the construction of the Perris Boulevard Widening from Cactus Avenue to the Perris Valley Storm Drain Lateral “B”. The Work, including a timetable and a detailed scope of work, is more fully described in Exhibit “A” attached hereto and, pursuant to Section 3.15 below, is subject to modification as requested by the City and approved by RCTC. The Work shall be consistent with one or more of the defined RCTC Call for Projects phases detailed herein as follows:

- 1) PA&ED – Project Approvals & Environmental Document
- 2) PS&E – Plans, Specifications and Estimates
- 3) R/W – Right of Way Acquisition and Utility Relocation
- 4) CONS – Construction

The Work phase(s) funded pursuant to this Agreement shall be consistent with the City’s Call for Projects Nomination Form submitted to the RCTC (“the Project”) and as approved by the RCTC on September 8, 2004. The Project is more fully described in Exhibit “B” attached hereto. It is understood and agreed that the City shall expend TUMF Regional Funds only as set forth in this Agreement and only for the Work. To this end, any use of funds provided pursuant to this Agreement shall be subject to the review and approval of RCTC.

3.2 RCTC Funding Amount. RCTC hereby agrees to distribute to the City, on the terms and conditions set forth herein, a sum not to exceed **Five Million Six Hundred and Sixty Five Thousand dollars and no cents (\$ 5,665,000.00)**, to be used exclusively for reimbursing the City for eligible Work expenses as described herein (“Funding Amount”). The City acknowledges and agrees that the Funding Amount may be less than the actual cost of the Work, and that RCTC shall not contribute TUMF Regional Funds in excess of the maximum TUMF share for the phase/project identified in Appendix F of the TUMF Nexus Study.

3.2.1 Eligible Work Costs. The total Work costs (“Total Work Cost”) may include the following items, provided that such items are included in the scope of work attached as Exhibit “A”: (1) City and/or consultant costs associated with direct Work coordination and support; (2) funds expended in preparation of preliminary engineering studies; (3) funds expended for preparation of environmental review documentation for the Work; (4) all costs associated with right-of-way acquisition, including right-of-way engineering, appraisal, acquisition, legal costs for condemnation procedures if authorized by the City, and costs of reviewing appraisals and offers for property acquisition; (5) costs reasonably incurred if condemnation proceeds; (6) costs incurred in the preparation of plans, specifications, and estimates by City or consultants; (7) City costs associated with bidding, advertising and awarding of the Work contracts; (8) construction costs, including change orders to construction contract approved by the City; and (9) construction management, field inspection and material testing costs.

3.2.1.1 Right-of-Way Acquisition. The Parties acknowledge that in order to protect the City’s ability to deliver the Project in a timely cost effective manner, the City may purchase parcels of property in advance of the completion of the Project’s final design (PS&E). The Parties acknowledge that acquired parcels or remnants purchased in advance of final design may not ultimately be required for the Project. Upon completion of the Project’s final design, the City shall provide RCTC with a detailed list of all parcels purchased by the City for which it received TUMF Regional Funds pursuant to this Agreement. The City shall identify any parcels or remnants thereof which were acquired using TUMF Regional Funds and are not required for construction of the Project. A preliminary list shall be submitted to the RCTC 30 days before the issuance of bid documents for construction of the Project and a final list shall be submitted to the RCTC no later than 30 days following the recording of the Certificated of Completion for the Project.

3.2.1.2 Valuation and Repayment of Any Property Remnants. Upon receipt of the City’s final list, RCTC shall meet with the City for the purpose of identifying any parcel or reasonably usable remnant of a parcel for which TUMF Regional Funds were expended that may reasonably be developed for other use by the City and/or sold. The Parties shall confer in good faith to agree upon the disposition of such parcels and remnant parcels and their fair market value as of a date agreed to by the parties, but in no event later than the date of completion of the Project. “Fair Market Value” shall have the definition set forth in Code of Civil Procedure Section 1263.320 and “remnant” shall have the definition set forth in Code of Civil Procedure Section 1240.410. Nothing herein shall preclude the City and RCTC from beginning the meetings earlier in the event both parties agree that the parcel or remnant will not be used for the Project.

3.2.1.3 Reimbursement for Unused Parcels. Following recordation of the Certificate of Completion for the Project, the City shall be responsible for promptly reimbursing RCTC for any TUMF Regional Funds which were used to acquire parcels which are completely unused in the Project. If City funds other than TUMF were used to purchase the Parcel, those local funds shall be considered in determining the reimbursement amount.

3.2.1.4 Appeal to Commission. In the event of a disagreement between the Parties regarding the reimbursement of TUMF Regional Funds under this section 3.2.1, either party may appeal, in writing, to the RCTC Board. The RCTC Board's determination regarding excess right-of-way and value pursuant to this section shall be final.

3.2.2 Ineligible Work Costs. The Total Work Cost shall not include the following items which shall be borne solely by the City without reimbursement: (1) City administrative costs; (2) City costs attributed to the preparation of invoices, billings and payments; (3) any City fees attributed to the processing of the Work; and (4) expenses for items of work not included within the scope of work in Exhibit "A".

3.2.3 Increases in Work Funding. The Funding Amount may, in RCTC's sole discretion, be augmented with additional TUMF Regional Funds if the TUMF Nexus Study is amended to increase the maximum eligible TUMF share for the Work. Any such increase in the Funding Amount must be approved in writing by RCTC's Executive Director. In no case shall the amount of TUMF Regional Funds allocated to the City exceed the then-current maximum eligible TUMF share for the Work. No such increased funding shall be expended to pay for any Work already completed. For purposes of this Agreement, the Work or any portion thereof shall be deemed complete upon its acceptance by RCTC's Executive Director.

3.2.4 No Funding for Temporary Improvements. Only segments or components of the Work that are intended to form part of or be integrated into the Work may be funded by TUMF Regional Funds. No improvement which is temporary in nature, including but not limited to temporary roads, curbs, or drainage facilities, shall be funded with TUMF Regional Funds except as needed for staged construction of the Work.

3.3 City's Funding Obligation to Complete the Work. In the event that the TUMF Regional Funds allocated to the Work represent less than the total cost of the Work, the City shall provide such additional funds as may be required to complete the Work as described in Exhibit "A".

3.3.1 City's Obligation to Repay TUMF Regional Funds to RCTC. In the event that: (i) the City, for any reason, determines not to proceed with or complete the Work; or (ii) the Work is not timely completed, subject to any extension of time granted by RCTC pursuant to Section 3.15; the City agrees that any TUMF Regional Funds that were distributed to the City for the Work shall be repaid in full to RCTC. The Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism which may include, but is not limited to, withholding of Measure A Local Streets and Roads revenues. The City acknowledges and agrees that RCTC shall have the right to withhold any Measure A Local Streets and Roads revenues due the City, in an amount not to exceed the total of the funds distributed to the City, and/or initiate legal action to compel repayment, if the City fails to repay RCTC within a reasonable time period not to exceed 180 days from receipt of written notification from RCTC that repayment is required.

3.4 Work Responsibilities of the City. The City shall be responsible for the following aspects of the Work, in compliance with state and federal law provided that such items are included in the Project scope of work attached as Exhibit “A”: (i) development and approval of plans, specifications and engineer’s estimate (PS&E), environmental clearance, right of way acquisition, and obtaining all permits required by impacted agencies prior to commencement of the Work ; (ii) all aspects of bidding, awarding, and administration of the contracts for the Work; (iii) all construction management of any construction activities undertaken in connection with the Work, including survey and material testing; and (iv) development of a budget for the Work prior to award of any contract for the Work, taking into consideration available funding, including TUMF Regional Funds.

3.5 Term/Notice of Completion. The term of this Agreement shall be from the date first herein above written until: (i) the date RCTC formally accepts the Work as complete, pursuant to Section 3.2.3; (ii) termination of this Agreement pursuant to Section 3.9; or (iii) the City has fully satisfied its obligations under this Agreement, (Note: If this Agreement is for Phase I work do not include the following text) “including full repayment of TUMF Regional Funds to RCTC as provided herein”. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

3.6 Representatives of the Parties. RCTC’s Executive Director, or his or her designee, shall serve as RCTC’s representative and shall have the authority to act on behalf of RCTC for all purposes under this Agreement. The City hereby designates **Ahmad R. Ansari, P.E., Public Works Director/City Engineer**, or his or her designee, as the City’s representative to RCTC. The City’s representative shall have the authority to act on behalf of the City for all purposes under this Agreement and shall coordinate all activities of the Work under the City’s responsibility. The City shall work closely and cooperate fully with RCTC’s representative and any other agencies which may have jurisdiction over or an interest in the Work.

3.7 Expenditure of Funds by City Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude the City from expending funds on the Work prior to the execution of the Agreement, or from being reimbursed by RCTC for such expenditures. However, the City understands and acknowledges that any expenditure of funds on the Work prior to the execution of the Agreement is made at the City’s sole risk, and that some expenditures by the City may not be eligible for reimbursement under this Agreement.

3.8 Review of Services. The City shall allow RCTC’s Representative to inspect or review the progress of the Work at any reasonable time in order to determine whether the terms of this Agreement are being met.

3.9 Termination. This Agreement may be terminated for cause or convenience as further specified below.

3.9.1 Termination for Convenience.

3.9.1.1 Notice. Either RCTC or the City may, by written notice to the other party, terminate this Agreement, in whole or in part, for convenience by giving thirty (30) days' written notice to the other party of such termination and specifying the effective date thereof.

3.9.1.2 Effect of Termination for Convenience. In the event that the City terminates this Agreement for convenience, the City shall, within 180 days, repay to RCTC in full all TUMF Regional Funds provided to the City under this Agreement. In the event that RCTC terminates this Agreement for convenience, RCTC shall, within 90 days, distribute to the City TUMF Regional Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the City regarding the Work at the time of the notice of termination; provided, however, that RCTC shall be entitled to exercise its rights under Section 3.14.2, including but not limited to conducting a review of the invoices and requesting additional information. This Agreement shall terminate upon receipt by the non-terminating party of the amounts due it under this Section 3.9.1.2.

3.9.2 Termination for Cause.

3.9.2.1 Notice. Either RCTC or the City may, by written notice to the other party, terminate this Agreement, in whole or in part, in response to a material breach hereof by the other party, by giving written notice to the other party of such termination and specifying the effective date thereof. The written notice shall provide a 30 day period to cure any alleged breach. During the 30 day cure period, the Parties shall discuss, in good faith, the manner in which the breach can be cured.

3.9.2.2 Effect of Termination for Cause. In the event that the City terminates this Agreement in response to RCTC's uncured material breach hereof, RCTC shall, within 90 days, distribute to the City TUMF Regional Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the City regarding the Work at the time of the notice of termination. In the event that RCTC terminates this Agreement in response to the City's uncured material breach hereof, the City shall, within 180 days, repay to RCTC in full all TUMF Regional Funds provided to the City under this Agreement. Notwithstanding termination of this Agreement by RCTC pursuant to this Section 3.9.2.2, RCTC shall be entitled to exercise its rights under Section 3.14.2, including but not limited to conducting a review of the invoices and requesting additional information. This Agreement shall terminate upon receipt by the non-terminating party of the amounts due it under this Section 3.9.2.2.

3.9.3 Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

3.10 Prevailing Wages. The City and any other person or entity hired to perform services on the Work are alerted to the requirements of California Labor Code Sections 1770 et seq., which would require the payment of prevailing wages were the services or any portion thereof determined to be a public work, as defined therein. The City shall ensure compliance with these prevailing wage

requirements by any person or entity hired to perform the Work. The City shall defend, indemnify, and hold harmless RCTC, its officers, employees, consultants, and agents from any claim or liability, including without limitation attorneys, fees, arising from its failure or alleged failure to comply with California Labor Code Sections 1770 et seq.

3.11 Progress Reports. RCTC may request the City to provide RCTC with progress reports concerning the status of the Work.

3.12 Indemnification.

3.12.1 City Responsibilities. In addition to the indemnification required under Section 3.10, the City agrees to indemnify and hold harmless RCTC, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of the City or its subcontractors. The City will reimburse RCTC for any expenditures, including reasonable attorneys' fees, incurred by RCTC, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of the City.

3.12.2 RCTC Responsibilities. RCTC agrees to indemnify and hold harmless the City, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of RCTC or its sub-consultants. RCTC will reimburse the City for any expenditures, including reasonable attorneys' fees, incurred by the City, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of RCTC.

3.12.3 Effect of Acceptance. The City shall be responsible for the professional quality, technical accuracy and the coordination of any services provided to complete the Work. RCTC's review, acceptance or funding of any services performed by the City or any other person or entity under this agreement shall not be construed to operate as a waiver of any rights RCTC may hold under this Agreement or of any cause of action arising out of this Agreement. Further, the City shall be and remain liable to RCTC, in accordance with applicable law, for all damages to RCTC caused by the City's negligent performance of this Agreement or supervision of any services provided to complete the Work.

3.13 Insurance. The City shall require, at a minimum, all persons or entities hired to perform the Work to obtain, and require their subcontractors to obtain, insurance of the types and in the amounts described below and satisfactory to the City and RCTC. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Work, whichever occurs last.

3.13.1 Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Work or be no less than two times the occurrence limit. Such insurance shall:

3.13.1.1 Name RCTC and City, and their respective officials, officers, employees, agents, and consultants as insured with respect to performance of the services on the Work and shall contain no special limitations on the scope of coverage or the protection afforded to these insured;

3.13.1.2 Be primary with respect to any insurance or self insurance programs covering RCTC and City, and/or their respective officials, officers, employees, agents, and consultants; and

3.13.1.3 Contain standard separation of insured provisions.

3.13.2 Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

3.13.3 Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than \$1,000,000.00 Professional liability insurance shall only be required of design or engineering professionals.

3.13.4 Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.

3.14 Procedures for Distribution of TUMF Regional Funds to City.

3.14.1 Initial Payment by the City. The City shall be responsible for initial payment of all the Work costs as they are incurred. Following payment of such Work costs, the City shall submit invoices to RCTC requesting reimbursement of eligible Work costs. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to the City, and documents evidencing the City's payment of the invoices or demands for payment. The City shall submit invoices not more often than monthly and not less often than quarterly.

3.14.2 Review and Reimbursement by RCTC. Upon receipt of an invoice from the City, RCTC may request additional documentation or explanation of the Work costs for which reimbursement is sought. Undisputed amounts shall be paid by RCTC to the City within thirty (30) days. In the event that RCTC disputes the eligibility of the City for reimbursement of all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in resolving the dispute, the City may appeal RCTC's

decision as to the eligibility of one or more invoices to RCTC's Executive Director. The City may appeal the decision of the Executive Director to the full RCTC Board, the decision of which shall be final. Additional details concerning the procedure for the City's submittal of invoices to RCTC and RCTC's consideration and payment of submitted invoices are set forth in Exhibit "C", attached hereto.

3.14.3 Funding Amount/Adjustment. If a post Work audit or review indicates that RCTC has provided reimbursement to the City in an amount in excess of the maximum eligible TUMF share of the Work, as determined by the TUMF Nexus Study, or has provided reimbursement of ineligible Work costs, the City shall reimburse RCTC for the excess or ineligible payments within 30 days of notification by RCTC.

3.15 Work Amendments. Changes to the characteristics of the Work, including the deadline for Work completion, and any responsibilities of the City or RCTC may be requested in writing by the City and are subject to the approval of RCTC's Representative, which approval will not be unreasonably withheld, provided that extensions of time for completion of the Work shall be approved in the sole discretion of RCTC's Representative. Nothing in this Agreement shall be construed to require or allow completion of the Work without full compliance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA") and the National Environmental Policy Act of 1969 (42 USC 4231 *et seq.*), but the necessity of compliance with CEQA and NEPA shall not justify, excuse, or permit a delay in completion of the Work.

3.16 Conflict of Interest. For the term of this Agreement, no member, officer or employee of the City or RCTC, during the term of his or her service with the City or RCTC, as the case may be, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.17 Limited Scope of Duties. RCTC's and the City's duties and obligations under this Agreement are limited to those described herein. RCTC has no obligation with respect to the safety of any Work performed at a job site. In addition, RCTC shall not be liable for any action of City or its contractors relating to the condemnation of property undertaken by City or construction related to the Work.

3.18 Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Work under this Agreement. They shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the Parties for at least three (3) years following termination of this

Agreement, and they shall have access to such information during the three-year period for the purposes of examination or audit.

3.19 Equal Opportunity Employment. The Parties represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.20 Governing Law. This Agreement shall be governed by and construed with the laws of the State of California.

3.21 Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

3.22 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.23 Headings. Article and Section Headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

3.24 Notification. All notices hereunder and communications regarding interpretation of the terms of the Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

City of Moreno Valley
Capital Projects Division
P.O. Box 88005
Moreno Valley, CA 92552-0805

RCTC
Riverside County Transportation Commission
4080 Lemon, 3rd Floor
Mailing address: P.O. Box 12008
Riverside, CA 92501

ATTN: Ahmad R Ansari, P.E.
Public Works Director/ City Engineer

ATTN: Executive Director

Any notice so given shall be considered served on the other party three (3) days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, and addressed to the party at its

applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

3.25 Conflicting Provisions. In the event that provisions of any attached appendices or exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the performance of the Services.

3.26 Contract Amendment. In the event that the Parties determine that the provisions of this Agreement should be altered, the Parties may execute a contract amendment to add any provision to this Agreement, or delete or amend any provision of this Agreement. All such contract amendments must be in the form of a written instrument signed by the original signatories to this Agreement, or their successors or designees.

3.27 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any previous agreements or understandings.

3.28 Validity of Agreement. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

3.29 Independent Contractors. Any person or entities retained by the City or any contractor shall be retained on an independent contractor basis and shall not be employees of RCTC. Any personnel performing services on the Work shall at all times be under the exclusive direction and control of the City or contractor, whichever is applicable. The City or contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services on the Work and as required by law. The City or consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance and workers' compensation insurance.

[Signatures on following page]

SIGNATURE PAGE
TO
AGREEMENT FOR THE FUNDING OF
TUMF REGIONAL ARTERIAL IMPROVEMENTS

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

(Name of local jurisdiction)

By: _____
John J Benoit
Chairman

By: _____
Henry Garcia
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Best, Best & Krieger
Counsel to the Riverside County
Transportation Commission

By: _____
Robert L. Hansen
City Attorney

EXHIBIT "A"

SCOPE OF WORK, FUNDING AND TIMETABLE

SCOPE OF WORK: Detail the Phase(s) of Work to be performed under this Agreement. (Note: Detail the full Project description on Exhibit B.) Provide specific information regarding the Work to be performed, identify the reaches of the work and include a general location map and site map, if applicable. For guidance in developing this Exhibit, please refer to Exhibit A-1.

FUNDING: Identify TUMF, local, state and/or federal funding for each Phase of Work. Delete those Phase which are not part of this Agreement.

PHASE	TUMF	LOCAL	TOTAL
CONSTRUCTION	\$5,665,000	\$ 0	\$5,665,000
TOTAL	\$5,665,000	\$ 0	\$5,665,000

TIMETABLE: Provide at a minimum the beginning and ending dates for each phase of work including major milestones within a phase.

Expected start date: July 2012

Estimated Completion date: April 2013

EXHIBIT “A-1”

GUIDANCE for COMPLETION OF EXHIBIT A

The following list of items generally identified as eligible or ineligible for TUMF Regional Funding reimbursement are consistent with those used to develop the costs for improvements in the first NEXUS Study prepared by WRCOG.

In general, all improvements, with the exception of sidewalks, must be within the curbs of the roadway and extend no further than the curb returns at intersections. In addition, all improvements on or connecting to interstate and state route facilities shall be consistent with Caltrans Highway Design Manual standards.

Items which are typically considered eligible include:

- Asphalt concrete pavement, up to 16’ per lane, to accomplish a 12’ travel lane and ancillary treatment and appropriate base materials
- Concrete curb and gutter and associated drainage – paved roadway shoulders and swale may be used as a substitute
- Class II Bike Lanes
- Paved and painted 14’ median, may be used as a dual left turn lanes
- Traffic signals at intersections with state highways and major arterials which are also on the TUMF Network
- Pavement striping and roadway signing as required.

Items which are not typically considered eligible include:

- Portland Cement pavement or other aesthetic pavement types (except at intersections)
- Major rehabilitation or overlay of existing pavement in adjacent roadway lanes
- Raised Medians
- Parking Lanes
- Landscaping
- Lighting
- Class I Bike Lanes

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EXHIBIT “B”

“PROJECT”DESCRIPTION, FUNDING AND MILESTONES

PROJECT DESCRIPTION: PA&ED, PS&E and R/W have been completed. This agreement is for the only for construction phase to widen Perris Boulevard from Cactus Avenue to Perris Valley Storm Drain Lateral “B”.

FUNDING: Identify TUMF, local, state and/or federal funding for each Phase of Work.

PHASE	TUMF	LOCAL	TOTAL
CONSTRUCTION	\$5,665,000	\$ 0	\$5,665,000
TOTAL	\$5,665,000	\$5,665,000	\$5,665,000

MILESTONES – provide a list of phases and milestones for completion of the improvements and estimated dates when each is expected to be accomplished.

Construction Start Date: July 2012

Estimated Completion date: April 2013

EXHIBIT “C”

PROCEDURES FOR SUBMITTAL, CONSIDERATION AND PAYMENT OF INVOICES

1. RCTC recommends that the City incorporate Exhibit “C-1” into its contracts with any subcontractors to establish a standard method for preparation of invoices by contractors to the City and ultimately to RCTC for reimbursement of City contractor costs.
2. Each month the City shall submit an invoice for eligible Work costs incurred during the preceding month. The original invoice shall be submitted to RCTC’s Executive Director with a copy to RCTC’s Project Coordinator. Each invoice shall be accompanied by a cover letter in a format substantially similar to that of Exhibit “C-2”.
3. Each invoice shall include documentation from each contractor used by the City for the Work, listing labor costs, subcontractor costs, and other expenses. Each invoice shall also include a monthly progress report and spreadsheets showing the hours or amounts expended by each contractor or consultant for the month and for the entire Work to date. Samples of acceptable task level documentation and progress reports are attached as Exhibits “C-4” and “C-5”. All documentation from the City’s contractors should be accompanied by a cover letter in a format substantially similar to that of Exhibit “C-3”.
4. If the City is seeking reimbursement for direct expenses incurred by City staff for eligible Work costs, the City shall detail the same level of information for its labor and any expenses in the same level of detail as required of contractors pursuant to Exhibit “C” and its attachments.
5. Charges for each task and milestone listed in Exhibit “A” shall be listed separately in the invoice.
6. Each invoice shall include a certification signed by the City Representative or his or her designee which reads as follows:

“I hereby certify that the hours and salary rates submitted for reimbursement in this invoice are the actual hours and rates worked and paid to the consultants or contractors listed.

Signed _____

Title _____

Date _____

Invoice No. _____

7. RCTC will pay the City within 30 days after receipt by the Commission of an invoice. If RCTC disputes any portion of an invoice, payment for that portion will be withheld, without interest, pending resolution of the dispute, but the uncontested balance will be paid.
8. The final payment under this Agreement will be made only after: (i) the City has obtained a Release and Certificate of Final Payment from each contractor or consultant used on the Work; (ii) the City has executed a Release and Certificate of Final Payment; and (iii) the City has provided copies of each such Release to RCTC.

DRAFT

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	February 27, 2012
TO:	Western Riverside County Programs and Projects Committee
FROM:	Tanya Love, Goods Movement Manager Michael Blomquist, Toll Program Director
THROUGH:	John Standiford, Deputy Executive Director
SUBJECT:	TIGER IV Discretionary Grants: State Route 91 Corridor Improvement Project

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Direct staff to prepare a Transportation Investment Generating Economic Recovery (TIGER) grant application and Transportation Infrastructure Finance and Innovation ACT (TIFIA) letter of interest (LOI) submittal package to U.S. Department of Transportation (U.S. DOT) for the SR-91 Corridor Improvement Project (SR-91 CIP);
- 2) Authorize the Executive Director to submit the grant application and TIFIA LOI;
- 3) Authorize the Executive Director to submit future TIGER grant applications and TIFIA LOI for the SR-91 CIP if necessary; and
- 4) Forward to Commission for final action.

BACKGROUND INFORMATION:

Grant and LOI Activities

In December 2011, the SR-91 CIP project received a \$20 million TIGER grant. The TIGER grant will pay for the U.S. DOT TIFIA subsidy payment that is needed to provide a future TIFIA loan for a portion of needed financing for the \$1.3 billion freeway widening between Interstate 15 and the Orange County line. In an attempt to bridge the remaining funding gap, the Commission directed staff to see additional funding through the FY 2011/12 TIFIA process. That TIFIA funding request was submitted to U.S. DOT in December 2011; it is anticipated that invitations to submit a TIFIA loan application will be made in March or April of 2012.

The extension of the 91 Express Lanes and freeway widening of the general purpose lanes continues to require significant funding that is anticipated to come from the sale of toll revenue bonds and Measure A funds. To supplement this

funding, staff is seeking an additional loan through the federal TIFIA program and is requesting Commission approval to submit the SR-91 CIP for FY 2011/12 TIGER Discretionary Grant and TIFIA LOI consideration. While staff is hopeful that the SR-91 CIP project will receive additional grant funding as a result of the December 2011 TIFIA submittal, the Commission should continue to be proactive in submitting a grant and/or LOI for every grant cycle until the funding for the SR-91 CIP is complete. On January 31, the U.S. DOT announced an additional grant cycle and identified March 19, as the last date to submit a grant application and LOI. Staff is again seeking approval to submit a grant and LOI for the SR-91 CIP project.

SR-91 CIP Project Details

The SR-91 CIP extends the 91 Express Lanes into Riverside County, adds a new lane in each direction of the SR-91, rebuilds seven interchanges, makes needed street and access improvements in the city of Corona and constructs a number of auxiliary lanes at key locations to ease access on and off the freeway especially between the SR-91 and I-15.

FY 2012 TIGER Grant/LOI Details

The FY 2011/12 Appropriations Act appropriated \$500 million for national infrastructure investments. Funding for the TIGER Discretionary Grants program will be allocated on a competitive basis by U.S. DOT. The process will be highly competitive with no more than \$125 million awarded to projects in a single state. This year's grant process allows for up to \$175 million of the \$500 million to be used to pay the subsidy and administrative costs of TIFIA, a federal credit assistance program. The notice of funding availability was released by U.S. DOT on January 31. While the guidelines allow almost any kind of eligible applicants (state and local governments, tribal governments, transit and port authorities, etc.,) and the project eligibility list covers a broad range of project types and modes, it is clear in the guidelines that U.S. DOT officials are looking to award funds for projects that will have a significant impact on the nation, a metropolitan area, or a region. Additionally, U.S. DOT will consider the extent that projects are ready to proceed with obligation of grant funds when evaluating applications.

U.S. DOT Application Process

Final grant applications and LOIs are due no later than March 19, 2012. Projects that are eligible for TIGER discretionary grants include capital investments in:

- 1) Highway or bridge projects;
- 2) Public transportation projects;
- 3) Passenger and freight rail projects; and
- 4) Marine port infrastructure investments.

U.S. DOT established a pre-application screening process based on the following threshold requirements:

- 1) Project is an eligible project;
- 2) NEPA (National Environmental Policy Act) is completed or has been initiated;
- 3) Project is included in the relevant state, metropolitan, and local planning documents, if applicable;
- 4) Project is able to obligate funds by September 30, 2013 (Note: U.S. DOT prefers June 30, 2013); and
- 5) For urbanized areas, a 20% local match must be identified and committed; there is no match requirement for rural areas.

Projects can increase their competitiveness by demonstrating significant non-federal contributions in excess of the required local match. Additionally, U.S. DOT will give priority to projects for which federal funding is required to complete an overall financing package; projects can increase their competitiveness by demonstrating significant non-federal contributions.

Key Dates for 2012 Grant and LOI Cycle

- 1) January 31, 2012 – U.S. DOT releases notice of funding availability;
- 2) February 20, 2012 – Pre-application due; and
- 3) March 19, 2012 – Grant application and LOI due.

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	February 27, 2012
TO:	Western Riverside County Programs and Projects Committee
FROM:	Henry Nickel, Staff Analyst Sheldon Peterson, Rail Manager
THROUGH:	Robert Yates, Multimodal Services Director
SUBJECT:	Amendment to Commission's FY 2007/08 and FY 2011/12 Rail Program Short Range Transit Plan

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Amend the Commission's Commuter Rail Program FY 2011/12 Short Range Transit Plan (SRTP) to reflect the allocation of \$10 million in Federal Transit Administration (FTA) Section 5309 program funds to the Commuter Rail State of Good Repair project;
- 2) Amend the Commission's Commuter Rail Program FY 2007/08 SRTP to reflect deobligation of \$123,131 in Local Transportation Fund (LTF) funds from the Commission Station Capital Improvement Program; and
- 3) Forward to the Commission for final action.

BACKGROUND INFORMATION:

The SRTPs include plans for the Commission's Regional Commuter Rail Program and provide detailed information about existing services and facilities, financial forecasts and plans, as well as planned and proposed improvements to be implemented. The Commission oversees transit service in Riverside County primarily through the approval of SRTPs that detail the operating and capital costs planned for transit services. Each operator adopts such a plan and then provides data to the Commission on performance. As SRTPs are based upon estimates of future projects, it is necessary to subsequently amend this document upon completion or changes to specified projects and circumstances. The Rail Program is thus requesting amendments to its FY 2007/08 and FY 2011/12 Commuter Rail SRTPs in order to:

- Use federal and state grant funds to preserve local funds;
- Protect lapsing grant funds; and
- Cleanup unused funds through deobligation.

FY 2011/12 SRTP Proposed Amendment

The Commission maintains a total of \$10 million in prior year unobligated federal Section 5309 funds. The Rail Program is now requesting amendment of the Commuter Rail Program's FY 2011/12 SRTP and allocation of these funds to the Commission Commuter Rail State of Good Repair project. The project will facilitate rehabilitation of Commission Commuter Rail assets and facilities in coordination with the Southern California Regional Rail Authority (SCRRA). This is a multi-year project that will commit funds to systematic improvement of facilities and equipment. This project will include the components of SCRRA's Five-Year Capital and Fleet Plan that calls for the rehabilitation of track, signals, communication, mechanical and layover facilities, and rolling stock (both locomotives and passenger rail cars). In addition, the grant will provide for the Commission's local efforts to improve, expand, and rehabilitate station parking and facilities. As required, the grant will also provide for additional funding for the development of the positive train control network and associated communications throughout Southern California. Due to timing of the federal grant process, it is not likely that any of the funds will be spent in FY 2011/12; therefore future budgets will include planned spending and related reimbursements.

Funding	SRTP Year	From	To	Amount
FTA 5309	FY 2011/12	Prior Year Unobligated Funds	Commuter Rail State of Good Repair Project	\$10,000,000

FY 2007/08 SRTP Proposed Amendment

The approved FY 2007/08 SRTP included allocation of \$500,000 in LTF funds for the Station Capital Improvement Program. This project has concluded with a balance of \$123,131 remaining. The Rail Program is requesting approval to deobligate this LTF balance to be used elsewhere by the Rail Program at a future date. As the funds are not budgeted in the current fiscal year, a budget adjustment is not required.

Funding	SRTP Year	From	To	Amount
LTF	FY 2007/08	Station Capital Improvement Program	Deobligation for future use	\$123,131

Financial Information					
In Fiscal Year Budget:	No	Years:	FY 2012/13	Amount:	\$10,000,000
Source of Funds:	FTA			Budget Adjustment:	N/A
GLA No.:	254199 414 41404 0000 103 25 41401				
Fiscal Procedures Approved:	<i>Theresa Irujo</i>			Date:	02/14/12

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	February 27, 2012
TO:	Western Riverside County Programs and Projects Committee
FROM:	Henry Nickel, Staff Analyst Sheldon Peterson, Rail Manager
THROUGH:	Robert Yates, Multimodal Services Director
SUBJECT:	Proposition 1B Fiscal Year 2010/11 California Transit Security Grant Program – California Transit Assistance Fund and Supporting Resolution

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Adopt Resolution No. 12-008, *“Resolution of the Riverside County Transportation Commission Appointing Individuals to Act on Behalf of the Commission for the Purpose of Applying and/or Accepting Grants Awarded to the Commission’s Rail Program”*; and
- 2) Forward to the Commission for final action.

BACKGROUND INFORMATION:

The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B in November 2006, includes a funding program in the amount of \$1 billion to be deposited in the Transit System Safety, Security, and Disaster Response Account. Funds are allocated by the state controller directly to the Commission’s Rail Program. These funds are to be expended within three years after receipt of funds. The FY 2010/11 appropriation includes \$60 million statewide (subject to available bond funding) for the California Transit Security Grant Program – California Transit Assistance Fund (CTSGP-CTAF). These funds are designated to be used for transit capital projects that provide increased protection against a security or safety threat.

The CTSGP-CTAF is administered by the California Emergency Management Agency (Cal EMA). Cal EMA requires a resolution appointing individuals to act on behalf of the Commission’s Rail Program. This resolution is needed in order to successfully complete the grant submittal process. Resolution No. 12-008 is to appoint the Rail Manager to act on behalf of the Commission for the purpose of applying for and/or accepting grants awarded to the Commission’s Rail Program. This item has no direct financial impact.

Attachments: Resolution No. 12-008 Approval and Authorization for Commuter Rail Program Appointees

RESOLUTION NO. 12-008

**RESOLUTION OF THE
RIVERSIDE COUNTY TRANSPORTATION COMMISSION APPOINTING
INDIVIDUALS TO ACT ON BEHALF OF THE COMMISSION FOR THE
PURPOSE OF APPLYING AND/OR ACCEPTING GRANTS AWARDED TO THE
COMMISSION'S RAIL PROGRAM**

WHEREAS, the California Emergency Management Agency requires a resolution regarding appointing individuals to act on behalf of the Riverside County Transportation Commission's Commuter Rail Program related to the FY 2010/11 Proposition 1B-6361-0002 California Transit Assistance Security Grant Program Funds – Commuter Rail Program.

NOW, THEREFORE IT BE RESOLVED, that the Riverside County Transportation Commission hereby finds that the Rail Manager is hereby authorized to execute for and on behalf of the Riverside County Transportation Commission, a public entity established under the laws of the State of California, any actions necessary for the purpose of obtaining FY 2010/11 Proposition 1B California Transit Security Grant Program-California Transit Assistance Fund (CTSGP-CTAF) Grant Funds provided by the California Emergency Management Agency.

APPROVED AND ADOPTED this 14th day of March, 2012.

John J. Benoit, Chair
Riverside County Transportation Commission

ATTEST:

Jennifer Harmon, Clerk of the Board
Riverside County Transportation Commission

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	February 27, 2012
TO:	Western Riverside County Programs and Projects Committee
FROM:	Sheldon Peterson, Rail Manager
THROUGH:	Robert Yates, Multimodal Services Director
SUBJECT:	Master Agreement and Program Supplements for State Funded Transit Projects with the California Department of Transportation

STAFF RECOMMENDATION:

This item is for the Committee to:

- 1) Adopt Resolution No. 12-007, *"Authorization for the Execution of a Master Agreement and Program Supplements for State-Funded Transit Projects"* with California Department of Transportation (Caltrans);
- 2) Approve Agreement No. 12-25-060-00 with Caltrans for state-funded transit projects;
- 3) Authorize the Executive Director, pursuant to legal counsel review, to execute the agreement on behalf of the Commission; and
- 4) Forward to the Commission for final action.

BACKGROUND INFORMATION:

Back in 2001, the Commission entered into the original master agreement for state funded transit projects with the Caltrans. This agreement allows the Commission the opportunity to use state transit funds for commuter rail and transit projects. The term of the original agreement was 10 years, which expired in December 2011.

Staff has been coordinating with Caltrans to establish a new 10-year agreement that will be valid from January 1, 2012, to January 1, 2022. Caltrans provided draft language for the resolution and an updated master agreement. In order to comply with its requirements, staff modified the attached Resolution 12-007, *"Authorization to Execute a Master Agreement and Program Supplements for State-Funded Transit Projects"* and seeks Commission approval for this resolution. This along with approval of the master agreement will allow the Commission to continue to use state transit funds. The next major project requiring state transit funds will be the Perris Valley Line that will be requesting state funds for construction in the near future. This master agreement is required in order to receive funding.

Attachments:

- 1) Resolution 12-007, *"Authorization to Execute a Master Agreement and Program Supplements for State-Funded Transit Projects"*
- 2) Draft Master Agreement for State-Funded Transit Projects

RESOLUTION NO. 12-007

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

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

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

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

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

WHEREAS, the Riverside County Transportation Commission wishes to delegate authorization to execute these agreements and any amendments thereto to the Executive Director.

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

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

ADOPTED this 14 day of March, 2012.

John J. Benoit, Chair
Riverside County Transportation Commission

ATTEST:

Jennifer Harmon, Clerk of the Board
Riverside County Transportation Commission

Master Agreement State Funded Transit Projects



California Department of Transportation

DIVISION OF MASS TRANSPORTATION
1120 N STREET, ROOM 3300
P. O. BOX 942874, MS-39
SACRAMENTO, CA 94274-0001
PHONE (916) 657-3876

**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: Month Date, Year

Termination Date of this Agreement: Month Date, Year

Recipient: Recipient Name

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

- ◆ **General Fund**
 - ◆ **State Highway Account**
 - ◆ **Public Transportation Account**
 - ◆ **Transportation Investment Fund**
 - ◆ **Traffic Congestion Relief Fund (TCR), GC 14556.40**
 - ◆ **Clean Air and Transportation Improvement Act of 1990 (PROP. 116) Bond Fund**
 - ◆ **Other State Funding Sources**
-

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

ARTICLE I - PROJECT ADMINISTRATION

Section 1. Program Supplement

A. General

- (1) This AGREEMENT shall have no force and effect with respect to any PROJECT unless and until a separate PROJECT specific “PROGRAM SUPPLEMENT – STATE FUNDED TRANSIT PROJECT(S),” hereinafter referred to as “PROGRAM SUPPLEMENT,” adopting all of the terms and conditions of this AGREEMENT has been fully executed by both **STATE** and **RECIPIENT**.
- (2) **RECIPIENT** agrees to complete each defined PROJECT, or the identified PROJECT Phase/Component thereof, described in the PROGRAM SUPPLEMENT adopting all of the terms and conditions of this AGREEMENT.

- (3) A financial commitment of actual PROJECT funds will only occur in each detailed and separate PROGRAM SUPPLEMENT. No funds are obligated by the prior execution of this AGREEMENT alone.
- (4) **RECIPIENT** further agrees, as a condition to the release and payment of the funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all the agreed-upon Special Covenants and Conditions attached to or made a part of the PROGRAM SUPPLEMENT identifying and defining the nature of that specific PROJECT.
- (5) The PROGRAM SUPPLEMENT shall include: a detailed Scope of Work conforming to the included Project Description, a Project Schedule, an Overall Funding Plan, and a Project Financial Plan as required by the applicable Program Guidelines.
 - a. The Scope of Work shall include a detailed description of the PROJECT and will itemize the major tasks and their estimated costs.
 - b. The Project Schedule shall include major tasks and/or milestones and their associated beginning and ending dates and duration.
 - c. The Overall Funding Plan shall itemize the various PROJECT Components, the committed funding program(s) or source(s), and the matching funds to be provided by **RECIPIENT** and/or other funding sources, if any [these Components include Environmental and Permits; Plans, Specifications and Estimates (PS&E); Right-of-Way (ROW); and Construction (including transit vehicle acquisition)].
 - d. The Project Financial Plan shall identify estimated expenditures for each PROJECT Component by funding source.
- (6) Adoption and execution of the PROGRAM SUPPLEMENT by **RECIPIENT** and **STATE**, incorporating the terms and conditions of this AGREEMENT into the PROGRAM SUPPLEMENT as though fully set forth therein, shall be sufficient to bind **RECIPIENT** to these terms and conditions when performing the PROJECT. Unless otherwise expressly delegated to a third-party in a resolution by **RECIPIENT**'s governing body, which delegation must be expressly assented to and concurred in by **STATE**, the PROGRAM SUPPLEMENT shall be managed by **RECIPIENT**.
- (7) The estimated cost and scope of each PROJECT will be as described in the applicable PROGRAM SUPPLEMENT. **STATE** funding participation for each PROJECT is limited to those amounts actually encumbered by **STATE** as evidenced in that applicable PROGRAM SUPPLEMENT. A contract awarded by **RECIPIENT** for PROJECT work in an amount in excess of said approved estimate or the PROGRAM SUPPLEMENT funding limit may exceed any said PROGRAM SUPPLEMENT cost estimate and the limits of **STATE**'s participation provided:
 - a. **RECIPIENT** provides the necessary additional funding, or
 - b. A cost increase in **STATE**'s share of PROJECT funding is first requested by **RECIPIENT** (before the cost overrun occurs) and that increase is approved by

STATE in the form of an Allocation Letter comprising the encumbrance document for that increased **STATE** funding level.

- (8) State programmed fund amounts may be increased to cover **PROJECT** cost increases only if:
 - a. Such funds are available;
 - b. **STATE** concurs with that proposed increase; and
 - c. **STATE** issues an approved Allocation Letter, Fund Shift Letter, or a Time Extension Letter with additional funding as stated in an executed amendment to that **PROGRAM SUPPLEMENT**.
- (9) When additional State programmed funds are not available, **RECIPIENT** agrees that reimbursements of invoiced **PROJECT** costs paid to **RECIPIENT** will be limited to, and shall not exceed, the amounts already approved in the **PROGRAM SUPPLEMENT** containing the **STATE** approved encumbrance documents and that any increases in **PROJECT** costs above that **STATE** supported funding level must be defrayed by **RECIPIENT** with non-State funds.
- (10) For each approved **PROGRAM SUPPLEMENT**, **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of appropriate matching funds (other than State funds) if any matching funds are specified within the **PROGRAM SUPPLEMENT**, or any attachment thereto, toward the actual cost of the **PROJECT** or the amount, if any, specified in an executed SB 2800 (Streets and Highways Code section 164.53) Agreement for local match fund credit, whichever is greater. **RECIPIENT** shall contribute not less than the required match amount toward the cost of the **PROJECT** in accordance with a schedule of payments as shown in a Project Financial Plan prepared by **RECIPIENT** as part of a **PROGRAM SUPPLEMENT**.
- (11) Upon the stated expiration date of this **AGREEMENT**, any **PROGRAM SUPPLEMENTS** executed under this **AGREEMENT** for a **PROJECT** with work yet to be completed pursuant to the approved Project Schedule shall be deemed to extend the term of this **AGREEMENT** only to conform to the specific **PROJECT** termination or completion date contemplated by the applicable **PROGRAM SUPPLEMENT** to allow that uncompleted **PROJECT** to be administered under the extended terms and conditions of this **AGREEMENT**.

B. Project Overrun

- (1) If **RECIPIENT** and **STATE** determine, at any time during the performance of a **PROJECT**, that the **PROJECT** budget may be exceeded, **RECIPIENT** shall take the following steps:
 - a. Notify the designated **STATE** representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify

potential cost savings or other measures which **RECIPIENT** will institute to bring the Project Budget into balance; and

- b. Schedule the projected overrun for discussion at the next Quarterly Review meeting; and
- c. Identify the source of additional **RECIPIENT** or other third party funds that can be made available to complete PROJECT.

C. *Scope of Work*

- (1) **RECIPIENT** shall be responsible for complete performance of the work described in the approved PROGRAM SUPPLEMENT for the PROJECT related to the commitment of encumbered funds. All work shall be accomplished in accordance with the applicable provisions of the Public Utilities Code, the Streets and Highways Code, the Government Code, and other applicable statutes and regulations.
- (2) **RECIPIENT** acknowledges and agrees that **RECIPIENT** is the sole control and manager of each PROJECT and its subsequent employment, operation, repair and maintenance for the benefit of the public. **RECIPIENT** shall be solely responsible for complying with the funding and use restrictions established by (a) the statutes from which these funds are derived, (b) the California Transportation Commission (CTC), (c) the State Treasurer, (d) the Internal Revenue Service, (e) the applicable PROGRAM SUPPLEMENT, and (f) this AGREEMENT.

D. *Program Supplement Amendments*

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

Section 2. Allowable Costs and Payments

A. *Allowable Costs and Progress Payment Vouchers*

- (1) Not more frequently than once a month, but at least quarterly, **RECIPIENT** will prepare and submit to **STATE** (directed to the attention of the appropriate State District Transit Representative) signed Progress Payment Vouchers for actual PROJECT costs incurred and paid for by **RECIPIENT** consistent with the Scope of Work document in the PROGRAM SUPPLEMENT and **STATE** shall pay those uncontested allowable costs once the voucher is approved. If no costs were incurred during any given quarter, **RECIPIENT** is exempt from submitting a signed Progress Payment Voucher; but is still required to present a progress report at each Quarterly Review.

- (2) **STATE** shall not be required to reimburse more funds, cumulatively, per quarter of any fiscal year greater than the sums identified and included in the PROJECT Financial Plan. However, accelerated reimbursement of PROJECT funds in excess of the amounts indicated in the Project Financial Plan, cumulatively by fiscal year, may be allowed at the sole discretion of **STATE** if such funds are available for encumbrance to fulfill that need.
- (3) Each such voucher will report the total of PROJECT expenditures from all sources (including those of **RECIPIENT** and third parties) and will specify the percent of State reimbursement requested and the fund source. The voucher should also summarize State money requested by PROJECT component (environmental and permits, plans specifications, and estimates (PS&E); right of way; construction; rolling stock; or--if bond funded--private activity usage) and phase, and shall be accompanied by a report describing the overall work status and progress on PROJECT tasks. If applicable, the first voucher shall also be accompanied by a report describing any tasks specified in the PROGRAM SUPPLEMENT which were accomplished prior to the Effective Date of this AGREEMENT or the PROGRAM SUPPLEMENT with costs to be credited toward any required local contribution described in Article II, Section 1 of this Agreement (but only if expended pursuant to any applicable prior executed Agreement for Local Match Fund Credit between **RECIPIENT** and **STATE**).
- (4) An Indirect Cost Rate Proposal and/or Central Service Cost Allocation plan and related documentation approved under cognizant agency regulations are to be provided to **STATE** (Caltrans Audits & Investigations) annually for their review, and approval and filing prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for reimbursement.

B. Advance Payments (TCR Projects Only)

- (1) Advance reimbursements or payments by **STATE** are not allowed except in the case of TCR funded Projects, and only then when expressly authorized by the CTC.
- (2) In order to receive a CTC approved TCR payment advance, **RECIPIENT** must provide duplicate signed invoices to **STATE** requesting payment of that authorized advance.
- (3) For TCR Projects approved for advanced payment allocation by the CTC, said advance payment shall be deposited by **RECIPIENT** in an interest bearing account held by institutions with long-term credit ratings of "AA" or better from at least two nationally recognized credit rating agencies, or in instruments issued by and secured by the full faith and credit of the U.S. Government or by an agency of the U.S. Government. No TCR interest earnings may be spent on the PROJECT. Interest earned shall be recorded and documented from the time the TCR funds are first deposited in **RECIPIENT**'s account until all the approved TCR advance funds have been expended or returned to **STATE** together with all accrued interest. Interest earned shall be reported to **STATE**'s Project Coordinator on an annual basis and upon the final PROJECT

payment when interest earnings, overpayments, and unexpended advanced TCR funds shall be returned to **STATE** no later than thirty (30) days after **PROJECT** completion or termination of the **PROGRAM SUPPLEMENT**, whichever is first in time.

- (4) Advanced funds are to be expended only as indicated in the approved TCR Application. **RECIPIENT** must be able to document the expenditures/disbursement of funds advanced to only pay for actual allowable **PROJECT** costs incurred.
- (5) Except as expressly allowed hereinbelow, non-TCR funds and TCR project funds not authorized for advance payment can only be released by **STATE** as reimbursement of actual allowable **PROJECT** costs already incurred and paid for by **RECIPIENT** no earlier than the effective date of this **AGREEMENT** and not incurred beyond the **AGREEMENT/PROGRAM SUPPLEMENT** Termination Date.
- (6) Where advance payments are authorized in a **PROGRAM SUPPLEMENT**, **RECIPIENT** must report and document the expenditure/disbursement of funds advanced to pay for actual eligible **PROJECT** costs incurred, at least quarterly, using a Progress Payment Voucher to be approved by **STATE**'s District Project Administrator.

C. Expedited Payments

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

D. Advance Expenditure of Local Funds

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

E. Travel Reimbursement

Payments to **RECIPIENT** for **PROJECT** related travel and subsistence expenses of **RECIPIENT** forces and its subcontractors claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid rank and file State employees under current

State Department of Personnel Administration (DPA) rules. If the rates invoiced by **RECIPIENT** are in excess of those authorized DPA rates, then **RECIPIENT** is responsible for the cost difference, and any overpayments inadvertently paid by **STATE** shall be reimbursed to **STATE** by **RECIPIENT** on demand.

F. *Final Invoice*

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

ARTICLE II – GENERAL PROVISIONS

Section 1. Funding

A. *Local Match Funds*

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

- (1) Except where specifically allowed by the applicable PROGRAM SUPPLEMENT, reimbursement of and credits for local matching funds will be made or allowed only for work performed after the Effective Date of a PROGRAM SUPPLEMENT and prior to the Termination Date unless permitted as local match PROJECT expenditures made prior to the effective date of the PROGRAM SUPPLEMENT pursuant to Government Code section 14529.17 or by an executed SB 2800 Agreement for Local Match Fund Credit.
- (2) **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of matching funds (other than State or federal funds), if any is specified within the PROGRAM SUPPLEMENT or any attachment thereto, toward the actual cost of the PROJECT or the amount, if any, specified in any executed SB 2800 (Streets and Highways Code Section 164.53) Agreement for local match fund credit, whichever is greater. **RECIPIENT** shall contribute not less than its required match amount toward the PROJECT cost in accordance with a schedule of payments as shown in the Project Financial Plan prepared by **RECIPIENT** and approved by **STATE** as part of a PROGRAM SUPPLEMENT.

B. *Funding Contingencies*

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

C. *Funds Movement*

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

Section 2. Audits and Reports

A. *Cost Principles*

- (1) **RECIPIENT** agrees to comply with Title 2 Code of Federal Regulations 225 (2 CFR 225) 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** agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) 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) those parties 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 2 CFR 225, 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 thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, **STATE** is authorized to intercept and withhold future payments due **RECIPIENT** from **STATE** or any third-party source, including but not limited to, the State Treasurer, the State Controller and the CTC.

B. *Record Retention*

- (1) **RECIPIENT** agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of **RECIPIENT**, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **RECIPIENT**, its contractors and subcontractors connected with PROJECT performance under this AGREEMENT and each PROGRAM SUPPLEMENT shall be maintained for a minimum of three (3) years from the date of final payment to **RECIPIENT** under a PROGRAM SUPPLEMENT and shall be held open to inspection, copying, and audit by representatives of **STATE**, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by **RECIPIENT**, its contractors, and subcontractors upon receipt of any request made by **STATE** or its agents. In conducting an audit of the costs and match credits claimed under this AGREEMENT, **STATE** will rely to the maximum extent possible on any prior audit of **RECIPIENT** pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by **RECIPIENT**'s external and internal auditors may be relied upon and used by **STATE** when planning and conducting additional audits.
- (2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of **RECIPIENT**'s contracts with third parties pursuant to Government Code section 8546.7, **RECIPIENT**, **RECIPIENT**'s contractors and subcontractors and **STATE** shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to **RECIPIENT** under any PROGRAM SUPPLEMENT. **STATE**, the California State Auditor, or any duly authorized representative of **STATE** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions, and **RECIPIENT** shall furnish copies thereof if requested.

- (3) **RECIPIENT**, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **STATE**, for the purpose of any investigation to ascertain compliance with this AGREEMENT.

C. *Quarterly Review*

- (1) Subject to the discretion of **STATE**, **RECIPIENT** and **STATE** agree to conduct, on a quarterly basis, on-site reviews of all aspects of the progress of each PROJECT. **RECIPIENT** agrees, during each quarterly progress review, to inform **STATE** regarding:
 - a. Whether the PROJECT is proceeding on schedule and within budget;
 - b. Any requested changes to the Project Description, Scope of Work, Project Schedule, Overall Funding Plan, or Project Financial Plan contained in a PROGRAM SUPPLEMENT;
 - c. Major construction accomplishments during the quarter;
 - d. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties;
 - e. The status of the PROJECT budget; and
 - f. The status of critical elements of PROJECT.
- (2) Quarterly reviews of **RECIPIENT** progress will include consideration of whether reported implementation activities are within the scope of the PROJECT PROGRAM SUPPLEMENT and in compliance with State laws, regulations, and administrative requirements.

Section 3. Special Requirements

A. *California Transportation Commission (CTC) Resolutions*

- (1) **RECIPIENT** shall adhere to applicable CTC policies on “Timely Use of Funds” as stated in Resolution G-06-04, adopted April 26, 2006, addressing the expenditure and reimbursement of TCR funds; and Resolution G-09-11, adopted October 14, 2009, to provide guidance for the use of Proposition 116 and STIP funds. 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, respectively.
- (2) **RECIPIENT** shall be bound to the terms and conditions of this AGREEMENT; the PROJECT application contained in the PROGRAM SUPPLEMENT (as applicable); and CTC Resolutions G-06-04, G-09-11 and/or their respective successors in place at the time the PROGRAM SUPPLEMENT is signed (as applicable) and all restrictions, rights, duties and obligations established therein on behalf of **STATE** and CTC shall accrue to the benefit of the CTC and shall thereafter be subject to any necessary

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

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

B. *RECIPIENT Resolution*

- (1) **RECIPIENT** has executed this AGREEMENT pursuant to the authorizing **RECIPIENT** resolution, attached as Attachment II to this AGREEMENT, which empowers **RECIPIENT** to enter into this AGREEMENT and which may also empower **RECIPIENT** to enter into all subsequent PROGRAM SUPPLEMENTS adopting the provisions of this AGREEMENT.
- (2) If **RECIPIENT** or **STATE** determines that a separate Resolution is needed for each PROGRAM SUPPLEMENT, **RECIPIENT** will provide information as to who the authorized designee is to act on behalf of the **RECIPIENT** to bind **RECIPIENT** with regard to the terms and conditions of any said PROGRAM SUPPLEMENT or amendment and will provide a copy of that additional Resolution to **STATE** with the PROGRAM SUPPLEMENT or any amendment to that document.

C. *Termination*

- (1) **STATE** reserves the right to terminate funding for any PROGRAM SUPPLEMENT upon written notice to **RECIPIENT** in the event that **RECIPIENT** fails to proceed with PROJECT work in accordance with the PROGRAM SUPPLEMENT, the bonding requirements, if applicable, or otherwise violates the conditions of this AGREEMENT and/or the PROGRAM SUPPLEMENT or the funding allocation such that substantial performance is significantly endangered.
- (2) No such termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, **RECIPIENT** either cures the default involved or, if not reasonably susceptible of cure within said thirty (30)-day period, **RECIPIENT** proceeds thereafter to complete the cure in a manner and time line acceptable to **STATE**. Any such termination shall be accomplished by delivery to **RECIPIENT** of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the

period before the effective termination date, **RECIPIENT** and **STATE** shall meet to attempt to resolve any dispute.

- (3) Following a fund encumbrance made pursuant to a PROGRAM SUPPLEMENT, if **RECIPIENT** fails to expend TCR/GENERAL FUND monies by June 30 of any applicable Fiscal Year that those funds would revert, those funds will be deemed withdrawn and will no longer be available to reimburse PROJECT work unless those funds are specifically made available beyond the end of that Fiscal Year through re-appropriation or other equivalent action of the Legislature and written notice of that action is provided to **RECIPIENT** by **STATE**.
- (4) In the event **STATE** terminates a PROGRAM SUPPLEMENT for convenience and not for a default on the part of **RECIPIENT** as is contemplated in C (1) and (2) above of this Section 3, **RECIPIENT** shall be reimbursed its authorized costs up to **STATE**'s proportionate and maximum share of allowable PROJECT costs incurred to the date of **RECIPIENT**'s receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by **RECIPIENT** to effect such termination following receipt of that termination notice.

D. *Third Party Contracting*

- (1) **RECIPIENT** shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of **STATE**. Contracts awarded by **RECIPIENT**, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.
- (2) Any subcontract entered into by **RECIPIENT** as a result of this AGREEMENT shall contain the provisions of ARTICLE II – GENERAL PROVISIONS, Section 2. Audits and Reports and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.
- (3) To be eligible for local match credit, **RECIPIENT** must ensure that local match funds used for the PROJECT meet the General Provisions requirements outlined in this ARTICLE II in the same manner as required of all other PROJECT expenditures.
- (4) In addition to the above, the preaward requirements of third party contractor/consultants with local transit agencies should be consistent with Local Program Procedures (LPP-00-05).

E. *Change in Funds and Terms/Amendments*

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

F. *Project Ownership*

- (1) Unless expressly provided to the contrary in a PROGRAM SUPPLEMENT, subject to the terms and provisions of this AGREEMENT, **RECIPIENT**, or a designated subrecipient acceptable to **STATE**, as applicable, shall be the sole owner of all improvements and property included in the PROJECT constructed, installed or acquired by **RECIPIENT** or subrecipient with funding provided to **RECIPIENT** under this AGREEMENT. **RECIPIENT**, or subrecipient, as applicable, is obligated to continue operation and maintenance of the physical aspects of the PROJECT dedicated to the public transportation purposes for which PROJECT was initially approved unless **RECIPIENT**, or subrecipient, as applicable, ceases ownership of such PROJECT property; ceases to utilize the PROJECT property for the intended public transportation purposes; or sells or transfers title to or control over PROJECT and **STATE** is refunded the Credits due **STATE** as provided in paragraph (4) herein below.
- (2) Should State bond funds be encumbered to fund any part of a PROJECT under this AGREEMENT, then, at **STATE**'s option, before **RECIPIENT** will be permitted to make any proposed change in use, **RECIPIENT** shall be required to first obtain a determination by Bond Counsel acceptable to the State Treasurer's Office and **STATE** that a change in the operation, proportion, or scope of PROJECT as originally proposed by **RECIPIENT** will not adversely affect the tax exempt status of those bonds.
- (3) PROJECT right-of-way, PROJECT facilities constructed or reconstructed on a PROJECT site and/or PROJECT property (including vehicles and vessels) purchased by **RECIPIENT** (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this AGREEMENT) shall remain permanently dedicated to the described public transit use in the same proportion and scope, and to the same extent as mandated in the PROGRAM SUPPLEMENT and related Bond Fund Certification documents, if applicable, unless **STATE** agrees otherwise in writing. Vehicles acquired as part of PROJECT, including, but not limited to, buses, vans, rail passenger equipment and ferry vessels, shall be dedicated to that public transportation use for their full economic life cycle, which, for the purpose of this AGREEMENT, will be determined in accordance with standard national transit practices and applicable rules and guidelines, including any extensions of that life cycle achievable by reconstruction, rehabilitation or enhancements.
- (4) (a) Except as otherwise set forth in this Section 4, **STATE**, or any other **STATE**-assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit (collectively the Credit), at **STATE**'s sole option, equivalent to the proportionate PROJECT funding participation received by **RECIPIENT** from

STATE if **RECIPIENT**, or a sub-recipient, as applicable, (i) ceases to utilize **PROJECT** for the original intended public transportation purposes or (ii) sells or transfers title to or control over **PROJECT**. If federal funds (meaning only those federal funds received directly by **RECIPIENT** and not federal funds derived through or from the State) have contributed to the **PROJECT**, **RECIPIENT** shall notify both **STATE** and the original federal source of those funds of the disposition of the **PROJECT** assets or the intended use of those sale or transfer receipts.

- (b) **STATE** shall also be entitled to an acquisition Credit for any future purchase or condemnation of all or portions of **PROJECT** by **STATE** or a designated representative or agent of **STATE**.
- (c) The Credit due **STATE** will be determined by the ratio of **STATE**'s funding when measured against the **RECIPIENT**'s funding participation (the Ratio). For purposes of this Section 4, the State's funding participation includes federal funds derived through or from **STATE**. That Ratio is to be applied to the then present fair market value of **PROJECT** property acquired or constructed as provided in (d) and (e) below.
- (d) For Mass Transit vehicles, this Credit [to be deducted from the then remaining equipment value] shall be equivalent to the percentage of the full extendable vehicle economic life cycle remaining, multiplied by the Ratio of funds provided for that equipment acquisition. For real property, this same funding Ratio shall be applied to the then present fair market value, as determined by **STATE**, of the **PROJECT** property acquired or improved under this AGREEMENT.
- (e) Such Credit due **STATE** as a refund shall not be required if **RECIPIENT** dedicates the proceeds of such sale or transfer exclusively to a new or replacement **STATE** approved public transit purpose, which replacement facility or vehicles will then also be subject to the identical use restrictions for that new public purpose and the Credit ratio due **STATE** should that replacement project or those replacement vehicles cease to be used for that intended described pre-approved public transit purpose.
 - (1) In determining the present fair market value of property for purposes of calculating **STATE**'s Credit under this AGREEMENT, any real property portions of a **PROJECT** site contributed by **RECIPIENT** shall not be included. In determining **STATE**'s proportionate funding participation, **STATE**'s contributions to third parties (other than **RECIPIENT**) shall be included if those contributions are incorporated into the **PROJECT**.
 - (2) Once **STATE** has received the Credit as provided for above because **RECIPIENT**, or a sub-recipient, as applicable, has (a) ceased to utilize the **PROJECT** for the described intended public transportation purpose(s) for which **STATE** funding was provided and **STATE** has not consented to that cessation of services or (b) sold or transferred title to or control over **PROJECT** to another

party (absent **STATE** approval for the continued transit operation of the **PROJECT** by that successor party under an assignment of **RECIPIENT**'s duties and obligations), neither **RECIPIENT**, subrecipient, nor any party to whom **RECIPIENT** or subrecipient, as applicable, has transferred said title or control shall have any further obligation under this **AGREEMENT** to continue operation of **PROJECT** and/or **PROJECT** facilities for those described public transportation purposes, but may then use **PROJECT** and/or any of its facilities for any lawful purpose.

- (3) To the extent that **RECIPIENT** operates and maintains Intermodal Transfer Stations as any integral part of **PROJECT**, **RECIPIENT** shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code section 99317.8). Upon request of **STATE**, **RECIPIENT** shall also authorize State-funded bus services to use those stations and appurtenances without any charge to **STATE** or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the State-funded bus service (for the purpose of this paragraph, "State-funded bus service" means any bus service funded pursuant to Public Utilities Code section 99316).
- (4) Special conditions apply to any proposed sale or transfer or change of use as respects **PROJECT** property, facilities or equipment acquired with tax free State bond funds and **RECIPIENT** shall conform to those restrictions as set forth herein and in said bonds.

G. Disputes

STATE and **RECIPIENT** shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, **RECIPIENT** shall submit to the **STATE**'s District Contract Manager or designee a written demand for a decision regarding the disposition of any dispute arising under this agreement. The District Contract Manager shall make a written decision regarding the dispute and will provide it to the fund **RECIPIENT**. The fund **RECIPIENT** shall have an opportunity to challenge the District Contract Manager's determination but must make that challenge in writing within ten (10) working days to the Mass Transportation Program Manager or his/her designee. [If the fund **RECIPIENT** challenge is not made within the ten (10) day period, the District Contract Manager's decision shall become the final decision of the **STATE**.] **STATE** and **RECIPIENT** shall submit written, factual information and supporting data in support their respective positions. The decision of the Mass Transportation Program Manager or his/her designee shall be final, conclusive and binding regarding the dispute, unless **RECIPIENT** commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

H. Hold Harmless and Indemnification

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

I. *Labor Code Compliance*

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

J. *Non-Discrimination*

- (1) In the performance of work under this AGREEMENT, **RECIPIENT**, its contractor(s) and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, family and medical care leave, pregnancy leave, and disability leave. **RECIPIENT**, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. **RECIPIENT**, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of **RECIPIENT**'s contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

- (2) Should federal funds be constituted as part of PROJECT funding or compensation received by **RECIPIENT** under a separate Contract during the performance of this AGREEMENT, **RECIPIENT** shall comply with this AGREEMENT and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.
- (3) **RECIPIENT** shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

K. State Fire Marshal Building Standards Code

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

L. Americans with Disabilities Act

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

M. Access for Persons with Disabilities

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

N. Disabled Veterans Program Requirements

- (1) Should Military and Veterans Code sections 999 et seq. be applicable to **RECIPIENT**, **RECIPIENT** will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or **RECIPIENT**'s applicable higher goals) in the award of every contract for PROJECT work to be performed under these this AGREEMENT.
- (2) **RECIPIENT** shall have the sole duty and authority under this AGREEMENT and each PROGRAM SUPPLEMENT to determine whether these referenced code sections are applicable to **RECIPIENT** and, if so, whether good faith efforts asserted by those contractors of **RECIPIENT** were sufficient as outlined in Military and Veterans Code sections 999 et seq.

O. *Environmental Process*

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

ARTICLE III – SPECIAL PROVISIONS

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

A. *General Bond Provisions*

- (1) If **RECIPIENT** enters into a management contract with a private party (including AMTRAK) for operation of rail, ferry or other transportation services in connection with PROJECT, **RECIPIENT** will obtain prior approval from Bond Counsel acceptable to **STATE** that the terms of that management contract meet the requirements of Internal Revenue Service Revenue Procedure 97-13 (as supplemented or amended) or any successor thereto (dealing generally with guidelines for when management contracts may be deemed not to create a "private use" of bond-financed property) or are otherwise acceptable. **RECIPIENT** must also be prepared to certify, upon request of **STATE**, that the revenues which **RECIPIENT** (or its manager) will receive directly from the operation of transportation services in connection with PROJECT (but not including any subsidy of the transportation operation from taxes or other outside fund sources) are, for any fiscal year, less than the ordinary and necessary expenses directly attributable to the operation and maintenance of the transportation system (excluding any overhead or administrative costs of **RECIPIENT**).
- (2) Except as provided in this Article III, A (1), **STATE** and **RECIPIENT** agree that any costs of PROJECT acquired or constructed by **RECIPIENT** allocable to portions of PROJECT which are subject to any property interests held by a non-governmental person(s) in connection with business activities, such as easements, leases, or fee interests, not generally enjoyed by the public (hereinafter referred to as “Non-Governmentally Used Property” or “NUP”) shall require the prior approval of **STATE** and the State Treasurer, as applicable. If **RECIPIENT** receives any revenues or profits

from any NUP activities allowed pursuant to this Article (whether approved at this time or hereafter approved by **STATE**), **RECIPIENT** agrees that such revenues or profits shall be used exclusively for the public transportation services for which **PROJECT** was initially approved, either for capital improvements or operating costs. If **RECIPIENT** does not so dedicate those revenues or profits, a proportionate share shall (unless disapproved by Bond Counsel) be paid to **STATE** equivalent to the Ratio of **STATE**'s percentage of participation in **PROJECT**.

- (3) Notwithstanding the foregoing, **RECIPIENT** may be authorized to receive an allocation of bond proceeds for NUP activity, in an amount not to exceed the amount specified in the **PROGRAM SUPPLEMENT**, if **RECIPIENT** submits a certified bond certification questionnaire to the **STATE**, and both the **STATE** and the State Treasurer approve the private activities contained therein.
- (4) **RECIPIENT** shall not loan any portion of bond proceeds funding **PROJECT** to any private (including nonprofit) person or business. For this purpose, a "loan" includes any arrangement that is the economic equivalent of a loan, regardless of how it is named.
- (5) Delivery by **STATE** of any bond funds is contingent on the sale of bonds by the State Treasurer. **STATE** shall not be held liable for any resulting damage or penalty to **RECIPIENT** in the event bond sales are delayed, canceled, or downsized or other **AGREEMENT** funds are restricted, limited or otherwise conditioned by acts of Congress, the Internal Revenue Service, the United States Department of Transportation, the Legislature, or the CTC.
- (6) **RECIPIENT** shall, for the purposes of any State bond funded right of way acquisition which will become a permanent part of **PROJECT** (such acquisitions exclude temporary construction easements, property allocated to matching funds, and excess property purchased with State funds whose resale proceeds are returned or credited to **STATE**), maintain ownership of such **PROJECT** property for a minimum of twenty years or until the bonds have matured, whichever occurs first, before transferring or selling such property (subject to all refunds or Credits due **STATE** as provided hereinabove).
- (7) Where **RECIPIENT**'s **PROJECT** includes a commuter rail **PROJECT** within the meaning of Proposition 116, **RECIPIENT** shall coordinate and share with other public transit operators any rail rights-of-way, common maintenance services and station facilities used for intercity and commuter rail. Intercity and commuter rail services shall be coordinated with each other, with other providers and with freight traffic to provide integrated rail passenger and freight services with minimal conflict.
- (8) **RECIPIENT** agrees that all passenger vehicles, rail, and water borne ferry equipment, and all facilities acquired or constructed with Proposition 116 bond funds shall be accessible to persons with physical disabilities, including wheelchair users, at all stops, stations and terminals, whether or not staffed.

- (9) NUP shall, for accounting and bookkeeping purposes, first be allocated to funding sources other than the State bond funds. For purposes of making such allocations, the costs attributable to NUP involving a sale, easement, lease or similar arrangement shall be determined on the basis of a fair allocation of value, which may include determinations based upon square meters/feet of the area encumbered by the NUP lease or easement relative to the total area acquired or constructed if all such area is of approximately equal value.
- (10) NUP will include, but is not limited to, property which is sold (including sales of air and subsurface rights), and property subject to easements, leases or similar rights. A rail right of way will not be treated as NUP solely as a result of a Freight Use Easement retained by the seller of the right of way to **RECIPIENT**, provided that the sales agreement appropriately excludes the Freight Use Easement from the property or rights being acquired. Further, notwithstanding anything in this Article III to the contrary, **RECIPIENT** may allocate grant funds to the cost of any NUP if (a) neither **RECIPIENT** nor any other governmental entity will receive, directly or indirectly, any payments from or on behalf of the non-governmental user of the NUP, or (b) the payment from such user does not exceed the operation and maintenance costs fairly attributable or allocable to the non-governmental use of the NUP.
- (11) **RECIPIENT** shall request, in writing, **STATE**'s advance approval if **PROJECT** funds are to be allocated to any NUP except "incidental use" property described below. If property, the costs of which have previously been allocated to **PROJECT** funds, is to become NUP before the State bond funds are fully paid or redeemed, then **RECIPIENT** may allocate the costs of such property to another funding source as provided or obtain **STATE**'s approval that the allocation of the costs of such property to the bond funds may remain. It is anticipated that **STATE**'s approval will be granted if, taking into account the existing and expected uses of the proceeds of the State bonds, **STATE** determines that the continued tax-exempt status of the State bonds will not be adversely affected and that the use of the property is consistent with **PROJECT** and its described purpose.
- (12) For purposes of these fund source allocations, **RECIPIENT** does not have to consider NUP as including those "incidental uses" of **PROJECT** (for example, advertising billboards, vending machines, telephones, etc.) which meet the applicable requirements of federal tax regulations (IRS Notice 87-69 or any successor thereto). In general, such Notice requires that the incidental use not be physically separated from the rest of **PROJECT** and not comprise, in the aggregate, more than 2-1/2% of the total costs of **PROJECT**.

Section 2. TCRP PROJECTS

The TRAFFIC CONGESTION RELIEF (TCR) ACT OF 2000 (the "ACT"), was added (in Chapter 4.5, commencing with section 14556) to part 5.3 of Division 3 of Title 2 of the Government Code by AB 2928 and SB 406, as amended by SB 1662 and AB 1705. As directed

by the ACT and the CTC established Guidelines (as set out in CTC Resolution G-06-04), and as those Guidelines may be amended prior to the execution of a future PROGRAM SUPPLEMENT, said Guidelines shall apply to each TCRP funded PROJECT. By this reference, those Guidelines are made an express part of this AGREEMENT and shall apply to each TCRP funded PROJECT. **RECIPIENT** will cause its specific TCRP mandated Resolution to be attached as part of any TCRP funded PROGRAM SUPPLEMENT as a condition precedent to the acceptance of TCR ACT funds for that PROJECT.

Section 3. PROJECT MANAGEMENT

- (1) **STATE's** PROJECT administrator for this AGREEMENT shall be the chief of the State Transit Grants Branch of the Division of Mass Transportation. **RECIPIENT's** General Manager, Executive Director or a Designee as named in writing to **STATE** following execution of this AGREEMENT shall be the administrator acting for **RECIPIENT**.
- (2) PROGRAM SUPPLEMENT administrators for **STATE** shall be the applicable District Division Chief for Planning and for **RECIPIENT**, the designee named in the applicable PROGRAM SUPPLEMENT.

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

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

RECIPIENT NAME

BY: _____
TERRY FARRIS, Chief
State Transit Grants Branch

BY: _____
EXECUTIVE NAME
Title

APPROVED AS TO FORM AND PROCEDURE

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

BY: _____
TODD VAN SANTEN
Attorney

ATTACHMENT I

CTC RESOLUTION G-91-2

Passed by the CTC on February 21, 1991

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

**Commission Policy Resolution for Hazardous Waste Identification
and Cleanup for Rail Right-of-Way**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT II

(INSERT AGENCY BOARD RESOLUTION)

See Sample at

http://www.dot.ca.gov/hq/MassTrans/state_grants.html

under Transit Forms

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	February 27, 2012
TO:	Western Riverside County Programs and Projects Committee
FROM:	Jennifer Harmon, Office and Board Services Manager
THROUGH:	John Standiford, Deputy Executive Director
SUBJECT:	Election of Officers

STAFF RECOMMENDATION:

This item is for the Western Riverside County Programs and Projects Committee to conduct an election of officers for 2012 – Chair and Vice Chair.

BACKGROUND INFORMATION:

The election of officers for the full Commission and its Committees are held on an annual basis. Commissioners Darcy Kuenzi and Adam Rush were elected as the Western Riverside County Programs and Projects Committee’s officers in March 2011. Once the election has been conducted, the new Chair and Vice Chair will immediately assume the positions.

Past Chairs of the Western Riverside County Programs and Projects Committee are as follows:

- 2011 – Darcy Kuenzi, City of Menifee
- 2010 – Karen Spiegel, City of Corona

Past Chairs of the Plans and Programs Committee are as follows:

- 2009 – Bob Botts, City of Banning
- 2008 – Frank West, City of Moreno Valley
- 2007 – Patrick Mullany, City of Indian Wells
- 2006 – Daryl Busch, City of Perris
- 2005 – Michael H. Wilson, City of Indio
- 2004 – Frank Hall, City of Norco
- 2003 – Dick Kelly, City of Palm Desert
- 2002 – Daryl Busch, City of Perris
- 2001 – Percy L. Byrd, City of Indian Wells
- 2000 – Robin Lowe, City of Hemet