

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.3**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation or his designee to execute Master Agreement 64SFMTA2015MA, all Program Supplements, and any amendments thereto, with the California Department of Transportation, for projects funded through the Transit and Intercity Rail Capital Program.

**SUMMARY:**

- The California Department of Transportation (Caltrans) requires that the SFMTA execute a Master Agreement so that the SFMTA can receive funds from the State's Transit and Intercity Rail Capital Program (TIRCP) for specific transit projects, including procurement of light rail vehicles (LRVs).
- The SFMTA already has Master Agreements in place with Caltrans for an array of State-funded or State-administered projects. Under the authority of the Master Agreement, Caltrans issues Program Supplements for grant awards for specific projects.
- Master Agreement 64SFMTA2015MA would have a three-year term effective from December 1, 2015 through December 1, 2018.

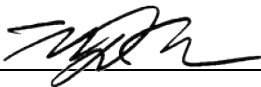
**ENCLOSURES:**

1. SFMTAB Resolution
2. Master Agreement

**APPROVALS:**

**DATE**

DIRECTOR

  
\_\_\_\_\_

11/8/16

SECRETARY

  
\_\_\_\_\_

11/8/16

**ASSIGNED SFMTAB CALENDAR DATE:** November 15, 2016

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**PURPOSE**

Authorizing the Director of Transportation or his designee to execute Master Agreement 64SFMTA2015MA, all Program Supplements, and any amendments thereto, with the California Department of Transportation, for projects funded through the Transit and Intercity Rail Capital Program.

**STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This action supports the following SFMTA Strategic Plan Goals and Objectives with regard to procurement of LRVs, which would be funded through this Master Agreement:

- Goal 1: Create a safer transportation experience for everyone.
  - Objective 1.3: Improve the safety of the transportation system.
  
- Goal 2: Make transit, walking, bicycling, taxi, ridesharing & carsharing the preferred means of travel.
  - Objective 2.2: Improve transit performance.
  - Objective 2.3: Increase use of all non-private auto modes.
  
- Goal 3: Improve the environment and quality of life in San Francisco
  - Objective 3.1: Reduce the Agency's and the transportation system's resource consumption, emissions, waste, and noise.
  - Objective 3.2: Increase the transportation system's positive impact to the economy.
  - Objective 3.3: Allocate capital resources effectively. Objective 3.4: Deliver services efficiently.
  - Objective 3.5: Reduce capital and operating structural deficits.

This action supports these Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
  
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

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The Transit and Intercity Rail Capital Program (TIRCP) was created to provide grants from the State's Greenhouse Gas Reduction Fund to fund transformative capital improvements that will modernize California's intercity, commuter, and urban rail systems, and bus and ferry transit systems to reduce emissions of greenhouse gases by reducing congestion and vehicle miles traveled throughout California. CalSTA has delegated to Caltrans, one of its member agencies, the administration of these funds. Caltrans uses Master Agreements to govern the funding and administration of transportation projects statewide. Under the authority of the Master Agreement, Caltrans issues Program Supplements for grant awards for specific projects. In order to be reimbursed for these funds, a Master Agreement is required to be in place. Because this is a new state funding source, the SFMTA has not previously had a master agreement in place for this grant program.

On August 15, 2016, the California State Transportation Agency (CalSTA), programmed \$45,092,000 in TIRCP funds to the SFMTA for the purchase of expansion Light Rail Vehicles (LRVs). This follows an initial allocation of \$41,181,000 for the same purpose in December 2015. These vehicles will expand the fleet beyond the 151 light rail vehicles now in service. The LRVs being funded by the TIRCP will be the first new vehicles added to the light rail fleet. By putting them into service as quickly as possible, crush loads can be alleviated and additional capacity can be realized.

Master Agreement 64SFMTA2015MA would have a three-year term effective from December 1, 2015 through December 1, 2018. As mentioned above, the TIRCP funds are limited to projects that expand the transit system, have verifiable greenhouse gas reduction benefits, and benefit disadvantaged communities. The new LRV fleet successfully met these criteria during two competitive solicitations led by CalSTA.

## **PUBLIC OUTREACH**

The Master Agreement establishes a grantor-grantee relationship so that SFMTA can receive State TIRCP funds. There has not been public outreach on the Master Agreement per se. The new LRV fleet, though, which will receive \$86,273,000 in TIRCP funds once the Master Agreement is executed, had extensive public review over the course of its planning and design.

## **ALTERNATIVES CONSIDERED**

If the SFMTA opts not to accept Master Agreement 64SFMTA2015MA, it will be unable to accept TIRCP funding for the LRVs. This would leave the project in substantial deficit that could force the Agency to reprogram \$86,273,000 in alternative funds from other capital programs to fund the new LRV fleet.

## **FUNDING IMPACT**

There is no funding associated with executing the Master Agreement. When a project gets approved for TIRCP funding, a Program Supplement in the amount of the funding for the particular allocation will be linked to the Master Agreement.

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**ENVIRONMENTAL REVIEW**

On October 26, 2016, the SFMTA, under authority delegated by the San Francisco Planning Department, determined that Master Agreement 64SFMTA2015MA is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Sections 15060(c) and 15378(b) because the action would not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney has reviewed this report.

**RECOMMENDATION**

Staff recommends that the SFMTA Board authorize the Director of Transportation or his designee to execute Master Agreement 64SFMTA2015MA, all Program Supplements, and any amendments thereto, with the California Department of Transportation, for projects funded through the Transit and Intercity Rail Capital Program.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, In December of 2015, the California State Transportation Agency (Caltrans) programmed \$41,181,000 in Transit and Intercity Rail Capital Program (TIRCP) funds to the SFMTA for the purchase of expansion Light Rail Vehicles (LRVs), followed by an additional \$45,092,000 on August 15, 2016 for additional expansion LRVs; and,

WHEREAS, Substantial revisions were made to the programming and funding processes for the transportation projects programmed in the Transit and Intercity Rail Capital Program (TIRCP), by Chapter 36 (SB 862) of the Statutes of 2014; and

WHEREAS, The statutes related to TIRCP-funded transit projects require a local agency to execute an agreement with the State of California through Caltrans before it can be reimbursed for project expenditures; and

WHEREAS, Caltrans uses Master Agreements for TIRCP-funded transit projects, along with associated Program Supplements, for the purpose of administering and reimbursing State transit funds to local agencies; and

WHEREAS, Caltrans has requested a resolution from the governing board of the SFMTA authorizing execution these agreements; and

WHEREAS, The SFMTA Board of Directors wishes to delegate the authority to execute these agreements and any amendments thereto to the Director of Transportation or his designee; and

WHEREAS, On October 26, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the CalSTA Master Agreement 64SFMTA2015MA is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation or his designee to execute Master Agreement 64SFMTA2015MA, all Program Supplements, and any amendments thereto, with the California Department of Transportation, for projects funded through the Transit and Intercity Rail Capital Program and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency agrees to comply with all conditions and requirements set forth in the Master Agreement and applicable statutes, regulations, and guidelines for all TIRCP-funded transit projects.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 15, 2016.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

California State Transportation Agency  
2015 Transit and Intercity Rail Capital Program

Grant Recipient:

San Francisco Municipal Transportation Agency

CalSTA Transit and Intercity Rail Capital Program Administered by:

California Department of Transportation  
Division of Rail and Mass Transportation  
1120 N Street, Room 3300  
P.O. Box 942874, MS-39  
Sacramento, California 94274-0001

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STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

Effective Date of this Agreement: December 1, 2015

Termination Date of this Agreement: December 1, 2018

Recipient: San Francisco Municipal Transportation Agency

Application Funding: The Greenhouse Gas Reduction Fund is the applicable funding source covered by this Agreement and will be identified in each specific Program Supplement, adopting the terms of this Agreement.

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RECITALS

1. WHEREAS, The Global Warming Solutions Act of 2006 (the "ACT") (Assembly Bill [AB] 32, Nunez, Chapter 488) created a comprehensive program to reduce greenhouse gas emissions in California. AB 32 requires California to reduce greenhouse gases to 1990 levels by 2020, and to maintain and continue reductions beyond 2020. In March 2012, Governor Brown signed Executive Order B-16-2012 affirming a long-range climate goal for California to reduce greenhouse gases from the transportation sector to 80 percent below 1990 levels by 2050.
2. WHEREAS, the Cap-and-Trade Program is a key element in California's climate plan. It creates a limit on the emissions from sources responsible for 85 percent of California's greenhouse gas emissions, establishes the price signal needed to drive long-term investment in cleaner fuels and more efficient use of energy, and gives covered entities flexibility to implement the lowest-cost options to reduce greenhouse gas emissions.
3. WHEREAS, in 2012, the Legislature passed and Governor Brown signed into law three bills, AB 1532 (Pérez, Chapter 807, Statutes of 2012), Senate Bill (SB) 535 (De León, Chapter 830, Statutes of 2012), and SB 1018 (Budget and Fiscal Review Committee, Chapter 39, Statutes of 2012), that established the Greenhouse Gas Reduction Fund to receive proceeds from the distribution of allowances via auction and provided the framework for how those auction proceeds will be appropriated and expended. These statutes require that expenditures from the Greenhouse Gas Reduction Fund be used to facilitate the achievement of greenhouse gas emission reductions and further the purposes of AB 32.
4. WHEREAS, the Transit and Intercity Rail Capital Program is one of several programs funded as part of the 2014-2015 State of California Budget (Senate Bill 852 and Senate Bill 862), and implemented pursuant to Public Resources Code section 75220 et seq and Health and Safety Code section 39719 et seq..

5. WHEREAS, as directed by the ACT, CalSTA established TIRCP Program Guidelines that describe the policy, standards, criteria, and procedures for the development, adoption and management of the TIRCP Program.

6. WHEREAS, Recipient has submitted an application, been evaluated and selected by CalSTA in accordance with the TIRCP Program Guidelines.

7. WHEREAS, on August 17, 2015, CalSTA delegated the administration of the TIRCP Program to the Department pursuant to the TIRCP Program Guidelines and the Department's policies and procedures for the administration of similar grant programs.

NOW THEREFORE, in consideration of the recitals and the rights, duties and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following:

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 the California Department of Transportation (hereinafter referred to as DEPARTMENT), and subject to the approval of the California State Transportation Agency (CalSTA).

## ARTICLE I - DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings specified herein.

1.1 "Act" refers to the Global Warming Solutions Act of 2006 (the "ACT") (Assembly Bill [AB] 32, Nunez, Chapter 488) created a comprehensive program to reduce greenhouse gas emissions in California.

1.2 "Agreement" shall mean this Agreement, inclusive of all appendices and Program Supplements, whereby the Department, on behalf of CalSTA, and pursuant to the Act and as set forth herein, administers the TIRCP Program.

1.3 "California Department of Transportation" or "Caltrans" or "Department" means the State of California, acting by and through its Department of Transportation of the State of the State of California, and any entity succeeding to the powers, authorities and responsibilities of the Department invoked by or under this Agreement or the Program Supplements.

1.4 "California Transportation Commission" or "CTC" shall refer to the commission established in 1978 by Assembly Bill 402 (Chapter 1106, Statutes of 1977).

1.5 "Effective Date" means the date set forth on page 1 of this Agreement.

- 1.6 “Greenhouse Gas Reduction Funds” or “GGRF” shall mean the funds subject to Chapter 26, Statutes of 2014, authorizing the State to fund capital improvements and operational investments for California’s transit systems and intercity, commuter, and urban rail systems.
- 1.7 “Overall Funding Plan” has the meaning set forth in Article I, Section 2(A)(5)(c).
- 1.8 “Program Guidelines” shall mean the policy, standards, criteria, and procedures for the development, adoption and management of the TIRCP Projects established by CalSTA and provided in Appendix A.
- 1.9 “Program Supplement” shall mean a project-specific subcontract to this Agreement that is executed following a CTC approved action and includes all Project specific information needed to encumber funding.
- 1.10 “Program Supplement Termination Date” shall have the meaning set forth in Article III, Section 3(C) and refers to the last date for Recipient to incur valid Project costs or credits and is the date that the Program Supplement expires.
- 1.11 “Progress Payment Invoice” shall have the meaning set forth in Article II, Section 3A.
- 1.12 “Project Closeout Report” shall have the meaning set forth in Article II, Section 3(B).
- 1.13 “Project Financial Plan” shall have the meaning set forth in Article I, Section 2(A)(5)(d).
- 1.14 “Project Schedule” has the meaning set forth in Article I, Section 2(A)(5)(b).
- 1.15 “Project” shall mean the project identified in Recipient’s application in Appendix C and further defined in Appendix D.
- 1.16 “Scope of Work” has the meaning set forth in Article I, Section 2(A)(5)(a).
- 1.17 “Secretary” shall mean the Secretary of the California State Transportation Agency (CalSTA). Unless the context otherwise requires, any reference to the Secretary includes CalSTA and its officers and employees.
- 1.18 “State” shall mean the State of California.
- 1.19 “Term” has the meaning set forth in Appendix E.
- 1.20 “TIRCP Projects” shall mean projects that are selected and funded pursuant to the Transit and Intercity Rail Capital Program.
- 1.21 “TIRCP” shall mean the “Transit and Intercity Rail Capital Program”.

## ARTICLE II – TIRCP PROJECTS AND ADMINISTRATION

### Section 1. TIRCP Projects and Project Management

1. TIRCP Projects, pursuant to the Act, are established by CalSTA in accordance with the TIRCP Program Guidelines. Under delegation from CalSTA, the Department will administer the TIRCP Program in accordance with the TIRCP Program Guidelines and best management practices identified in the administration of similar Department grant programs.
2. By this reference, those Guidelines are made an express part of this Agreement and shall apply to each TIRCP Program funded Project. Recipient will cause its specific TIRCP mandated Resolution to be attached as part of any TIRCP funded Program Supplement as a condition precedent to the acceptance of Greenhouse Gas Reduction Funds for such project.
3. All inquiries during the term of this Agreement and any applicable Program Supplement will be directed to the project representatives identified below:

State's Project Administrator:  
Department of Transportation  
Ezequiel Castro  
Chief, State Transit Grants Branch  
Phone: (916) 654-8012  
Email: ezequiel.castro@dot.ca.gov

Recipient's Project Administrator:  
San Francisco Municipal Transportation  
Agency  
Joel Goldberg  
Manager, Capital Procurement and  
Management  
(415) 701-4499  
joel.goldberg@sfmta.com

### Section 2. Program Supplement

#### A. *General*

1. This Agreement shall have no force and effect with respect to the Project unless and until a separate Project specific program supplement 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 the defined scope of work for the Project, described in the Program Supplement adopting all of the terms and conditions of this Agreement.
3. A financial commitment of actual 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 scope of work 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 scope of work.

5. The Program Supplement shall include a detailed scope of work, which shall include but not be limited to, a Project Description, a Project Schedule, an Overall Funding Plan, and a Project Financial Plan as required in the TIRCP Program Guidelines. The Program Supplement will be in a form similar to Appendix D.

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 the Project Component by funding source, provided that for the purposes of this Agreement the State is only monitoring compliance for expenditures for the Greenhouse Funds allocated for the Project Component.

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 the Project will be as described in the applicable Program Supplement. The State, shall not participate in any funding for the Project beyond those amounts actually encumbered by the STATE as evidenced in the applicable Program Supplement unless the appropriate steps are followed and approval is granted by the CTC as described below.

8. Upon the stated expiration date of this Agreement, any Program Supplement executed under this Agreement for the 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 or the State determine, at any time during the performance of the 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. Identify the source of additional Recipient or other third party funds that can be made available to complete Project. Recipient agrees that the allocation of the GGRF is subject to the allocation made proposed by the CalSTA, submitted by the State, and approved by the CTC.

*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 Act, 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 the 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 the GGRF Funds are derived, (b) the 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 CalSTA approved changes to the cost, or delivery schedule of the 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 3. Allowable Costs and Payments**

*A. Allowable Costs and Progress Payment Invoice*

1. Not more frequently than once a month, Recipient will prepare and submit to State signed Progress Payment Invoice 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 invoice is review and approved by the Department, subject

to CalSTA's approval. If no costs were incurred during any given quarter, Recipient is exempt from submitting a signed Progress Payment Invoice.

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.

3. Each such invoice will report the total of Project expenditures from GGRF (including those of Recipient and third parties) and will specify the percent of State reimbursement requested and the GGRF fund source.

*B. 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 (180<sup>th</sup>) day following the Project Termination Date.

## ARTICLE III – GENERAL PROVISIONS

### Section 1. Funding

1. 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 appendices 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.

### Section 2. Audits and Reports

*A. Cost Principles*

1. Recipient agrees to comply with Title 2 Code of Federal Regulations 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2. Recipient agrees, and will assure that its contractors and subcontractors will be obligated to agree to follow 2 CFR 200 and it shall be used to determine that the allowability of individual

Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with 2 CFR 200.

3. Any Project costs for which Recipient has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR Part 200, 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 whose funding passes through the State, including but not limited to, the State Treasurer, the State Controller and the CTC.

4. The State may terminate the grant for any reason at any time if it is determined by the State, based on an audit under this section, that there has been a violation of any State or federal law or policy by the Recipient during performance under this or any other grant agreement or contract entered into with the State. If the grant is terminated under this section, the Recipient may be required to fully or partially repay funds.

*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 the 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 and the Act.

*C. Reporting Requirements*

1. Subject to the discretion of State, Recipient and State agree to provide on a semi-annually basis, the progress of the Project. Recipient agrees, during each semi-annual reporting, to inform State regarding:

- a. Whether the Project is proceeding on schedule and within budget;
- b. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties;
- c. Reporting requirements per California Air Resource Board Cap and Trade Auction Proceeds Funding Guidelines for Agencies that Administer California Climate Investments.

2. Reporting requirements of Recipient will include 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 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 Greenhouse Gas Reduction Funds. These resolutions, and/or successor resolutions in place at the time a Program Supplement is executed, shall be applicable to GGRF 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 Appendix C 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, subject to CalSTA approval, upon written notice to Recipient in the event that Recipient fails to proceed with Project work in accordance with the Program Supplement, 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 GGRF monies within the time allowed specified in the Program Supplement, 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 this section, 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 III – 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. 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 (2) herein below.

2. Project right-of-way, Project facilities constructed or reconstructed on the 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, unless State agrees otherwise in writing. Vehicles acquired as part of Project, including, but not limited to, buses, vans, rail passenger equipment, 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. The exceptions to this section are outlined below:

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.

i. In determining the present fair market value of property for purposes of calculating State's Credit under this Agreement, any real property portions of the 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.

ii. 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.

iii. 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).

#### *G. Disputes*

Parties shall develop a mutually agreed upon issue resolution process, as described below, and issues between the Parties are to be resolved in a timely manner. The Parties agree to the following:

1. If the Parties are unable to reach agreement on any particular issue relating to either Parties' obligations pursuant to this Agreement, the Parties agree to promptly follow the issue resolution process as outlined below:

a. The Department's project manager and the Recipient's equivalent may initiate the process of informal dispute resolution by providing the other Party with written notice of a dispute. The written notice shall provide a clear statement of the dispute, and shall refer to the specific provisions of this Agreement or Program Supplement that pertain to the dispute. The

Department's project manager and the Recipient's equivalent shall meet and attempt to resolve the dispute within five days from the written notice. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

b. If the dispute is not resolved by the fifth day from the written notice, the Department's senior project manager and the Recipient's equivalent shall meet and review the dispute within five days. The Department's senior project manager and the Recipient's equivalent manager shall attempt to resolve the dispute within ten days of their initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

c. If the dispute is not resolved by the tenth day, the Department's Director or his designee and the Recipient's equivalent manager shall meet and review the dispute within five days. The Department's Director or his designee and the Recipient's equivalent manager shall attempt to resolve the dispute within ten days of the initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties. If the dispute is not resolved by the tenth day by the Department's Director or his designee and the Recipient's equivalent manager, the Parties shall submit the matter to the Secretary of CalSTA for a final administrative determination.

#### *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 Clause*

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, mental disability, medical condition, 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. Each of the Recipient's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. The Recipient shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

3. 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.

4. Recipient shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

5. The Recipient shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR 21 (Nondiscrimination in Federally-Assisted Programs of The Department Of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964) and 23 CFR Part 200 (Title VI Program and Related Statutes—Implementation and Review Procedures) are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean the Recipient.

6. The Recipient shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements,

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 Department to investigate compliance with this Section J.

*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.

*P. Force Majeure*

Each party will be excused from performance of its obligations where such non-performance is caused by any event beyond its reasonable control, such as any non-appealable order, rule or regulation of any federal or state governmental body, Acts of God (of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, provided that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

Should a *force majeure* event occur, as provided in Section G, which renders it impossible for a period of forty-five (45) or more consecutive days for either party to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the existing Business Plan or Business Plan Update to deal with such event and to seek additional sources of funding to continue the operation of the Service.

## ARTICLE IV – MISCELLANEOUS PROVISIONS

### Section 1. Miscellaneous Provisions

*A. Successor Acts*

All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

*B. Successor and Assigns to the Parties*

Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party; provided, that unless otherwise expressly required herein, a party shall not be obligated to obtain the written consent of the other party with respect to any contract related to the Service for the provision of goods and/or services to the contracting party in the ordinary course of business.

*C. Notice*

Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to the Department:

State of California

Department of Transportation

Division of Rail and Mass Transportation

P.O. Box 942874

Sacramento, CA 994274-0001

Attention: Mass Manager, MS 39

with a copy to:

California State Transportation Agency

915 Capitol Mall Suite 350 B

Sacramento, CA 95814

If given to the Recipient:

San Francisco Municipal Transportation Agency

1 South Van Ness Avenue 8<sup>th</sup> Floor

San Francisco, CA 94103

Attention: Joel Goldberg

*D. Amendment*

This Agreement may not be changed, modified, or amended except in writing, signed by the parties hereto, and approved in advance in writing by the Secretary, and any attempt at oral modification of this Agreement shall be void and of no effect.

*E. Representation and Warranties of the Parties*

a. Recipient hereby represents and warrants to the Department that:

i. Recipient is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to this Agreement.

ii. Recipient has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by the governing board of such entity and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The Agreements have been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to the creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

iii. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which Recipient is a party; (ii) violate any write, order, judgment, injunction, decrees, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

b. The Department does hereby represent and warrant with respect to each of this Agreement to the Recipient that:

i. It validly exists with all requisite power and authority to carry on the activities proposed to be conducted pursuant to this Agreement.

ii. It has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations thereunder. The execution and delivery of this Agreement, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The agreements have been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

iii. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any other agreement; (ii) violate any writ, order,

judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

*F. Construction, Number, Gender and Captions*

The Agreements have been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used therein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

*G. Complete Agreement*

This Agreement, including Appendices, constitutes the full and complete agreement of the parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement. All attached Appendices A through E are hereby incorporated and made an integral part of this Agreement by this reference.

*H. Partial Invalidity*

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

*I. Conflicts*

To the extent that any provision of or requirement of this Agreement may conflict with a provision or requirement of any other agreement between the parties hereto, or between a party hereto and any other party, which is attached to this Agreement as an appendix, the priority of agreements shall be employed to resolve such conflict.

*J. Counterparts*

This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

*K. Governing Law*

The Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

[SIGNATURES TO FOLLOW]

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

CITY AND COUNTY OF SAN  
FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

BY: \_\_\_\_\_  
BRUCE ROBERTS  
Division Chief, Division of Rail and  
Mass Transportation

BY: \_\_\_\_\_  
EDWARD D. REISKIN  
Director of Transportation

San Francisco Municipal Transportation  
Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:  
\_\_\_\_\_  
Secretary, SFMTA Board of Directors

APPROVED AS TO FORM AND PROCEDURE

APPROVED AS TO FORM:

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

Dennis J. Herrera, City Attorney

BY: \_\_\_\_\_  
JON OLDENBURG, Deputy Attorney

BY: \_\_\_\_\_  
ROBIN M. REITZES  
Deputy City Attorney

APPENDIX A  
TIRCP PROGRAM GUIDELINES AND DEPARTMENT DELEGATION

APPENDIX B  
RECIPIENT'S RESOLUTION  
(INSERT AGENCY BOARD RESOLUTION)



APPENDIX C  
PROGRAM SUPPLEMENT

- A. Project Description (if applicable)
- B. Special Conditions to Scope of Work
- C. Project Overall Funding Plan
- D. Project Financial Plan
- E. Project Schedule