



INYO COUNTY LOCAL TRANSPORTATION COMMISSION

P.O. DRAWER Q
INDEPENDENCE, CA 93526
PHONE: (760) 878-0201
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Doug Wilson, Executive Director

AGENDA

INYO COUNTY LOCAL TRANSPORTATION COMMISSION

Inyo County Board of Supervisors' Chambers 224 N. Edwards St., Independence, CA 93526

All members of the public are encouraged to participate in the discussion of any items on the Agenda. Anyone wishing to speak, please obtain a card from the Transportation Commission Secretary and indicate each item number you would like to discuss. Return the completed card to the Transportation Commission Secretary before the Commissioners consider the item(s) about which you wish to speak. You will be allowed to speak about any item before the Commission takes action on it.

Any member of the public may also make comments during the scheduled "Public Comment" period on this agenda concerning any subject related to the Inyo County Local Transportation Commission. No cards need be submitted in order to speak during the "Public Comment" period.

PUBLIC NOTICE: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Transportation Commission Secretary at (760) 878-0201. Notification 48 hours prior to the meeting will enable the Inyo County Local Transportation Commission to make reasonable arrangements to ensure accessibility to this meeting (28CFR 35.102-35. ADA Title II).

January 18, 2012

9:00 a.m. Open Meeting

ITEM NO. 1 Roll Call

ITEM NO. 2 Public Comment

ACTION ITEMS

ITEM NO. 3 Election of Officers

ITEM NO. 4 Secretary of the Local Transportation Commission - Request approval of the minutes of the special meeting of December 7, 2011.

ITEM NO. 5 Request Commission consider the submittal of a letter asking for clarification from the Caltrans District 9 Office on why the preferred alternative for the Olancho – Cartago Four Lane project was chosen.

ITEM NO. 6 Request Commission approve, by minute order, the submittal of a letter of support for the City of Bishop Sustainable Communities Grant application for a targeted update of their General Plan.

ITEM NO. 7 Request Commission approve Resolution No. 2012-01 approving a Master Agreement between the Commission and the State for the completion of currently allocated transit projects.

DISCUSSION ITEMS

None

INFORMATIONAL ITEMS

ITEM NO. 8 ESTA Report

ITEM NO. 9 Tribal Report

ITEM NO. 10 Caltrans Report

ITEM NO. 11 City of Bishop Report

ITEM NO. 12 Executive Director's Report

ITEM NO. 13 Reports from all members of the Inyo County LTC

CORRESPONDENCE

December 28, 2011 Letter from Richard Cervantes to Caltrans District 9

January 9, 2012 e-mail from Scott Palamar

ADJOURNMENT



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Doug Wilson
Executive Director

STAFF REPORT

MEETING: January 18, 2012
SUBJECT: Election of Officers

Recommended Action

Nominate and then vote to elect Inyo County Local Transportation Commission (ICLTC) commissioner(s) to serve as the Chair and Vice-Chair of the ICLTC for the 2012 calendar year.

Background

Section 4 of the Inyo County By-Laws states:

Officers of the ICLTC shall be elected during the first meeting of each year and shall consist of a Chairperson and a Vice-Chairperson.

In 2011, the Chair of the ICLTC was Bob Kimball and the Vice-Chair was Marty Fortney.



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LOCAL TRANSPORTATION COMMISSION**

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Doug Wilson, Executive Director

**SPECIAL MEETING
MINUTES**

INYO COUNTY LOCAL TRANSPORTATION COMMISSION

**Bishop City Council Chambers
377 W. Line St., Bishop, CA 93514**

December 7, 2011

9:00 a.m. Bob Kimball called the meeting to order.

ITEM NO. 1 Roll Call

Commissioners Present:

Bob Kimball
Laura Smith
Doug Thompson
Susan Cullen
Marty Fortney
Rick Pucci

Others Present:

Troy Patton, Cartago resident
Susie Patton, Cartago resident
Herman Meylemans, Ranch House Café Owner
Claudine Meylemans, Ranch House Café Owner
Scott Palamar, Cartago resident
David Bloom, Caltrans
Selma Calnan
Cedrik Zemitis, Caltrans
Mike McDermott, City of Bishop
John Helm, Eastern Sierra Transit Authority (ESTA)
Jill Batchelder, Eastern Sierra Transit Authority (ESTA)
Courtney Smith, Inyo County
Ryan Standridge, Inyo County

ITEM NO. 2 Public Comment

Selma Calnan stated that she has been appointed to the Social Services Transit Advisory Council (SSTAC). She is an active participant with ACT 4 Bishop Neighborhoods to find solutions for affordable public transportation. They are preparing for the February SSTAC meeting by investigating if the unmet transit needs definitions can be changed.

Herman Meylemans a resident of Lone Pine and owner of Ranch House Café introduced himself. Mr. Meylemans is requesting the commission not support the Caltrans preferred alternative for the Olancha-Cartago four lane project. He believes the recommended alternative will result in a loss of jobs and tax income for Inyo County and that the environmental document is not adequate and Caltrans should be required to complete an EIR/EIS. The preferred alternative is not discussed in the environmental document. The statement that the proposed bypass will have no impact to Olancha is false. The Ranch House Café will go out of business if the bypass is constructed.

Bob Kimball asked Cedrik for an update on the status of the environmental document.

Cedrik replied that an Initial Study with Proposed Mitigated Negative Declaration/ Environmental Assessment was completed and circulated for public review. Caltrans is now completing Phase 2 archeological studies on the preferred route. Upon completion of the studies, and once the final alignment of the preferred alternative is chosen, the environmental document will be finalized. The final document is at least one year out. The final document will address all public comments, and include additionally required studies.

Bob asked if there will be any special public comment meetings.

Cedrik explained there will be no public hearings on the environmental document before the document is finalized. The public comment period on the draft document ended in October 2011. He referred to the environmental document that specifically states that alternatives may be combined to minimize impacts and to maximize benefits.

Cedrik went on to say that Caltrans is looking at access and circulation options at both ends of the bypass and is considering holding public meetings specific to this topic.

Doug Thompson expressed his concern over Caltrans' cone of silence and referenced the environmental document asking if Caltrans has a need for any public comments on what the future should bring.

Cedrik clarified that the environmental document will address the public comments that were submitted in October. He explained that Caltrans is following standard procedures. He reminded the commission that Caltrans is seeking further input on access options with the preferred alternative. This project is mostly being done for the safety of the community and visitors traveling the highway.

Courtney Smith said that the Commission should only receive input during the public comment period. The discussion of this topic is pertinent to Agenda Item No. 9 and should be included as a part of the consideration of that item.

Bob agreed with Doug that the public needs to be heard but stated that no action can be taken at this time. Marty asked for this item to be discussed at a later time.

ACTION ITEMS

ITEM NO. 3 Secretary of the Local Transportation Commission - Request approval of the minutes of the meeting of October 19, 2011.

Susan Cullen moved to approve the minutes of the meeting of October 19, 2011. Laura Smith seconded the motion. Marty Fortney abstained
Motion carried 5-0-1.

ITEM NO. 4 Jill Batchelder of ESTA request the commission program Resolution No. 2011-13 authorizing the submittal of the Federal Fiscal Year 2012 Section 5311 Program of Projects (POP) with Eastern Sierra Transit Authority as the sub recipient of \$73,735 in Federal Funds and authorize the Executive Director to sign the Certifications and Assurances for operating assistance for general public transit services in Inyo County.

Rick Pucci moved to approve Resolution 2011-13. Doug Thompson seconded the motion. Motion carried 6 - 0.

ITEM NO. 5 Courtney Smith passed out a revised staff report and resolution that reflects more 2009-2010 funds being available than was shown in the staff report. The reasons for this is that \$19,500 of funds for the Pressure Washer were allocated using 2008-2009 funds and also \$606 Inyo received from the Mono County LTC for the Diesel Bus Filters project. Courtney requested the Commission approve Resolution No. 2011-14 allocating \$78,967 in FY 2009-2010 Public Transportation Modernization, Improvement and Service Enhancement Account (PTMISEA) funds to Eastern Sierra Transit (ESTA) for Support Vehicles (\$67,000) and additional funds to complete the security fencing and lighting project at the Eastern Sierra Transit Authority headquarters at the Bishop airport (\$11,967).

It was initially assumed that PTMISEA funds could be spread out over the ten-year period these funds will be allocated. It has been determined that FY 2009- 2010 funds must be allocated by June 2012. Slow bond sales have resulted in FY 2010-2011 funds being delayed.

Doug Thompson was concerned about additional \$11,000+ had been addressed in previous meetings.

Courtney explained that there were cost increases to the project and that the TEA exchange loan approved at a previous meeting would still need to be used because funding would not be completed until the allocation of Transit Security Grant Funds for FY 2010- 2011.

Laura Smith motion to approve Resolution No. 2011-14. Marty Fortney seconded.

Motion Carried 6 - 0

ITEM NO. 6 Courtney request the commission approve Resolution No. 2011-15 allocating an estimated amount of \$103,390 in FY 2011-2012 STA funds to Eastern Sierra Transit (ESTA) for operating costs. The STA funds are only an estimated based on a percentage of diesel tax money that has not been received yet. An efficiency analysis was completed so funds can be used for operating expenses. ESTA audited data showed operating cost decreased in the last three years making them eligible to use the STA funds for operating expenses.

Marty Fortney motioned to approve Resolution No. 2011-15. Rick Pucci seconded.

Motion Carried 6 - 0

ITEM NO. 7 Courtney request the commission to approve Resolution No. 2011-16, allocating \$132.00 of Regional Planning Assistance (RPA) funds to the County Engineers Association of California to complete two updates to the Statewide Local Streets and Roads Needs Assessment. The total cost for this project is \$500,000 statewide. Inyo County's share of this is \$132 using the RSTP exchange formula.

Rick Pucci motioned to approve resolution No. 2011-16. Laura Smith seconded.

Motioned Carried 6 - 0

ITEM NO. 8 Courtney request commission approves the project ranking set forth in the staff report. The commission released a call TE project resulting in two applications Warren Street pedestrian and aesthetic improvements (City) and Red Hill and Ed Powers bicycle lanes (County). A scoring committee consisting of Ron Chegwiddden (Caltrans), Deborah Lyons (Forest Service) and Cathreen Richard (Inyo County Planning Department) scored the applications. Courtney briefly reviewed the scoring committee's findings. The Red Hill and Ed Powers project was ranked first.

With cost increases and missing components to existing projects being programmed, only \$733,000 of the 1.2 million is available in this call. Warren Street project is so large it did not fit the funds well. The programming will be detailed in the RTIP action item.

Bob Kimball spoke for the merits of the Warren Street project as did Laura Smith, though they both agreed with the recommended project ranking.

Doug Thompson motioned to approve project ranking. Marty Fortney seconded.

Motion passed 6 - 0

ITEM NO. 9 Request Commission 1) Approve the submittal of the 2012 RTIP to the California Transportation Commission (CTC) and 2) Authorize the Executive Director to sign documents related to the submittal of the RTIP and to make any technical changes to the RTIP in response to input from City, County, and/or State staff.

Funding occurs every two years. The submittal due date is December 15, 2011. The RTIP becomes part to the Statewide Transportation Improvement Program (STIP) resulting in

the programming of projects in specific amounts and program years for State and local roads, TE projects and PPM funds. 2012 RTIP priorities are programming MOU projects on the State Highway system, complete local projects programmed in the 2010 STIP, evaluate the cost increase to existing projects and program TE projects. The Inyo County LTC has previously set aside \$9,648,000 for the future construction component of Olancho-Cartago. An additional \$2,883,000 is available to the LTC as part of the formula distribution for this STIP cycle. Spreadsheets were passed out detailing programming on the State Highway system, local streets and roads, and for TE projects. Some of the programming is different than in the staff report.

Bob Kimball asked if the commission can choose to not fund a program.

Courtney explain that potential is there but it is recommended to do it before expending funds on projects. The Commission has some discretion, though it is not possible at this point to fund a project that has not been submitted by the State, City, or County. Funds not programmed would carry forth into the next cycle.

Courtney Smith then gave a synopsis of the programming for each project in the RTIP. The Freeman Gulch project is being split into three segments because of the high cost. This is an MOU project in Kern County on State Route 14 with Kern COG contributing 40%, Caltrans ITIP funds contributing 40%, and Mono and Inyo County LTC each contributing 10%. Segment 1 is being programmed to completion in this cycle. New funds programmed by Inyo County will include \$310,000 for Construction Support and \$2,799,000 for construction in 2015-2016. For Segment 2, the funding is being calculated differently than usual with Inyo and Mono LTCs contributing 30% each and Kern COG contributing \$0 in this cycle because of needs they have elsewhere in their County. Kern COG has agreed in principle to repay Inyo and Mono in future cycles, presumably for the construction component of Olancho-Cartago. For Segment 2 in this cycle, Inyo is contributing \$975,000 for the design component, \$630,000 for Right of Way Support and \$1,653,000 for Right of Way in 2015-2016. No new funds are being programmed for Olancho-Cartago in this cycle. Because of the new programming for Freeman Gulch Segments 1 and 2, the Inyo LTC future set aside for the construction component will be reduced to \$6,686,000.

For the County, there will be no change to the South Bishop Resurfacing project. Funds are being deprogrammed from the Gill Station – Coso Road Reconstruction because the County is instead using Proposition 1B local streets and roads funds to overlay the asphalt on this road. The funds are being moved to the West Bishop Improvement project that will reconstruct approximately 3 miles of pavement on Pa Me Lane and Sunset Subdivision roads that suffer from severe transverse cracking. The Nine Mile Canyon Road Stage 2 project environmental component funds are being deprogrammed because the County was successful in obtaining Highway Safety Improvement funds to address a significant portion of the purpose and need for the project. The widening of this road is not feasible with the amount of funds Inyo County will likely receive in the next several STIP cycles. The County is programming an additional \$100,000 for the construction component of the Independence Town Rehabilitation project. The City of Bishop has decided to not push the programming out one year for the design and construction

components of the Warren Street Improvements project because it was not able to obtain TE funds in this cycle.

For TE projects, an additional \$299,000 is being programmed for the West Line Street sidewalk project. There are no cost increases on other City or County TE projects. A call for projects was released and two applications were received. The County revised the scope of the Red Hill and Ed Powers bicycle lanes project to just include Ed Powers Road after a revised engineer's estimate. It was not cost effective for the City of Bishop to program a TE component to the Warren Street Improvements project with the remaining TE funds. Therefore, the remaining TE funds, \$212,000 are being programmed as a TE reserve that the City and/or County can access at a future date.

Up to 5% of the STIP share can be used for Planning, Programming, and Monitoring (PPM) funds. Unlike the staff report, staff proposes to program the entire amount of PPM funds. This will program more than is anticipated to be uses. As a result, the City and County will be able to due future STIP amendments to reduce this amount by as much as \$250,000 to \$300,000 to fund cost increases to City and/or County projects.

Doug Thompson asked if Sunland bicycle lanes project had been funded. Courtney said that it was funded last cycle and linked to the South Bishop Project and no cost increase is being requested at this time.

For Public Transportation Account (PTA) funds, there are still funds programmed for bus shelters in the City of Bishop. Since ESTA discontinued fixed route services, this project has been dropped resulting in \$169,000 left PTA funding that can only be programmed if it is federalized.

Bob Kimball expressed the opportunity it would be if the funds could be used for roads.

Courtney suggested that if the \$169,000 is only for transit funds, it will be programed for transit. If not, it will be used for local streets and road if that is the direction of the Commission. It is not clear if this can be determined before the submittal deadline for the RTIP.

Rick Pucci asked what the impact would be from the LTC saying no to funding on a project because they don't like the alternative.

Courtney mentioned to the Commission that there is a memorandum of understanding in place leveraging funds from other agencies for Olancho-Cartago. Courtney suggested that the Commission could consider submittal of a letter of concern to Caltrans regarding the recommended alternative at a future meeting. He suggested that pulling money would be unwise at this point in time. Caltrans is unable to proceed to the design phase until the environmental phase is completed. The environmental phase is ongoing.

Marty Fortney feels that the safety reports in the environmental document are inaccurate in that all the accidents did not occur where the bypass is proposed. The Board of Supervisors continues to support the community members and submitted a letter in

support of Alternative 1. He relayed that the Olancha CSD fire chief is not pleased with the recommended alternative as it may delay emergency response.

Cedrik Zemitis of Caltrans suggests that he will consult with Traffic Engineer Terry Erlwein regarding the accident data.

Marty Fortney mentioned that at least one rancher in Olancha was not in favor of Alternative 1. He felt that it would have been ideal for the highway to bypass the community to the east but understands that Caltrans determined that was not practical.

Bob Kimball discussed his representation on the Project Development Team. LTC representatives expressed support for Alternative 1. The Project Development Team supported Alternative 3 but specifically not Alternative 4. He conditioned his support for Alternative 3 on the State maintaining the portion of the existing US 395 alignment south of SR 190 as part of SR 190 in the hopes that would continue to encourage a commercial business environment. He suggested a letter be sent from commission expressing concerns and asking for clarification on why the recommended alternative was chosen. He also mentioned that the Commission has a contractual obligated to continue on with the project.

Courtney said a letter would be drafted and agendized for consideration at the January meeting.

Doug Thompson pondered that perhaps the north and southbound lanes did not need to be as widely apart as proposed. He expressed his concern for project needs elsewhere in the County that may be a higher priority than Olancha-Cartago. He also mentioned that Alternative 1 puts the community in a tough place because the Post Office and Ranch House Café might be removed. Is it possible to move these structures?

Herman Meylemans quoted a portion of the environmental document that said “it does not appear there one place that has a concentration of accidents.”

Susan Patton brought up her concerns on the preferred alternative taking away the potential for commercial revenue in the future, the cost of the project, and access issues near Cartago.

Troy Patton proposed the bypass alternative will kill the community, decrease county tax base and place an increased burden on the local fire department for local emergencies. Though a reason for the project is increased safety, he mentioned anecdotally that the fire department responds to more accidents outside of the communities than in the communities. He said he is not opposed to the four laning as long it would stick to the existing alignment.

Scott Palamar referenced his letter of correspondence. He would like to see the Commission submit a letter in support of Alternative 1 at the next meeting. He expressed his dislike of the alternative that Caltrans chose and stated that Alternative 1 would also improve safety.

Marty Fortney motioned to approve the submittal of the 2012 RTIP and authorize the Executive Director to sign documents related to the submittal of the RTIP. Laura Smith Seconded. Doug Thompson abstained.

Motion carried 5- 0- 1

DISCUSSION ITEMS

None

INFORMATIONAL ITEMS

None

ITEM NO. 10 ESTA Report

John Helm said that September service changes are working well. The call in advance service going north from Lone Pine has been given a grace period and will require a call one day in advance starting Jan1, 2012. Red Meadow buses are ahead of schedule and will be delivered late spring. Google transit, that will enable users to use the Google transit trip planning tool, will be available early 2012. The NextBus system has been in place for six months. Via smartphone, passengers can access real time information. Signage lets users know of the NextBus service. The URL www.estransit.com will be ESTA's only web address.

ITEM NO. 11 Tribal Report

None

ITEM NO. 12 Caltrans Report

Cedrik Zemitis will work with Courtney to get more information for the next LTC meeting.

ITEM NO. 13 City of Bishop Report

Mike McDermott expects money in January for the environmental component of the Warren St. project and request for proposal are out for bid currently. Available TE funds didn't make sense to be programmed at this time. They will refine the scope for this project. The Pine to Park Path environmental document is in final draft. They are acquiring right of way for Wye Road. Public comments on the Mobility Element environmental document are due by January 10, 2012. Pending the planning commission approval in January, the Mobility Element will be brought before the City Council in February. He thanked LTC for their support.

ITEM NO. 14 Executive Director's Report

None

ITEM NO. 15 Reports from all members of the Inyo County LTC

Doug wishes everyone Merry Christmas.

Laura Smith wishes everyone a happy holidays and drive safely on all roads.

Marty Fortney wanted to let everyone know that SRA fees will be coming from the state. Penalties for not paying will result in a lean against the property.

CORRESPONDENCE

None

ADJOURNMENT

Bob Kimball adjourned the meeting at 10:53

Attest:

Doug Wilson
Executive Director

By Ryan Standridge, Secretary



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Doug Wilson
Executive Director

STAFF REPORT

MEETING: January 18, 2012

PREPARED BY: Courtney Smith, Transportation Planner

SUBJECT: Letter Requesting More Information Regarding the Preferred Alternative for the Olancha-Cartago Project

Recommended Action

Approve the submittal of a letter asking for clarification on why the Caltrans District 9 office chose its preferred alternative.

Background

Caltrans environmental staff published an Initial Study and Proposed Mitigated Negative Declaration/Environmental Assessment and released it for public review and comment. The document was duly noticed and there were public meetings in addition to a public comment period. At the public meetings, the public could submit spoken or written comments. Caltrans District 9 issued a press release indicating that the preferred alternative for the Olancha-Cartago Four Lane project is a hybrid of Alternatives 3 and 4 and showing the proposed location. The recommended alternative will bypass the community of Olancha. A relatively small amount of information has been made publicly available regarding this preferred alternative.

While Caltrans has announced their preferred alternative, the complete rationale for their choice and all backing material has not brought forward to the public. The final environmental document will include all comments submitted to date on this project and a response to those comments.

At the December 7, 2011 Special Meeting, your Commission gave direction to staff to submit a letter requesting clarification of why the preferred alternative was selected and for a more detailed explanation of why Alternative 1 was not chosen.

Mix Up

Inyo County LTC staff initially thought that the topic for this submittal letter was submitting a letter recommending the selection of Alternative 1. This was represented to several concerned citizens and to Caltrans. A careful re-examination of the minutes revealed that the direction given by Commissioner Bob Kimball was to submit a letter asking for clarification on why Caltrans choose a hybrid alternative and why specifically Alternative 1 was not chosen given the concern of the community.



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Doug Wilson
Executive Director

January 18, 2012

Tom Hallenbeck, Director
Caltrans District 9
500 South Main Street
Bishop, CA 93514

Subject: Olancha – Cartago Preferred Alternative

Dear Mr. Hallenbeck:

The completion of the Olancha-Cartago Four Lane project has long been a priority for our Commission. It is our understanding that you have tentatively selected a recommended alternative that combines Alternative 3 and 4, which bypass the community of Olancha. The Inyo County LTC requests that your staff conduct a workshop with the Inyo County LTC exploring in more detail why this alternative was chosen. In that workshop, please explain what your thought process was in regards to the concerns of citizens in the Olancha-Cartago area. Please specifically address why Alternative 1 was not chosen.

The Inyo County LTC has worked since the 2008 State Transportation Improvement Program cycle to set aside funds for the construction component of the Olancha Cartago Four Lane project. The Inyo County LTC recognizes that the selection of the preferred alternative is the responsibility of Caltrans District Director.

Please don't hesitate to contact the Executive Director, Doug Wilson, at (760) 878-0201 if you have any questions or concerns regarding this matter.

Sincerely,

Bob Kimball, Chair
Inyo County Local Transportation Commission

cc: Cedrik Zemitis, Project Manager
Brad Mettam, Deputy Director



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Doug Wilson
Executive Director

STAFF REPORT

MEETING: January 18, 2012

SUBJECT: Letter of Support for City of Bishop Sustainable Communities Grant Application to Update Their General Plan

Recommended Action

Approve by Minute Order the submittal of a letter in support of the City of Bishop Sustainable Communities Grant application for a targeted update of their General Plan.

Background

A draft letter is attached in addition to talking points that explain the purpose of the General Plan update. The Inyo County LTC supported the City of Bishop's efforts to update their Circulation Element. Much of the City of Bishop General Plan has not received an update since the early 1990s.

Inyo County Regional Transportation Plan includes multiple goals, policies, and objectives that support the City of Bishop's goal for a targeted update of their General Plan.

Goal 2: A Transportation System Which Is Safe, Efficient, and Comfortable, Which Meets the Needs of People and Goods, and Enhances the Lifestyle of the County's Residents

Objective 2.4: Relationship Between RTP and General Plans. Recognize the relationship between the RTP and the Inyo County and City of Bishop General Plans and strive to accomplish the aims and purposes of these plans.

Policy 2.4.1: Plan Comprehensive Transportation System. Continually plan, prioritize, design, and develop a comprehensive transportation system in cooperative partnership between the county, city, state officials, the Local Transportation Commission, the Inyo County Planning Commission, City of Bishop Planning Commission, public and private groups, Inyo County Tribal Governments, and other interested entities. This may include elements of the Sierra Nevada Region ITS Strategic Deployment Plan.

Policy 12.1.1: Assist local jurisdictions in taking a regional approach in land use decisions during their General Plan process, and developing a road network that supports the RTP goals and objectives and the reduction of Greenhouse Gases.



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Doug Wilson
Executive Director

January 18, 2012

Keith Caldwell
Interim City Administrator
City of Bishop
P.O. Box 1236
Bishop, CA 93515

Subject: Letter in Support of City of Bishop Sustainable Communities Planning Grant and Incentive Program Application

Dear Mr. Caldwell:

The Inyo County Local Transportation Commission supports the City of Bishop's application to the Strategic Growth Council's Sustainable Communities Planning Grant and Incentive Program for the preparation of a Targeted General Plan Update and implementing zoning regulations. The comprehensive approach proposed by the City; integrating economic development, efficient land use, and enhanced mobility to achieve multiple sustainability goals, will lead to tangible and sustainable improvements in the economy of an economically disadvantaged community, a higher quality of life for community residents, and reductions in greenhouse gas emissions.

We understand the grant would be used to update the city's Economic Development Element and Land Use Element focusing on effective sustainable policies and programs. Goals and objectives from the recently adopted Housing and Mobility elements would be integrated into the updates. Associated amendments to the Open Space and Conservation and Public Facilities elements would be developed to assure that all the general plan elements constitute a coherent plan. The zoning code update would enable successful implementation of the City's general plan revisions.

The program of the City of Bishop aligns with the goals and objectives set forth in the Inyo County Regional Transportation Plan. An example would be:

***Policy 12.1.1:** Assist local jurisdictions in taking a regional approach in land use decisions during their General Plan process, and developing a road network that supports the RTP goals and objectives and the reduction of Greenhouse Gases.*

The Inyo County Local Transportation Commission is committed to working with the City of Bishop in the completion of this project.

For these reasons, the Inyo County Local Transportation Commission is in complete support of the Sustainable Communities Planning Grant and Implementation Program Application proposed by the City of Bishop.

Sincerely,

Doug Wilson, Executive Director
Inyo County Local Transportation Commission

Sustainable Communities Planning Grant Application

Talking Points

The City of Bishop is preparing an application for a planning grant from the Strategic Growth Council. The primary purpose of the application is a targeted update the city's Economic Development and Land Use Elements and its zoning code. The city may also amend its Conservation and Open Space and Public Facilities elements. Taken together with the Housing Element and Mobility Element, the update will provide a coordinated set of policies to improve the economy and quality of life for the City of Bishop and the greater Bishop community and further the sustainability objectives of the state.

The features of the proposal include:

- A sustainable economic development plan. This plan builds on other local efforts including ABC 2000 and the Retail Gap Analysis.
 - The goals of the ED plan are to:
 - capture more of the local retail market,
 - expand capture of retail and other business opportunities derived from pass-through traffic on 395,
 - provide land use policies that encourage and support businesses that can take advantage of Digital 395 and improvements at the Bishop Airport,
 - grow visitation through longer stays and greater capture of 395 traffic.
- Integration of land use policies with mobility objectives to support a variety of modes of transportation and to reduce vehicle miles traveled.

The benefits of the proposal include:

- Increased retail expenditures leading to stronger employment opportunities for the greater community
- Expansion of better paying jobs related to services and businesses connected to D 395
- Improved transportation options including more efficient transit and more walking and biking choices
- Improved recreation access
- Water quality and air quality improvements
- Reduction in GHG emissions

Possible other points to raise

- Currently a lot of local jobs are relatively low paying. Internet based businesses have the potential to bring higher paying jobs to the Bishop region.
- Success of this plan improves the economic opportunities for the greater Bishop community, not just the city and its residents
- Success of this plan improves connectivity and enhances the quality of life for the greater community



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Doug Wilson
Executive Director

STAFF REPORT

MEETING: January 18, 2012

PREPARED BY: Courtney Smith, Transportation Planner

SUBJECT: State Funded Transit Projects Master Agreement

Recommended Action

Approve Resolution No. 2012-01 approving a master agreement between the Inyo County Local Transportation Commission and the State for the completion of three previously programmed Public Transportation Account projects

Background

The last State Funded Transit Projects Master Agreement was entered into on December 1, 2001 between Inyo County and the State of California Department of Transportation Division of Mass Transportation. The Master Agreement applies to those types of projects that are funded through the Statewide Transportation Improvement Program (STIP) by the California Transportation Commission (CTC). This includes funds through the Public Transportation Account (PTA), the Traffic Congestion Relief (TCR) project, Proposition 116 funds, and other possible bond-related funding programs. At this point in time, the CTC has allocated funds to Inyo County for three different PTA projects for bus purchases that are still active.

Eligible agencies to enter into this master agreement include the County, Inyo County Local Transportation Commission (ICLTC), and the Eastern Sierra Transit Authority (ESTA) as a Joint Powers Authority as the sole provider of public transit services in Inyo County. The previous master agreement with the state likely reflects the status of Inyo Mono Transit in 2001. In the opinion of ICLTC staff, these funds would be most efficiently funneled directly to the ESTA. The STIP related projects are being completed on behalf of ESTA. ESTA is now the Consolidated Transit Service Agency for Inyo County.

ICLTC staff asked Caltrans if the master agreement could be between ESTA and the State. Caltrans Division of Mass Transportation staff replied that it would not be possible to change the recipient agency to ESTA for projects that have already been allocated (bus purchases).

Since there are no projects currently identified in the future that use this type of funding, it is not possible for ESTA to enter into a Master Agreement at this time. ESTA has preliminarily indicated that they would be willing enter into a Master Agreement to manage future STIP or bond-related state funded transit projects.

To make sure this arrangement is initiated at a future date – the last ‘Whereas’ in the Resolution was modified to read:

WHEREAS, the Inyo County Local Transportation Commission authorizes its Executive Director to execute state funded transit agreements and amendments thereto for current projects where funds have already been allocated.

The goal of this is to finish the existing projects and to make sure there was a hook to change this arrangement in the future. Caltrans staff has indicated that they would like the wording change so that this agreement applies to “current and future transit projects.” They indicate that the eligibility of ESTA could be analyzed at a future date.

The issue of who should be responsible for transit projects was raised previously during the STIP bus purchase projects. These projects require the County to provide up front funding for the bus purchases. The buses are for ESTA. ESTA is an independent public transit agency governed by a Joint Powers Authority.

It is the opinion of LTC staff that if the Caltrans recommended wording were used, that future projects would by default remain the responsibility of the Inyo County LTC. This should be re-examined when future funding opportunities are identified.

ATTACHMENT II

**INYO COUNTY LOCAL TRANSPORTATION COMMISSION
RESOLUTION #2012-01**

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

WHEREAS, the Inyo County Local Transportation Commission may receive state funding from the California Department of Transportation (Department) 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 Inyo County Local Transportation Commission authorizes its Executive Director to execute state funded transit agreements and amendments thereto for current projects where funds have already been allocated.

NOW, THEREFORE, BE IT RESOLVED by the Inyo County Local Transportation Commission agrees to comply with all conditions and requirements set forth in this agreement and applicable statutes, regulations and guidelines previously allocated 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.

Passed and adopted this 18th day of January, 2012, by the following vote:

Ayes:
Noes:
Abstain:
Absent:

Chairman, Inyo County Local Transportation Commission

Attest:

Executive Director, Inyo County Local 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: December 1, 2001

Termination Date of this Agreement: December 1, 2021

Recipient: Inyo County Local Transportation Commission

**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**

**INYO COUNTY LOCAL
TRANSPORTATION COMMISSION**

BY: _____
TERRY FARRIS, Chief
State Transit Grants Branch

BY: _____
DOUG WILSON
Executive Director

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

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

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

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

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

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

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

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

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

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

ATTACHMENT II

(INSERT AGENCY BOARD RESOLUTION)

See Sample at

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

under Transit Forms



COUNTY OF INYO
BOARD OF SUPERVISORS

December 28, 2011

Director Tom Hollenbeck
Cal Trans District 9
500 S. Main Street
Bishop CA, 93515

Mr. Hollenbeck,

Please be advised that I can no longer support the Cal Trans Olancha-Cartago four lane project as it stands, for the following reasons:

1. Cal Trans has disregarded the consensus of The Inyo County Board of Supervisors.
2. Cal Trans has disregarded the majority opinion of the residents of Olancha - Cartago.
3. Cal Trans has ignored the Inyo County General Plan.
4. Cal Trans has disregarded the wishes of the Local Transportation Commission.
5. Cal Trans has ignored the fact that none of the other 395 communities in Inyo County have been bypassed.
6. Cal Trans has failed to take into consideration that the route they selected effectively kills all potential for economic growth and development along the highway, upon which we are so dependant for our livelihood.
7. Cal Trans has failed to take into consideration negative environmental impacts. The route they selected goes across undisturbed land creating a killing field 115 ft. wide where wildlife will die including: deer, coyotes, rabbits, raccoons, birds of prey, plus peoples pets.
8. Cal Trans has failed to win the trust of the community, and instead have created a atmosphere of fear, uncertainty and doubt.

It is not without good reason that Caltrans is mistrusted. The Department is currently under investigation for : Theft (CHP & NBC4) Falsifying Data, (Sac Bee) Abuse of Power, (Orange County Register).

Cal Trans has kept property off tax rolls draining county coffers of tens of millions of dollars in lost revenue. By there own admission in an interview with Gov. Arnold Schwargenegger The head of Cal Trans Director Will Kempton said that "Cal Trans sometimes ran roughshod over communities instead of working with them".

Therefore; I urge Cal Trans to bow to the collective wisdom of the people, Supervisors, and the LTC of Inyo County, and build the four lane undivided highway as per alt.#1a

As the duly elected official representing the people of the 5th District of Inyo County, which includes Olancha - Cartago, I am saddened that my constituents have been treated with such complete disregard.

Sincerely,



Richard Cervantes
Supervisor 5th District
Inyo County, California

Courtney Smith

From: scott palamar <palamar@gmail.com>
Sent: Monday, January 09, 2012 5:52 PM
To: Courtney Smith
Cc: Jen@BlueSkyLonePine.com; qtheart@yahoo.com; amicia@qnet.com; hcmeylemans@msn.com; Lauberge@Cox.net; bludog60@hughes.net; bkessler@sierrawave.net; kathybncrft@yahoo.com; Scott Douglas Palamar
Subject: FW: Olancha/Cartago 4-Lane Project
Attachments: CaltransOlanchaCartagoSpeedSurvey2010.jpg; EPA_EmmissionsPerMile.pdf

Courtney,

I'd appreciate it if you could see to it that the Local Transportation Commissioners sees the information I received from Caltrans and the extrapolations I have made from it (below).

Thanks and regards,

Courtney Smith

Scott Palamar

Cedrik Zemitis informs me that the "Hallenbeck Alternative" Olancha bypass would make I-395 about a mile longer (see below).

Some people reason that a bypass around Olancha is desirable because it would speed up I-395 travel if 55mph through Olancha-Cartago is not necessary anymore (www.sierrawave.net/8811/olanacha-bypass/).

Well, average traffic does not currently obey the 55mph zone through Cartago and Olancha; it varies from 60-68 between Olancha at 190 and Cartago as documented by a 2010 Caltrans Speed Survey (see attached).

Caltrans informed me the 55mph speed limit is actually unenforceable because the Speed Survey documents that average traffic goes considerably faster. I was told for this reason Caltrans will probably not consider a sub-65mph limit for any widened highway alternative through Olancha-Cartago.

Assuming that traffic currently already travels an average of 65mph through the 8 miles of I-395 that Caltrans wants to bypass, then the Hallenbeck Alternative, with its "about 1 mile longer" path will actually add about one minute to the current average time that traffic would spend on I-395 between Olancha and Cartago!

So much for 'quicker' as a reason to bypass Olancha.

Further, the EPA estimates that carbon dioxide emissions per vehicle per mile is .916 pounds for cars and 1.15 pounds for light trucks. Using 1 pound of CO₂ emitted per vehicle per mile, and Caltrans' estimate of 6,930 vehicle of average daily count in 2014, (www.dot.ca.gov/dist9/projects/olanacha/traffic.html), a 1 mile elongation of I-395 will add over 2-1/2 million more pounds of carbon dioxide into our atmosphere per year! This estimate does not even factor in the emissions from the heavy truck traffic on 395 which represents over 20% of the total.

Based on the same sources and estimating method, passenger cars and light trucks would burn over an extra 125,000 gallons of fuel per annum because of a bypass!

These are just a few of a very long list of negatives for the Hallenbeck Alternative when compared to Alternative 1 or the No-Build alternative. I am working to compile such a list.

Regards,

Scott Palamar
310-361-6867

-----Original Message-----

From: Cedrik Zemitis [mailto:cedrik_zemitis@dot.ca.gov]
Sent: Monday, January 09, 2012 1:44 PM
To: palamar@gmail.com
Subject: FW: Olancha/Cartago 4-Lane Project

Hi Scott:

The preferred alternative is about 1 mile longer than the current alignment.

Page 30 of the Draft Project Report has the proposed route adoption distances for Alts. 1-4:

U.S. 395 PROPOSED ROUTE ADOPTIONS

ALTERNATIVE BEGIN END

1 PM 31.97 PM 40.06
2 PM 31.54 PM 40.06
2A PM 31.54 PM 40.06
3 PM 31.97 PM 40.06
4 PM 30.04 PM 40.06

http://www.dot.ca.gov/dist9/projects/olancha/docs/draft_olancha-cartago_project_report.pdf

Thanks,

Cedrik Zemitis
Project Manager
Caltrans - District 9
(760) 872-5250
cedrik.zemitis@dot.ca.gov

scott palamar
<palamar@gmail.com>
m> To
<cedrik_zemitis@dot.ca.gov>
01/06/2012 09:58 PM cc
Subject
FW: Olancha/Cartago 4-Lane Project
Please respond to
<palamar@gmail.com>
m>

-----Original Message-----

From: scott palamar [mailto:scott@palamar.com]

Sent: Tuesday, January 03, 2012 11:00 AM

To: 'Cedrik Zemitis'

Subject: RE: Olancha/Cartago 4-Lane Project

Hi Cedrik

Happy 2012!

I have not been able to (re)locate the added length the proposed "Hallenbeck Alternative" would introduce over the current I-395 within the project area.

Would you provide me with this figure?

Thanks and regards,

Scott Palamar

310-361-6867