



Members of the Board

Charlene Haught Johnson, Chair
Anthony J. Intintoli, Jr., Vice Chair
Gerald Bellows
Beverly Johnson
John O'Rourke

**MEETING AGENDA FOR THE WETA
BOARD OF DIRECTORS**

Wednesday, September 17, 2008, 1:00 P.M. to 3:00 P.M.
**San Francisco Bay Area Water
Emergency Transportation Authority**
Pier 9, Suite 111
San Francisco

A supplemental materials packet is available for download at www.watertransit.org.

AGENDA

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please contact the Board Secretary at least five (5) working days prior to the meeting to ensure availability.

PUBLIC COMMENT The Water Emergency Transportation Authority welcomes comments from the public. Speakers' cards and a sign-up sheet are available. Please forward completed speaker cards to the Board Secretary.

Non-Agenda Items: A 15 minute period of public comment for non-agenda items will be held at the end of the meeting. Please indicate on your speaker card that you wish to speak on a non-agenda item. No action can be taken on any matter raised during the public comment period. Speakers will be allotted no more than three (3) minutes to speak and will be heard in the order of sign-up.

Agenda Items: Speakers on individual agenda items will be called in order of sign-up after the discussion of each agenda item and will be allotted no more than three (3) minutes to speak. You are encouraged to submit public comments in writing to be distributed to all Directors.

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|--|---------------------------|
| 1. <u>CALL TO ORDER – BOARD CHAIR</u> | <i>Information</i> |
| 2. <u>ROLL CALL/PLEDGE OF ALLEGIANCE</u> | <i>Information</i> |
| 3. <u>REPORT OF BOARD CHAIR</u> | <i>Information</i> |
| 4. <u>REPORTS OF DIRECTORS</u> | <i>Information</i> |

**Water Emergency Transportation Authority
September 17, 2008 Meeting of the Board of Directors**

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| 5. <u>REPORTS OF STAFF</u>
a. Executive Director's Report
b. Legislative Report - Federal | <i>Information</i> |
| 6. <u>CONSENT CALENDAR</u>
a. Minutes of August 21, 2008
b. Minutes of August 29, 2008
c. Authorize the Executive Director to Execute a Master Agreement for State Funded Transit Projects with the State of California Department of Transportation | <i>Action</i> |
| 7. <u>AUTHORIZE THE METROPOLITAN TRANSPORTATION COMMISSION TO ALLOCATE AN ADDITIONAL \$1.9 MILLION REGIONAL MEASURE 2 FUNDS TO SUPPORT FY 2008/09 VALLEJO FERRY OPERATIONS</u> | <i>Action</i> |
| 8. <u>APPROVAL OF SELECTION FOR THE TRANSITION PLAN CONSULTANT SERVICES CONTRACT AND AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE THE AGREEMENT</u> | <i>Action</i> |
| 9. <u>AUTHORIZE RELEASE OF A RFP FOR EMERGENCY WATER TRANSPORTATION SERVICE(S)</u> | <i>Action</i> |
| 10. <u>RECESS INTO CLOSED SESSION</u>
a. <u>CONFERENCE WITH REAL PROPERTY NEGOTIATORS</u>
Property: San Mateo County Harbor District, South San Francisco Small Boat Harbor
Agency Negotiators: Nina Rannells and John Sindzinski, San Francisco Bay Area Water Emergency Transportation Authority
Negotiating Parties: San Mateo County Harbor District
Under Negotiation: Terms and conditions to the cooperative agreement/lease with the San Mateo County Harbor District for the South San Francisco service | <i>Action</i>
<i>To Be Determined</i> |
| 11. <u>REPORT OF ACTIVITY IN CLOSED SESSION</u>
Chair will report any action taken in closed session that is subject to reporting at this time. Action may be taken on matters discussed in closed session. | <i>Action</i>
<i>To Be Determined</i> |
| 12. <u>OPEN TIME FOR PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA</u> | |

ADJOURNMENT

Water Emergency Transportation Authority (WETA) meetings are wheelchair accessible. Upon request WETA will provide written agenda materials in appropriate alternative formats to individuals with disabilities. Please send a written request to email@watertransit.org or call (415) 291-3377 at least five (5) days before the meeting. Under Cal. Gov't. Code sec. 84308, Directors are reminded that they must disclose on the record of the proceeding any contributions received from any party or participant in the proceeding in the amount of more than \$250 within the preceding 12 months. Further, no Director shall make, participate in making, or in any way attempt to influence the decision in the proceeding if the Director has willfully or knowingly received a contribution in an amount of more than \$250 within the preceding 12 months from a party or such party's agent, or from any participant or his or her agent, provided, however, that the Director knows or has reason to know that the participant has a financial interest in the decision. For further information, Directors are referred to Gov't. Code sec. 84308 and to applicable regulations.

LINDSAY, HART, NEIL & WEIGLER, LLP
ATTORNEYS AT LAW

1120 G Street, NW
Suite 1020
Washington, DC 20005
Tel: (202) 783-3333
Fax: (202) 783-4422

Peter Friedmann
Of Counsel

OurManInDC@FederalRelations.com

DATE: September 11, 2008

TO: WETA Board Members

FROM: Peter Friedmann
Tel: 202-783-3333 Fax: 202-783-4422 OurManInDC@federalrelations.com

SUBJECT: Report to the Board: WETA's Federal Strategy in the New Washington, DC Environment

As the 110th Congress draws to a close, with a new occupant in the White House in the coming year, a changing power structure on Capitol Hill, and the beginning of the legislative road to a new approach to the nation's transportation infrastructure spending, WETA is positioned to continue and expand an effective federal strategy. Following is a recap of how we have built federal support WETA and how we will continue and expand it.

Building a National Coalition of Stakeholders

Critical to our strategy from the very inception, has been to engage as many interests as possible, in California and beyond, to work towards the success of WETA. In particular, those interests have been organized and deployed to advocate for funding for WETA which in turn, would generate new jobs and ship orders.

Our first outreach was to the maritime labor unions for whom expansion of ferry boat infrastructure on San Francisco Bay offers the greatest potential for U.S. maritime labor, anywhere in the country. All the unions which would man the vessels and terminals have come together to advocate for the funds necessary to build those boats and terminals.

Secondly, we have engaged the ship yards for whom WETA ferry boat construction program offers significant opportunities. We continue working with the shipyards and unions, particularly through their Washington, DC representatives, and continue to meet regularly. The stakeholder coalition is in place and ready to advocate for WETA in the coming Congress.

Congressional Relations

Building and maintaining a Congressional coalition of supporters for WETA is an ongoing task. Essential to obtaining a stream of federal funding, has been the engagement of Members of Congress representing Congressional Districts and states far from California. These, in turn, are the result of the national coalition of stakeholders in the success of WETA.

Funding Strategies

Over the past six years, WETA has gained annual appropriations from the Ferry Boat Discretionary Fund (FBD) (typically about \$1.25 million/year), as well as an annual allocation set aside from the Transit Fund (\$2.5 million/year), in addition to specific allocations from SAFETEA-LU for projects including Hercules (\$1.5 million) and the South San Francisco/Oyster Point/Tom Lantos ferry terminal (\$5.8 million).

The big story will be how WETA fares under the next Transportation Authorization bill. This bill, which will be drafted in the coming year; it will spend a minimum of \$350 billion in federal gas tax revenues over the coming six years on highways and transit infrastructure. Our goals are as follows:

1. Expand the FBD. Working with other public ferry authorities, we expanded it from \$38 million to the current \$75 million. Our objective is to double this amount in the next Transportation bill. This will allow us to pursue annual FBD appropriations for WETA.
2. Obtain an allocation of the FBD set aside for WETA. Currently, Alaska, Washington and New Jersey ferry systems enjoy set asides, from \$5 to \$10 million/year. These may remain or be revised in the coming Transportation bill; our objective is to obtain a set aside for WETA.
3. We worked to create the new Transit Fund in SAFETEA-LU and obtained the WETA \$2.5 million/year set aside. Our objective is to extend this set aside through the life of the coming Transportation bill.
4. Particular projects on the drawing boards for WETA deserve specific funding in the next Transportation bill. These would include the Berkeley/Albany ferry terminal, the ferry boat maintenance facility in the Vallejo system that can serve all WETA vessels and other terminal projects in the pipeline.

We will be able to provide additional specifics during our appearance at the upcoming September 17 Board Meeting.

Looking forward to seeing you then.

Regards,
Peter

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

MINUTES OF THE BOARD OF DIRECTORS MEETING

(August 21, 2008)

The Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority met in regular session at the offices of the San Francisco Bay Conservation & Development Commission, San Francisco, CA.

1. ROLL CALL AND CALL TO ORDER

Chair Charlene Haught Johnson called the meeting to order at 1:08 p.m. Directors present were Chair Johnson, Vice Chair Anthony Intintoli and Director Gerald Bellows. Director Bellows led the Pledge of Allegiance. Director Beverly Johnson arrived at 1:20 p.m.

2. REPORT OF BOARD CHAIR

Chair Johnson noted that future Board meetings would be held on a more regular schedule. After some discussion it was resolved that meetings would be moved to the third Wednesdays of the month.

3. REPORT OF DIRECTORS

None.

4. REPORTS OF STAFF

Executive Director Jon Stanley noted it had been one month since he joined WETA and that staff had done a great job of bringing him up to speed on the projects and challenges ahead.

Mr. Stanley reported that SB 1093 was in the final stages of passage and expected to go through once the budget impasse is cleared in Sacramento with further details to be presented later in the meeting. He noted that WETA had issued an RFQ for consulting assistance in putting together the Transition Plan required by the legislation and that WETA had begun to collect the information and data necessary to put together the Plan as well as to develop a five year plan going forward. He added that WETA was working with Vallejo and Alameda as well as MTC on the Plan.

Mr. Stanley stated that the terminal project in South San Francisco is proceeding slowly due to funding issues as a result of delays in finalizing the lease agreement with the San Mateo County Harbor District and that WETA was not yet received funding from the San Mateo County Measure A sales tax. He added that both items would be discussed in depth later in the meeting.

He further updated the Board on the status of emergency response planning which had continued with the hiring of Bill McCammon as a consultant to assist with plan development and readiness review as well as with possible additional grant funding, noting that WETA's charter includes emergency planning but outside funding has not been identified. Mr. Stanley added that WETA had prepared a draft RFQ for additional consulting assistance.

Mr. Stanley reminded the Board that the first two vessels are scheduled to be delivered in December and March respectively and that staff is working on agreements with current operators to place the vessels in service after delivery.

Regarding WETA's legislative outreach and strategy, Mr. Stanley noted that WETA had been working with Sacramento and Washington consultants to develop this year's strategy for sponsorship and funding and will be reaching out to key members of the State Senate and Assembly and to key members of the congressional delegation in the next few months to lay the groundwork for continued WETA funding and legislative support.

Mr. Stanley also noted upcoming "Lunch for the Office Bunch" events on September 5th and 19th. In closing, he thanked the Board for taking the time to speak with him individually over the previous month.

5. CONSENT CALENDAR

Director Bellows noted an error in the minutes for the June 19, 2008 Board of Directors meeting.

Vice Chair Intintoli made a motion to approve the minutes with Item 5 corrected to note: "Vice Chair Intintoli made a motion to approve the item. Director Bellows seconded the motion and the item carried unanimously." Director Johnson seconded the motion and the item carried unanimously.

Director Bellows also asked if any action had been taken by MTC regarding the Pier 9 berthing project. Deputy Director of Finance and Administration Nina Rannells reported that MTC had approved the funding request.

6. APPROVAL OF THE DISADVANTAGED BUSINESS ENTERPRISE PLAN AND OVERALL ANNUAL DBE GOAL

Community Relations Manager Shirley Douglas presented the FY 2008/09 DBE Plan for approval. Ms. Douglas noted that no comments had been received on the plan.

Director Johnson made a motion to approve the item. Director Bellows seconded the motion and the item carried unanimously.

7. INFORMATIONAL PRESENTATION – SOUTH SAN FRANCISCO PROJECT UPDATE

Manager of Planning and Development John Sindzinski presented this item regarding the status of the South San Francisco project. He presented a schedule to the Board and noted that WETA would hold off advertising for construction bids until the lease with San Mateo County Harbor District was finalized.

Mr. Stanley added that Measure A talks were ongoing and the San Mateo County Transportation Authority had been seeking collateral for the funds. Ms. Rannells added that this was still under discussion. Vice Chair Intintoli noted that SB 1093 calls for five year operating plans and asked if that wasn't sufficient for the County. Ms. Rannells responded that they were looking for collateral for their capital investment more than a projection of viability. Vice Chair Intintoli asked if this meant the boats, and Ms. Rannells replied that it did although that would not be a feasible solution.

Vice Chair Intintoli noted that this would be an issue for all new services as WETA is underfunded for operating and even capital expenses. He noted the need for WETA to be ready to access any additional funding that becomes available as \$15 million will not be sufficient to operate additional ferry services as well as new capital projects. Mr. Stanley agreed and noted that he was in touch with Brian Kelly in Sacramento and that there is a possibility that more funding would be available when a revised plan is submitted but that 1B funds were only available for Emergency Response. Director Johnson asked if 1B funds would be available for

the Transition Plan. Ms. Rannells replied that 1B funds are for capital projects only, and that the next round of 1B funds would be appropriated through the State budget process this year.

Director Johnson asked how much on the funding for the project was in-hand and what was still needed before proceeding. Mr. Sindzinski said that all of the funding would be needed before proceeding. Ms. Rannells added that Measure A money would be used to fund the long term lease and the terminal and that it was critical to resolve this funding before the project can move forward. Mr. Sindzinski further stated that the lease must be finalized soon to allow time to check firms and meet seasonal construction windows. Chair Johnson asked if the delay created any opportunity to reduce expenses related to the terminal. Mr. Sindzinski replied that any changes made now will only add expense and that the latest construction window has already been missed due to stalled lease negotiations with the Harbor District.

Public Comment:

Veronica Sanchez of Masters, Mates and Pilots asked if the RM2 funds were already available to WETA. Ms. Rannells replied that they were scheduled to be available in January 2009 but that WETA was in talks to see if earlier was possible. Ms. Sanchez asked if it was a problem that terminal construction would begin before the funds were available. Ms. Rannells replied that it was not an issue as the project was already delayed due to the lease issue and missed construction window.

8. INFORMATIONAL PRESENTATION – EMERGENCY RESPONSE

Manager of Operations Keith Stahnke presented an overview to the Board on Emergency Response Planning Activities. He reviewed the existing organizational structure and outlined WETA's role in emergency response for the region.

Director Johnson asked if WETA's emergency response role would include coordinating transit connections. Mr. Stahnke replied that WETA would have some role in updating MTC and OES and they would coordinate connections. Director Johnson asked if FEMA was a possible source of funding for these planning activities and disaster preparedness. Mr. Stahnke said that they were, specifically for reimbursement for the Emergency Response Plan. He added that Bill McCammon would be working on identifying additional sources of funding for these activities.

Mr. Stanley added clarification that Mr. Stahnke's presentation was intended to illustrate the challenges of creating the plan, not the plan itself.

Public Comment:

Veronica Sanchez expressed a concern over the viability of coordinating 850 busses in the East Bay in the event the I-80 corridor is shut down. She added that an emergency response plan would need to cover all locations.

Mr. Stahnke responded that there were any number of scenarios that would need to be addressed and that his presentation was specific to a San Francisco evacuation. Vice Chair Intintoli asked if the connecting busses would be WETA's responsibility or not. Mr. Stahnke replied that WETA would have a coordination role. Mr. Stanley added clarification that WETA's responsibility was limited to delivering passengers to the dock and that its role beyond that was limited to assisting with coordination.

Vice Chair Intintoli noted that it would take many years to acquire sufficient vessels for such an evacuation. Mr. Stahnke replied that there were already 40 vessels in the Bay that could be used in emergency response. Chair Johnson asked if WETA had coordinated use of these boats with FEMA. Mr. Stahnke reminded the Board that WETA would be releasing an RFP for

emergency response charters that would not activate until needed for emergency response. He added that the initial response from the various operators indicated that they would be receptive to the charters.

9. NATIONAL INCIDENT MANAGEMENT SYSTEM/STATE EMERGENCY MANAGEMENT SYSTEM

Mr. Stahnke presented this item regarding WETA's adoption the NIMS and SEMS, both of which are required for compliance.

Vice Chair Intintoli made a motion to approve adoption of NIMS. Director Johnson seconded the motion and the item carried unanimously.

Director Bellows made a motion to approve adoption of SEMS. Vice Chair Intintoli seconded the motion and the item carried unanimously.

10. UPDATE ON SENATE BILL 1093

Ms. Rannells presented an informational item on the status of SB 1093, which WETA had worked on cooperatively with the cities of Alameda and Vallejo, noting that it had passed out of the Assembly on August 12 and the Senate that morning.

Director Johnson asked for clarification on the \$600,000 of RM2 funds for the transition. Ms. Rannells explained that that amount was support for the initial year for all three organizations, including funding for a plan consultant and expenses. Director Johnson asked how that was coordinated. Ms. Rannells said WETA has asked Alameda and Vallejo to provide estimated costs and that ultimately WETA would present MTC with a budget for reimbursement to WETA and the cities.

Chair Johnson asked if WETA would be required to accept old boats from the cities. Ms. Rannells replied that WETA would not be required to do anything, but that the Transition Plan will specifically identify all the elements of the current state of the systems including the costs of operations and the state of each system's assets, including what it would take to bring vessels up to CARB requirements.

Public Comment:

Gary Leach, Vallejo Public Works Director expressed thanks to Ms. Rannells and the WETA Board for help in bringing the plan to fruition.

11. RECESS INTO CLOSED SESSION AND REPORT ON CLOSED SESSION

Chair Johnson called the meeting into closed session at 2:30. Upon reopening of the meeting at 3:20 she reported that direction had been given to staff regarding lease negotiations with the San Mateo County Harbor District.

12. ADJOURNMENT

All business having concluded, the meeting was adjourned at 3:25 P.M.

Respectfully Submitted,

Board Secretary

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

MINUTES OF THE BOARD OF DIRECTORS MEETING

(August 29, 2008)

The Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority met at the offices California Maritime Academy, Vallejo, CA.

1. ROLL CALL AND CALL TO ORDER

Chair Charlene Haught Johnson called the meeting to order at 9:30a.m. Directors present were Chair Johnson, Vice Chair Anthony Intintoli, Director Gerald Bellows, Director Beverly Johnson and Director John O'Rourke.

2. MISSION AND VISION STATEMENTS, REVIEW AND REVISE

The discussion among the Board members elicited the following points:

- Ensure that WETA has an operational focus, along with design focus. It is important to successfully transition the existing Vallejo and Oakland/Alameda ferry services per the legislation. The challenge will be to balance consolidation of existing service while at the same time expanding service.
- It will be important to raise operating funds sufficient to support the capital projects that WETA undertakes. Failure to maintain and expand service will make it difficult to maintain legislative support.
- It is important to complete the South San Francisco ferry terminal and go into service, while maintaining momentum for the subsequent identified sites.
- Legislative strategy – both Federal and State – are key to maintaining support and funding stream. One of WETA's challenges is to identify, legislators and political leadership who will champion the WETA cause - in support of both the regular public service responsibility, and the emergency response responsibility. Lack of funding to support the expansion of the system to a fully realized system is a continuing challenge.
- Need to build a regional lobby of cities/developers/employers and agencies to successfully lobby for the support that WETA needs.
- Possible funding sources and partnerships could be local businesses, such as refineries. Public/private partnerships must be explored.
- Need to connect with other emergency response agencies to ensure that the WETA role is understood and integrated into the regional response planning.

This discussion continued later in the day with a review of the mission and vision statements developed for WETA in the April, 2005 retreat. The members then discussed appropriate revisions to those statements in light of the Authority's new and expanded role as a result of SB 976 and SB 1093.

The revised draft mission statement is: *"WETA is a regional agency with responsibility to develop and operate a comprehensive Bay Area regional public water transportation transit system. WETA shall also provide water transportation services in response to natural or man-made disasters."*

The revised draft vision statement is: “Establish and operate a regional ferry system that connects communities, reduces congestion, and provides an emergency response capability.”

Members then asked staff to further refine the above statements along with goals and objectives. They agreed to the following as key goals of the vision:

- Safety
- Cost Effectiveness
- Environmental responsibility
- Cooperative community relationships

3. COMMITTED PRIORITIES

For this agenda item, staff reviewed with Board members the current FY 2008/09 committed projects per the approved budget. The projects are described in the budget summary package submitted for approval at the June 19, 2008 Board meeting.

- **SB 976 and SB 1093 Requirements**

Staff provided a brief summary of both of the bills mandating the formation of the WETA.

- **Implementation and Operations Plan**

Each currently budgeted project was briefly reviewed for the Board.

- **Vessel Deployment Plan**

Staff is continuing to work on the Bareboat Charter proposal with MTC to make productive use of Gemini and Pisces when they are delivered in December 2008, and March 2009.

- **Other projects**

Staff reported that the Pier 9 Layover Berth should be completed by Summer 2009.

Staff reported on a recent meeting with the Treasure Island project representatives from the SF Mayor’s office who may be helpful in moving the SF Docks improvements along to support both the TI project as well as WETA needs for dock space to support emergency planning/response.

4. STRATEGIC ISSUES AND DIRECTIONS

- **Funding Realities/Managing Expectations**

Staff provided a review of the budgets and funding sources for each of the identified FY 2008/09 projects reviewed earlier. South San Francisco, the first “expansion” project per the schedule is currently delayed while funding from Measure A is worked out with San Mateo County Transit Authority, and while lease negotiations continue for the ferry terminal site with the San Mateo County Harbor District. Other current projects have funding sources identified for this year. RM2 funding is also available for near-term operations, and to support development of the Transition Plan.

Staff also presented a longer range discussion with a summary of funding sources and budget estimates for the expanded ferry service system contemplated by the *Implementation and Operations Plan* approved in July 2003.

Members indicated the following general priorities and expectations for the next few years that supports taking on an operations role while expanding the WETA emergency and general transportation ferry system as follows:

- Successful assumption of the Vallejo and Oakland/Alameda service as analyzed by the Transition Plan
- Continued high priority to complete SSF and Berkeley/Albany – the first two near-term expansion terminals
- Completion of the Emergency Response Plan for WETA
- Build-out of system infrastructure to support these top priority items

Staff provided a listing of current Federal and State legislators that are or could be involved in WETA support initiatives. Members discussed each name, and provided staff with insight/suggestions as to strategies to gain legislative support. Staff indicated a desire to increase use of the State and Federal legislative advocates (lobbyists) and will initiate a briefing from them to the Board at a future Board meeting this Fall.

- **Organizational Evolution – Moving from Design into Operations**

With respect to “marketing” WETA, Director Johnson stated that WETA needed a “brand” for its service. Staff will take for action. Vice Chair Intintoli indicated that development of the Transition Plan will begin the process of WETA identifying organizational changes that may be required to execute the “operations” aspect to our charter. Focus on operations is critical now as we contemplate assumption of existing services in Vallejo and Oakland/Alameda, as well as further expansion.

5. ADJOURNMENT

All business having concluded, the meeting was adjourned at 8:00 P.M.

Respectfully Submitted,

Board Secretary

MEMORANDUM

TO: Board Members

FROM: Nina Rannells, Deputy Director of Finance & Administration

SUBJECT: Authorize the Executive Director to Execute a Master Agreement for State Funded Transit Projects with the State of California Department of Transportation

Recommendation

Authorize by resolution the Executive Director to execute a Master Agreement for State Funded Transit Projects with the State of California Department of Transportation to accommodate the transfer of state funding for transit projects from a variety of sources.

Background/Discussion

In order for a local transportation agency to secure state funds administered by the State of California Department of Transportation (Caltrans) for transportation projects, the State requires the agency to agree to general grant terms and execute a master agreement for funds. This Master Agreement serves as the core agreement between Caltrans and the local agency for state grant funds including State Transportation Improvement Program, Traffic Congestion Relief Fund, Transportation Investment Fund and General Fund allocations. As specific grant monies are made available to an agency, the Master Agreement is augmented with supplemental agreements (Program Supplements) that award specific funds to projects and address any special project or funding requirements.

In order to prepare WETA to be eligible to receive State funds, Caltrans has prepared a Master Agreement for WETA as provided in **Attachment 1** to this item. This item authorizes the Executive Director to execute the Master Agreement as well as future Program Supplements required to secure State funds for WETA projects.

Financial Implications

There is no direct financial impact associated with this item. However, this action will allow WETA to be eligible to secure and use State grant funds to support its program of projects over the ten-year period of the agreement.

Options

Approve or reject.

END

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) 654-9842

**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: 21 July, 2008

Termination Date of this Agreement: 21 July, 2018

Recipient: San Francisco Bay Area Water Emergency Transportation Authority

**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 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**).

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 exempt non-represented 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 Office of Management and Budget Circular A-87, 48 CFR, 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.

- (4) **RECIPIENT** agrees to include all PROGRAM SUPPLEMENT(s) adopting the terms of this AGREEMENT in the schedule of projects to be examined in **RECIPIENT**'s annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with Office of Management and Budget Circular A-133.

B. *Record Retention*

- (1) **RECIPIENT**, 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-06-20, adopted December 13, 2006, 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-06-20 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 Marshall 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 appropriate, an environmental impact report). California Public Resources Code section 21080(b)(10) 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 82-14 (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 a NUP activity allocation of bond proceeds, not to exceed the amount specified in the **PROGRAM SUPPLEMENT**, once **RECIPIENT** submits to **STATE** a completed bond certification questionnaire and the State Treasurer and **STATE** both approve that private activity as described 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**

**SAN FRANCISCO BAY AREA
WATER EMERGENCY
TRANSPORTATION AUTHORITY**

BY: _____
TRACEY FROST, Chief
State Transit Grants Branch

BY: _____
JONATHAN STANLEY
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

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;

San Francisco Bay Area Water Emergency Transportation Authority
Master Agreement No. 64A0216

- 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

RESOLUTION NO. _____

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

WHEREAS, the San Francisco Bay Area Water Emergency Transportation Authority may receive state funding from the California Department of Transportation (Department) now or sometime in the future for transit projects; and

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

WHEREAS, the Traffic Congestion Relief Act of 2000 (the Act) was established by Chapters 91 (AB 2928) and 92 (SB 496), as amended by SB 1662, of the statutes of 2000, creating the Traffic Congestion Relief Program (TCRP); and

WHEREAS, these 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 California Transportation Commission (CTC) guidelines for the Traffic Congestion Relief Program encourages the Department and the implementing agency to maximize the use of existing agreements such as Master Agreements and Program Supplements to expedite development and execution of cooperating agreements; and

WHEREAS, The CTC, who governs the administration of transit related projects, requires a cooperative agreement, for TCRP projects to include a certification, by resolution of the governing board of a local or regional agency, as required by statutes, that it will sustain its level of expenditures for transportation purposes at a level that is consistent with the average of its annual expenditures during the 1997-98, 1998-99, and 1999-2000 fiscal years, including funds reserved for transportation purposes, during the fiscal years that the allocation is available for use; and

WHEREAS, the San Francisco Bay Area Water Emergency Transportation Authority wishes to delegate authorization to execute these agreements and any amendments thereto to the Executive Director

NOW, THEREFORE, BE IT RESOLVED THAT: The San Francisco Bay Area Water Emergency Transportation Authority agrees to comply with all conditions and requirements set forth in this agreement and applicable statutes, regulations and guidelines for all state-funded transit projects.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT: The level of expenditures for transportation purposes will be sustained at a level that is consistent with the average of its annual expenditures during the 1997-98, 1998-99, and 1999-2000 fiscal years, including funds reserved for transportation purposes, during the fiscal years that allocations for TCRP Projects are available for use.

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.

DULY PASSED AND ADOPTED by the San Francisco Bay Area Water Emergency Transportation Authority at its meeting of the Board held on _____, 2008, in San Francisco, California, by the following votes:

AYES: NOES: ABSTAIN: ABSENT:

**CERTIFIED AS A TRUE COPY OF
RESOLUTION NO. _____**

Date Certified: _____, 2008

SIGNED _____
Charlene Haught Johnson, Chair

Board Secretary

MEMORANDUM

TO: Board Members

FROM: Jon Stanley, Executive Director
Nina Rannells, Deputy Director of Finance & Administration

SUBJECT: Authorize the Metropolitan Transportation Commission to Allocate an Additional \$1.9 million Regional Measure 2 Funds to Support FY 2008/09 Vallejo Ferry Operations

Recommendation

Authorize by resolution the Metropolitan Transportation Commission (MTC) to allocate \$1.9 million additional Regional Measure 2 funds to the City of Vallejo to support Vallejo Baylink (Baylink) ferry services in FY 2008/09.

Background

Section 30914 of the Streets and Highways Code allows up to \$15.3 million per year in Regional Measure 2 (RM2) funds to be made available to support regional ferry transit operating expenses under WETA. Of this amount, \$2.7 million has previously been allocated by MTC to Vallejo, with WETA concurrence, to support the Baylink ferry services in FY 2008/09.

Discussion

Summary

The City of Vallejo (Vallejo), in conjunction with the Solano Transportation Authority (STA), has requested WETA support in requesting MTC allocation of an additional \$1.9 million in regional ferry operating RM 2 funds to support a revised FY 2008/09 Baylink budget and operating plan addressing sharp ridership decreases experienced beginning in June 2008 with the initiation of a 20% fare increase. This plan would allow Vallejo to partially roll-back the June fare increase and defer proposed service reductions in an effort to stabilize Baylink's services and gain back the ridership lost in recent months. This request is a part of a multi-agency solution structured to support continuing current services this year while a transition plan is developed for moving these services under WETA in future years.

Vallejo Baylink Status

The Baylink ferry system has experienced a significant increase in operating expenses over the past year, largely as a result of increased fuel prices. Given the limited operating revenue available to support Baylink services, this increase caused Vallejo to propose a program of revenue enhancement and cost cutting measures as a part of its balanced budget for Baylink in FY 2008/09. This budget plan included:

- A 20% increase in monthly fares starting June 2008
- A \$.50 per trip fuel surcharge to be added to fares each quarter
- Midday and weekend service reductions

Since the fare increase was implemented in June 2008, the Baylink service has experienced a 10% to 15% drop in ridership. This decline has come at a time when

many other transit systems are reporting ridership increases in response to the increased cost of driving resulting from rising gasoline prices. As a result, Vallejo staff believes that the fare increase implemented in June exceeded the price point that ferry patrons are willing and/or able to pay.

Vallejo Baylink Proposal

In order to address the current ridership loss and take steps to stabilize the Baylink service, Vallejo staff has developed a revised budget and operating plan for FY 2008/09 that includes the following changes and assumptions:

- A partial roll-back of June 2008 fare increases, bringing the monthly ticket price down from \$330 to \$290 (was \$270 prior to the June 2008 increase). All other fares would be similarly reduced.
- An average fuel price of \$4.50. In the event that fuel exceeds this amount, Vallejo would re-institute its fuel surcharge program; and
- No service reductions to be implemented this year.

Implementation of this plan requires \$1.9 million to \$2.2 million in additional operating subsidies in FY 2008/09. Vallejo staff, in partnership with the Solano Transportation Authority (STA) and in discussion with MTC and WETA staff, has developed a multi-agency plan for funding this proposal that includes the following commitments:

- \$150,000 State Transit Assistance funds from STA;
- \$150,000 Transportation Development Act funds from the County of Solano; and
- \$1.9 million in Regional Measure 2 funds, including \$1.6 million to support Vallejo's plan and a \$300,000 contingency reserve to be made available in the event that fare revenues or system expenses fall short of projections.

This plan requires the STA and Solano County commitments totaling \$300,000 to be used first, with RM2 funds used to fund the balance of Baylink's operating needs.

In order to allow Vallejo to implement this plan in October, all five partner agencies will need to take action to support the increased funding contributions in September. WETA support of this proposal will provide Vallejo Baylink with sufficient funds to continue existing operations this year while a transition plan for moving the service under WETA is developed. This action would be for one-year only, and, per Senate Bill 1093 and MTC requirements, future year allocation of RM2 funds in excess of \$2.7 million for the Vallejo service would be subject to completion of the overall WETA service plan and agreement by Vallejo to transition its services to WETA.

Financial Implications

There is no financial impact to WETA associated with this item as funds allocated to Vallejo would not otherwise be available to WETA in FY 2008/09 per MTC allocation rules limiting these funds to system operations. This action would bring the total RM2 subsidy to support Vallejo services up from \$2.7 million to \$4.6 million in FY 2008/09.

Options

Approve or reject.

END

MEMORANDUM

TO: Board Members

FROM: Mary Frances Culnane, Manager, Marine Engineering

SUBJECT: Approval of Selection for the Transition Plan Consultant Services Contract and Authorizing the Executive Director to Negotiate the Agreement

Recommendation

Approve by resolution the award of professional services contract to Arup to review, research and recommend course of action to transition Vallejo, AOFS and Harbor Bay Ferry Service into the Regional San Francisco Bay Area Water Emergency Transportation Authority, and convene appropriate meetings, create and market the Transition Plan.

Background

The WETA, created by the California State Legislature, is a regional agency with a multi-county jurisdiction. The WETA is responsible for developing an emergency water transportation system management plan for water transportation services in the bay area region in the event that bridges, highways, and other facilities are rendered wholly or significantly inoperable. WETA shall create and adopt this plan on or before 01 July 2009.

In addition WETA is to design, build and operate a seamless water transit system that responds to the regions' congestion management needs, develops innovative environmental solutions for ferry vessels, contributes to economic viability and improves quality of life. This water transportation system will also enhance the region's ability to respond to a natural or manmade disaster affecting the Bay Area's transportation infrastructure.

One stipulation of SB 1093 (12 August 2008 version) requires a survey of the assets and systems required to operate the Vallejo, Alameda and Harbor Bay Ferry Services and development of a comprehensive plan (Transition Plan) to consolidate these systems with planned WETA services to operate under one entity, i.e., WETA. The Transition Plan shall include:

- An operating element which should describe existing services and planned service expansions including the personnel required to operate such systems as well as identify a course of action for consolidation of service operations. The operating element shall include identification of costs and activities associated with the operation and revenues available and needed to sustain such a system over a five-year period. A transit coordination element identifying how the existing and expanded water transportation services will provide connections to other transit providers in the Bay Area region shall also be included.
- A capital element which shall define a five-year Capital Improvement Program identifying all assets required to maintain, sustain and expand the system as planned. This work will require development of an asset inventory, including identification of the condition of all assets, identification of replacement, rehabilitation, and expansion projects and costs and identification of an approach to funding implementation of these projects. In addition, the Capital element shall identify any assets to be transferred to WETA and any related compensation required.

Preparation of the Transition Plan will require focused effort beyond existing staff resources; consequently, the consultant shall provide the resources to develop and coordinate the overall Transition Plan. The consultant will be expected to work in close cooperation with Staff and the representatives of the cities of Vallejo and Alameda.

Prior to final WETA Board adoption, public input shall be sought on the Transition Plan in accordance with outreach requirements outlined in SB 1093 (12 August 2008 version), a process established by WETA, and the affected ferry operators. This public outreach effort will take approximately 60 – 90 days and therefore the draft Transition Plan shall be completed no later than 01 February 2009.

A consultant shall be selected to assist WETA Staff in creating and marketing the Transition Plan to insure adoption of same.

Discussion

The Board approved the release of a Transition Plan Consultant Services RFQ on 05 June 2008. The RFQ was issued on 15 August 2008 and emailed to over 700 technical firms as well as posted on the WTA website. Submittals were due on 05 September 2008.

Five firms submitted written responses to the RFQ including: Acumen Building Enterprise, Inc., Arup (along with URS, Nancy Whelan Consulting and Heather Barber Company), CHS Consulting Group (along with Parsons Brinckerhoff, Davis & Associates and The PFM Group), KPFF, and Singer Associates, Inc. All five submittals were reviewed by an evaluation panel comprised of Ernest Sanchez (City of Alameda Ferry Manager), Anne Richman (MTC Senior Program and Policy Analyst, Transit Capital Programs), Crystal Ford (City of Vallejo Transportation Program Superintendent), Nina Rannells (WETA Deputy Director of Finance and Administration) John Sindzinski (WETA Manager, Planning and Development) and Mary Frances Culnane (WETA Manager, Marine Engineering.)

After tallying the results of the weighted score evaluation method evaluating the proposed approach, proposed staffing plan, project schedule, previous experience, references and compliance with Levine Act Disclosures, the panel recommends selection of Arup.

Financial Implications

The award of these consultant services would commit the Authority to an initial contract in the amount of \$150,000. Actual expenditures will be authorized on a task order basis. Funds will be made available through RM2, including an additional allocation of RM2 funds to be made available by MTC once SB 1093 is enacted.

Options

Approve or reject

MEMORANDUM

TO: Board Members

**FROM: Jon Stanley, Executive Director
Keith Stahnke, Manager, Operations**

SUBJECT: RFP for Emergency Water Transportation Services

Recommendation

Approve by motion the Release of a Request for Proposals for Emergency Water Transportation Services.

Background

In order to make the best use of available resources and to respond immediately and effectively with emergency water transportation, WETA intends to negotiate Emergency Services Contracts with private passenger vessel operators to insure those products and services are readily available. Contractors would supply crewed passenger vessels for emergency water transportation ferry service. Contracts would be activated only during a declared emergency and with authorization by WETA.

Discussion

- Contracts will be utilized only if requested by the State Office of Emergency Services or if WETA determines a specific need. A declared emergency does not guarantee WETA use of a contract.
- To ensure a range of suitable vessels and services multiple vessel operators may be contracted.
- Contractors must have experience in the provision of products and services, and must be able to demonstrate the ability to provide the offered services.
- Although it is critical to act immediately in response to a disaster, WETA must perform due diligence to ensure Contracts are properly administered and that the cost for emergency services are reasonable.

Financial Implications

Release of an RFP does not commit the WETA to any expenditure.

Options

Direct staff not to release the Request for Proposal Emergency Water Transportation Services.

END