



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
619.231.1466 FAX 619.234.3407

Agenda

JOINT MEETING OF THE EXECUTIVE COMMITTEE

for the
Metropolitan Transit System
San Diego Transit Corporation, and
San Diego Trolley, Inc.

July 7, 2011
Executive Conference Room
9:00 a.m.

ACTION RECOMMENDED

- A. ROLL CALL
- B. APPROVAL OF MINUTES - June 2, 2011 Approve
- C. COMMITTEE DISCUSSION ITEMS
 - 1. Trolley Rehabilitation Project Update (Wayne Terry and John Haggerty of SANDAG) Receive
Action would receive a report for information and provide comments.
 - 2. Taxicab Committee Revised Guidelines Related to Membership (John Scott and Karen Landers) Possible
Action
Action would: (1) receive a report regarding the July 5, 2011, special meeting of the Taxicab Committee regarding proposed revisions of the Taxicab Committee's guidelines; and (2) forward a recommendation to the Board of Directors for revisions to the Taxicab Committee Guidelines.
 - 3. CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS Pursuant to California Government Code section 54957.6 Agency-Designated Representative - Jeff Stumbo; Employee Organization - Amalgamated Transit Union, Local 1309 (ATU) Possible
Action
- D. REVIEW OF DRAFT JULY 14, 2011, JOINT BOARD AGENDA
- E. REVIEW OF SANDAG TRANSPORTATION COMMITTEE AGENDA Possible
Action
Review of SANDAG Transportation Committee Agenda and discussion regarding any items pertaining to MTS, San Diego Transit Corporation, or San Diego Trolley, Inc. Relevant excerpts will be provided during the meeting.
- F. COMMITTEE MEMBER COMMUNICATIONS AND OTHER BUSINESS
- G. PUBLIC COMMENTS
- H. NEXT MEETING DATE: August 11, 2011
- I. ADJOURNMENT

Please SILENCE electronics
during the meeting



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Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations), and San Diego Vintage Trolley, Inc., a 501(c)(3) nonprofit corporation, in cooperation with Chula Vista Transit. MTS is the taxicab administrator for seven cities. MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego.

JOINT MEETING OF THE EXECUTIVE COMMITTEE FOR THE
METROPOLITAN TRANSIT SYSTEM (MTS),
SAN DIEGO TRANSIT CORPORATION (SDTC), AND
SAN DIEGO TROLLEY, INC. (SDTI)
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

June 2, 2011

DRAFT MINUTES

A. ROLL CALL

Chairman Mathis called the Executive Committee meeting to order at 9:35 a.m. A roll call sheet listing Executive Committee member attendance is attached.

B. APPROVAL OF MINUTES

Mr. Roberts moved for approval of the minutes of the May 5, 2011, MTS Executive Committee meeting. Mr. Ovrom seconded the motion, and the vote was 4 to 0 in favor.

C. COMMITTEE DISCUSSION ITEMS

The Executive Committee convened to Closed Session at 9:38 a.m.

1. SDTC: CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to California Government Code Section 54957.6;
Agency-Designated Representative - Jeff Stumbo;
Employee Organization - Amalgamated Transit Union, Local

The Executive Committee reconvened to open Session at 10:47 a.m.

Oral Report of Final Actions Taken in Closed Session

Karen Landers, MTS General Counsel, reported the following:

1. The Committee received a report.

D. REVIEW OF DRAFT JUNE 9, 2011, JOINT BOARD AGENDA

Recommended Consent Items

6. MTS: Portable Toilet Rental Services - Contract Award

Action would authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. G1379.0-11 with Diamond Environmental for portable toilet rental services for a three-year base with 2 one-year options.

7. MTS: Certifications and Assurances for the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Funds

Action would approve Resolution No. 11-7, which agrees to comply with all conditions and requirements set forth in the Certifications and Assurances document and applicable statutes, regulations, and guidelines for all Public Transportation Modernization, Improvement, and Service Enhancement Account- (PTMISEA)-funded transit projects and authorizes the CEO or designated representative to execute all required documents of the PTMISEA program and any amendments thereto with the California Department of Transportation (Caltrans).

8. MTS: NABI Brake Linings and Disc Brake Pads - Contract Award

Action would authorize the CEO to execute a five-year contract (MTS Doc. No. B0556.0-11) with North American Bus Industries (NABI) for brake linings and disc brake pads.

9. MTS: Taxicab Committee Revised Guidelines

Action would approve the proposed changes to the Taxicab Committee Guidelines.

10. MTS: Fiscal Year 2012 Transportation Development Act (TDA) Claim

Action would adopt Resolution Nos. 11-8, 11-9, and 11-10 approving fiscal year (FY) 2012 Transportation Development Act (TDA) Article 4.0, 4.5, and 8.0 claims.

11. MTS: Increased Authorization for Legal Services - Wheatley Bingham & Baker

Action authorize the CEO to execute MTS Doc. No. G1111.18-07 with Wheatley Bingham & Baker for legal services and ratify prior amendments entered into under the CEO's authority.

12. MTS: Increased Authorization for Legal Services - Law Offices of Mark H. Barber, APC

Action would authorize the CEO to execute MTS Doc. No. G1162.11-08 with the Law Offices of Mark H. Barber for legal services and ratify prior amendments entered into under the CEO's authority.

Recommended Consent Items

There was no additional discussion of the recommended Consent Items.

E. REVIEW OF SANDAG TRANSPORTATION COMMITTEE AGENDA

There was no SANDAG Transportation Committee agenda discussion.

F. COMMITTEE MEMBER COMMUNICATIONS AND OTHER BUSINESS

There were no Committee Member communications.

G. PUBLIC COMMENTS

There were no public comments.

H. NEXT MEETING DATE

The next Executive Committee meeting is scheduled for June 16, 2011, at 9:00 a.m. in the Executive Committee Conference Room.

I. ADJOURNMENT

Chairman Mathis adjourned the meeting at 10:48 a.m.

Chairman

Attachment: A. Roll Call Sheet

H:\Minutes - Executive Committee, Board, and Committees\Minutes - 2010\MINUTES - Executive Committee 6-2-11 DRAFT.docx

**EXECUTIVE COMMITTEE
METROPOLITAN TRANSIT SYSTEM**

ROLL CALL

MEETING OF (DATE) June 2, 2011

CALL TO ORDER (TIME) 9:35 AM

RECESS _____

RECONVENE _____

CLOSED SESSION 9:38 AM

RECONVENE 10:47 AM

ADJOURN 10:48 AM

BOARD MEMBER (Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
YOUNG <input checked="" type="checkbox"/> (Lightner) <input type="checkbox"/>	9:55 AM	
MATHIS <input checked="" type="checkbox"/>		
OVROM <input checked="" type="checkbox"/> (Janney) <input type="checkbox"/>		
ROBERTS <input checked="" type="checkbox"/> (Cox) <input type="checkbox"/>		
MINTO <input type="checkbox"/> (Cunningham) <input checked="" type="checkbox"/>		
Transportation Committee Rep Slot (Mathis)		

SIGNED BY OFFICE OF THE CLERK OF THE BOARD:

Valerie Vitzke

CONFIRMED BY OFFICE OF THE GENERAL COUNSEL:

Karen Le



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Agenda

Item No. C1

JOINT MEETING OF THE EXECUTIVE COMMITTEE
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

OPS 970.2

July 7, 2011

SUBJECT:

TROLLEY REHABILITATION PROJECT UPDATE (WAYNE TERRY AND JOHN
HAGGERTY OF SANDAG)

RECOMMENDATION:

That the Executive Committee receive a report for information and provide comments.

Budget Impact

None.

DISCUSSION:

Activities to rehabilitate and retrofit the trolley system for low-floor-car operations are underway. Design of the stations is progressing, and Blue Line catenary replacement work has been completed. Green Line Station retrofits have begun, and signal and track work is underway. MTS and San Diego Association of Governments (SANDAG) staffs will provide the Executive Committee with an update on the project.

A handwritten signature in black ink, appearing to read 'Paul C. Jablonski', is written over a horizontal line.

Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Wayne Terry, 619.595.4906, wayne.terry@sdmts.com

JULY7-11.C1.TROLLEY REHAB.TERRY

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Agenda

Item No. C2

JOINT MEETING OF THE EXECUTIVE COMMITTEE
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

July 7, 2011

SUBJECT:

TAXICAB COMMITTEE REVISED GUIDELINES RELATED TO MEMBERSHIP
(JOHN SCOTT AND KAREN LANDERS)

RECOMMENDATION:

That the Executive Committee:

1. receive a report regarding the July 5, 2011, special meeting of the Taxicab Committee regarding proposed revisions of the Taxicab Committee's guidelines; and
2. forward a recommendation to the Board of Directors for revisions to the Taxicab Committee Guidelines.

Budget Impact:

None.

DISCUSSION:

On June 23, 2011, the MTS Board of Directors postponed a decision on proposed changes to the Taxicab Committee Guidelines in order to consider placing additional driver representatives on the Taxicab Committee. The Board directed staff to convene a special meeting of the Taxicab Committee to receive its recommendation regarding possible inclusion of more driver representation and to return to the Board at its regularly scheduled July 14, 2011, meeting.



A meeting of the Taxicab Committee is scheduled for July 5, 2011, at 2:30 p.m.—the roster, agenda, and materials for the meeting are attached (Attachment A). The results of the meeting will be reported to the Executive Committee, and the Executive Committee will be asked to comment on the Taxicab Committee's proposed revisions to its Guidelines and to make a recommendation regarding revisions to those Guidelines to forward to the Board of Directors.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: John Scott, 619.595.7034, john.scott@sdmts.com

JULY7-11.C2.TAXICAB REVISED GUIDELINES.JSCOTT

Attachment: A. Taxicab Committee Agenda and Materials for 7/5/11



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Agenda

Item No. 3

Taxicab Committee Meeting

TAXI 585.3 (PC 50761)

Tuesday, July 5, 2011

2:30 p.m.

Subject:

TAXICAB COMMITTEE MEMBERSHIP

RECOMMENDATION:

That the Taxicab Committee forward a recommendation to the MTS Board of Directors to:

1. Amend the Taxicab Committee Guidelines regarding membership as follows:
 - a. Delete the San Diego Chamber of Commerce representative;
 - b. Add a San Diego County Sheriff's Licensing Division representative;
 - c. Add two additional driver representatives to serve three year terms and require that driver representatives must be taxicab drivers in good standing for at least one year prior to election to the Committee, and must remain as taxicab drivers for the duration of their term; and
 - d. Designate one of the three seats held by owners of fewer than four taxicabs for an owner that is also a driver.
2. Provide for a balloted election by all taxicab drivers holding an MTS Taxicab Driver Identification Card to elect two additional representatives from a duly nominated list before January 1, 2012. These elected representatives will complete the 2011-2013 term, serving a two year term.
3. Retain the representatives currently serving on the Taxicab Committee for the complete 2011-2013 term. (Roster attached.)



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Budget Impact:

If approved by the MTS Board of Directors, MTS staff would conduct the election using existing staff resources. It is estimated that postage, ballots, and all necessary materials for conducting nominations and the election of the two additional driver representatives would cost no more than \$2000. Funding source would be Taxicab budget.

DISCUSSION:

On June 23, 2011, the MTS Board of Directors postponed a decision on proposed changes to the Taxicab Committee Guidelines in order to consider placing additional driver representatives on the Committee. The Board directed staff to convene a special meeting of the Taxicab Committee to receive this body's recommendation regarding possible inclusion of more driver representation, and to return to the Board at its regularly scheduled July 14 meeting.

The Taxicab Committee is asked to consider potential changes to the Committee Guidelines as outlined in Attachment A. Staff recommends that if the changes outlined in this attachment are approved, that Ms. Margo Tanguay, the current appointed driver representative to the Taxicab Committee, retain her position for a three year term (2011 to 2013). It is also recommended that all other current Committee members retain their positions for the 2011-2013 term, since one of the owners of three or fewer taxicabs is also a driver. (See Attachment B for roster.)

John Scott
Taxicab Administration Manager

Key Staff Contact: John Scott, john.scott@sdmts.com, 619.595.7034

Attachment: A. Proposed Taxicab Committee Guidelines
B. 2011-2013 Taxicab Committee Roster (as of July 5, 2011)



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ATTACHMENT A

METROPOLITAN TRANSIT SYSTEM PROPOSED TAXICAB COMMITTEE GUIDELINES

1. PURPOSE

The Taxicab Committee's purpose is to:

- 1.1 Provide feedback on taxicab matters destined for Board action;
- 1.2 Review summaries of administrative hearing officer decisions concerning taxicab owner and driver penalties;
- 1.3 Resolve taxicab owners' written grievances;
- 1.4 Review summaries of complaints concerning taxicab service;
- 1.5 Review vehicle inspection criteria, process, results, and rankings;
- 1.6 Review the Chief Executive Officer's Annual Fee Schedule; and
- 1.7 Comment on MTS's work program concerning taxicab matters.

2. MEMBERSHIP

Nineteen ~~Seventeen~~ members are appointed as follows:

- 2.1 One representative of the MTS Board of Directors appointed on an annual basis, who will be designated by the MTS Board of Directors to serve as Chairman of the Taxicab Committee.
- 2.2 One member appointed by the San Diego Convention and Visitor's Bureau, the San Diego Chamber of Commerce, San Diego County Sheriff's Licensing Division, the San



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Diego County Regional Airport Authority, San Diego Convention Center, San Diego Travelers Aid Society, and two members from the Hotel Industry, each serving a three-year term.

2.3 Eight taxicab owners each serving a three-year term, elected by taxicab owners, divided as follows:

a. Three seats are designated for representation of owners of one to three taxicabs, one of whom must also be a driver;

and,

b. Five seats are designated for representation of owners of four or more taxicabs.

2.4 Three One-taxicab drivers in possession of a San Diego Sheriff's Department-issued taxicab Driver Identification Card valid in all areas of MTS jurisdiction and having served as a driver for at least one year leading up to the election. Each representative will be elected to -a three-year term, by licensed drivers operating in the MTS areas of jurisdiction. MTS shall accept nominations and conduct a balloted election and the three drivers who receive the most votes will be elected to the Committee. In the event that a representative is no longer operating a taxicab during the three year term, that individual forfeits the seat on the Committee.

2.5 A taxicab owner member unable to attend a meeting may appoint an alternate from the same or similarly sized company to attend in his or her absence.

2.6 The Taxicab Committee shall make an interim appointment if a member's seat becomes vacant within the three-year term.

2.7 The Vice Chairman will be the representative for the San Diego Convention and Visitors Bureau.

3. MEETINGS

3.1 Taxicab Committee meetings are subject to the provisions of the Ralph M. Brown Act, California Government Code, Section 54950, et. seq.

3.2 Taxicab Committee meetings will be held quarterly at the offices of MTS.

3.3 The agenda for each meeting will be posted in the MTS lobby.

3.4 The agenda, backup materials, and minutes of the previous meeting will be sent to each member ten calendar days in advance of the meetings.

3.5 The Chairman may call special meetings, as necessary.

3.6 Fifty-one percent attendance is a quorum to hold a meeting.

4. VOTING

4.1 Each member of the Taxicab Committee has an equal vote.

4.2 ___ Fifty-one percent of the votes of those in attendance will approve an item.

4.3 A roster of the Taxicab Committee members who voted will be provided to the MTS Board of Directors, along with the item, for MTS Board action on an agenda item.

5. APPROVAL

5.1 ___ These Guidelines were revised by the MTS Taxicab Committee on- July 5, 2011~~March 28,~~
~~2007~~.

ATTACHMENT B

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

TAXICAB COMMITTEE

The Committee has 17 members. One representative of the MTS Board of Directors, appointed annually by the Board, will be designated to serve as Chair of the Taxicab Committee. The San Diego Convention and Visitors Bureau, San Diego Regional Chamber of Commerce, San Diego County Regional Airport Authority, San Diego Convention Center, and San Diego Travelers Aid Society, each appoint one representative, and two members are appointed from the hotel-motel industry. The taxicab owners elect eight owners to represent them, and the Committee elects one person to represent lease drivers. Each member serves a three-year term.

Taxicab Advisory Committee members for the 2011-2013 term:

Marti Emerald, Chair City of San Diego Councilmember and MTS Board Member	George Abraham Eritrean Cab Inc., Owner-4 or more
Joe Terzi President/CEO Convention and Visitors Bureau	Fata Arghand Makmar Enterprises, Inc., Owner-4 or more
Vacant Seat TBD	Antonio Hueso USA Cab LTD., Owner-4 or more
Jim Myhers San Diego County Regional Airport Authority	Alex Gebreselassie Cross Town Transportation LLC, Owner-4 or more
Ron King San Diego Convention Center	Hushang Nahavandian ESM Corp., Owner-4 or more
Anthony Palmeri San Diego Travelers Aid Society	Kamran Hamidi V.I.P Taxi, Owner-3 or fewer
Namara Mercer San Diego County Hotel-Motel Association	Cameron Haratian P.B. Cab, Owner-3 or fewer
Mike Staples Catamaran Resort	Akbar Majid SDYC Holdings, LLC, Owner-3 or fewer
	Margo Tanguay Driver Representative



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DRAFT

Agenda

JOINT MEETING OF THE BOARD OF DIRECTORS

for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

July 14, 2011

9:00 a.m.

James R. Mills Building
Board Meeting Room, 10th Floor
1255 Imperial Avenue, San Diego

This information will be made available in alternative formats upon request. To request an agenda in an alternative format, please call the Clerk of the Board at least five working days prior to the meeting to ensure availability. Assistive Listening Devices (ALDs) are available from the Clerk of the Board/Assistant Clerk of the Board prior to the meeting and are to be returned at the end of the meeting.

ACTION RECOMMENDED

1. Roll Call
2. Approval of Minutes - June 23, 2011
3. Public Comments - Limited to five speakers with three minutes per speaker. Others will be heard after Board Discussion items. If you have a report to present, please give your copies to the Clerk of the Board.

Approve

Possible
Action

Please SILENCE electronics
during the meeting

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CONSENT ITEMS

- | | | |
|----|---|---------|
| 6. | <u>Caltrans Mass Transportation Program Master Agreement for State-Funded Projects</u>
Action would adopt Resolution No. 11-11 authorizing the Chief Executive Officer (CEO) or designated representative to execute Master Fund Transfer Agreement A0041 A01 with the California Department of Transportation (Caltrans). | Adopt |
| 7. | <u>Light Rail Vehicle Wheel-Scanning Measurement System - Contract Award</u>
Action would authorize the CEO to execute MTS Doc. No. L1016.0-11 with KLD Labs, Inc. for the procurement of goods, services, and parts necessary for a light rail vehicle (LRV) wheel-scanning measurement system. | Approve |
| 8. | <u>Investment Report - May 2011</u>
Action would receive a report for information. | Receive |
| 9. | <u>SANDAG FY 2012 Budget Amendment - Light Rail Vehicle (LRV) Car Wash Replacement and Substation SCADA Design</u>
Action would authorize the San Diego Association of Governments (SANDAG) to amend its FY 2012 Capital Improvement Program (CIP) budget and transfer \$200,000 from CIP 1144000 (Substation SCADA Design) to CIP 1128600 (LRV Car Wash Replacement). | Approve |

CLOSED SESSION

- | | | |
|-----|--|--------------------|
| 24. | a. CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to California Government Code Section 54957.6; Agency-Designated Representative - Jeff Stumbo; Employee Organization - Amalgamated Transit Union, Local 1309 | Possible
Action |
|-----|--|--------------------|

Oral Report of Final Actions Taken in Closed Session

NOTICED PUBLIC HEARINGS

- | | | |
|-----|---|-------------------|
| 25. | <u>Public Hearing Regarding Equivalent Facilitation for Modification of Detectable-Warning Tactile Strip to Accommodate Bridge Plate on Low-Floor Vehicles (Wayne Terry and John Haggerty of SANDAG)</u>
Action would: (1) receive public testimony; (2) adopt Resolution No. 11-12 approving the proposed design for the modified detectable-warning edge on all MTS light rail station platforms; and (3) authorize staff to submit a Request for Equivalent Facilitation to the Federal Transit Administration (FTA). | Adopt/
Approve |
|-----|---|-------------------|

DISCUSSION ITEMS

- | | | |
|-----|---|---------|
| 30. | <u>Taxicab Committee Membership and Workshop (John Scott and Karen Landers)</u>
Action would conduct a workshop on Taxicab Administration and approve the Executive Committee's recommendations for membership on the MTS Taxicab Committee. | Approve |
|-----|---|---------|

REPORT ITEMS

- | | |
|-----|-------|
| 45. | None. |
|-----|-------|

- | | | |
|-----|---|-------------|
| 60. | <u>Chairman's Report</u> | Information |
| 61. | <u>Audit Oversight Committee Chairman's Report</u> | Information |
| 62. | <u>Chief Executive Officer's Report</u> | Information |
| 63. | <u>Board Member Communications</u> | |
| 64. | <u>Additional Public Comments Not on the Agenda</u>
If the limit of 5 speakers is exceeded under No. 3 (Public Comments) on this agenda, additional speakers will be taken at this time. If you have a report to present, please furnish a copy to the Clerk of the Board. Subjects of previous hearings or agenda items may not again be addressed under Public Comments. | |
| 65. | <u>Next Meeting Date:</u> August 18, 2011 | |
| 66. | <u>Adjournment</u> | |



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Agenda

Item No. 6

JOINT MEETING OF THE BOARD OF DIRECTORS
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

**Draft for
Executive Committee
Review Date: 7/7/11**

July 14, 2011

SUBJECT:

CALTRANS MASS TRANSPORTATION PROGRAM MASTER AGREEMENT
FOR STATE-FUNDED PROJECTS

RECOMMENDATION:

That the San Diego Metropolitan Transit System (MTS) Board of Directors adopt Resolution No. 11-11 (Attachment A) authorizing the Chief Executive Officer (CEO) or designated representative to execute Master Fund Transfer Agreement A0041 A01 (Attachment B) with the California Department of Transportation (Caltrans).

Budget Impact

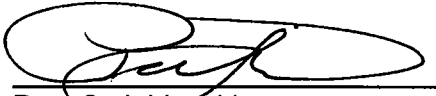
None.

DISCUSSION:

As a result of an effort to streamline the process for transit agencies to access state funds for projects programmed in the State Transportation Improvement Program (STIP), Caltrans Division of Mass Transportation developed a Master Fund Transfer Agreement (Master Agreement) to cover all STIP-funded projects through program supplements. Master Agreement No. 64A0041 between MTS and Caltrans, executed in 2001, has a term of ten years. In order for MTS to continue to receive state funding for transit-related projects, the Master Agreement needs to be amended to increase the term. Attachment B is the amended Master Agreement (65A0041-A01) to increase the term by ten years until 2021.



The Master Agreement/Program Supplement process covers all state funding sources and programs for transit projects, including State Transportation Improvement Program, Traffic Congestion Relief Program, Proposition 1B, State Highway Account, General Fund, and Public Transportation Account. The Master Agreement contains all of the necessary legal language to cover all state-funded transit projects. Once the overall Master Agreement is approved and signed by all parties, all subsequent Program Supplements will be signed by the CEO and the local Caltrans District Office.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Nancy Dall, 619.557.4537, nancy.dall@sdmts.com

JULY14-11.6.CALTRANS MASTER FUND AGMT.RESO 11-11.NDALL

Attachments: A. Resolution No. 11-11
B. Master Fund Transfer Agreement (64A0041 A01) } **Board Only Due to Volume**

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

RESOLUTION NO. 11-11

Authorizing the Execution of a Master Agreement and Program Supplements
for State-Funded Transit Projects

WHEREAS, the San Diego Metropolitan Transit System (MTS) may receive funding from the State of California now or sometime in the future for transit-related 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, these statutes related to state-funded transit projects require a local or regional implementing agency to execute a cooperative agreement with the California Department of Transportation (Caltrans) before it can be reimbursed for project expenditures; and

WHEREAS, Caltrans utilizes master agreements for state-funded transit projects, along with associated program supplements, for the purpose of administering and reimbursing state transit funds to local agencies; and

WHEREAS, the MTS Board of Directors wishes to delegate authorization to execute these agreements and any amendments thereto to the Chief Executive Officer, or designated representative; NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED by the San Diego Metropolitan Transit System that it 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; and

BE IT FURTHER RESOLVED that the Chief Executive Officer or designated representative be authorized to execute all program supplements for state-funded transit projects and any amendments thereto with the California Department of Transportation, and that the designated representatives are listed below:

1. The Chief of Staff is authorized to execute all program supplements for state-funded transit projects and any amendments thereto with the California Department of Transportation; or
2. The Chief Financial Officer is authorized to execute all program supplements for state-funded transit projects and any amendments thereto with the California Department of Transportation.

PASSED AND ADOPTED, by the Board of Directors this _____ day of ____ 2011 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINING:

Chairperson
San Diego Metropolitan Transit System

Filed by:

Approved as to form:

Clerk of the Board
San Diego Metropolitan Transit System

Office of the General Counsel
San Diego Metropolitan Transit System

ATTACHMENT II
(INSERT AGENCY BOARD RESOLUTION)

See Sample at
http://www.dot.ca.gov/hq/MassTrans/state_grants.html
under Transit Forms

Master Agreement State Funded Transit Projects



California Department of Transportation

DIVISION OF MASS TRANSPORTATION
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**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: February 22, 2001

Termination Date of this Agreement: February 22, 2021

Recipient: San Diego Metropolitan Transit System

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

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

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

ARTICLE I - PROJECT ADMINISTRATION

Section 1. Program Supplement

A. General

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

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

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

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

B. Project Overrun

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

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

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

C. *Scope of Work*

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

D. *Program Supplement Amendments*

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

Section 2. Allowable Costs and Payments

A. *Allowable Costs and Progress Payment Vouchers*

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

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

B. Advance Payments (TCR Projects Only)

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

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

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

C. Expedited Payments

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

D. Advance Expenditure of Local Funds

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

E. Travel Reimbursement

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

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

F. *Final Invoice*

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

ARTICLE II – GENERAL PROVISIONS

Section 1. Funding

A. *Local Match Funds*

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

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

B. Funding Contingencies

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

C. Funds Movement

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

Section 2. Audits and Reports

A. Cost Principles

- (1) **RECIPIENT** agrees to comply with Title 2 Code of Federal Regulations 225 (2 CFR 225) Cost Principles for State and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (2) **RECIPIENT** agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items and (b) those parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving **PROJECT** funds as a contractor or sub-contractor under this **AGREEMENT** shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (3) Any **PROJECT** costs for which **RECIPIENT** has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 225, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by **RECIPIENT** to **STATE**. Should

RECIPIENT fail to reimburse moneys due **STATE** within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, **STATE** is authorized to intercept and withhold future payments due **RECIPIENT** from **STATE** or any third-party source, including but not limited to, the State Treasurer, the State Controller and the CTC.

B. Record Retention

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

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

C. *Quarterly Review*

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

Section 3. Special Requirements

A. *California Transportation Commission (CTC) Resolutions*

- (1) **RECIPIENT** shall adhere to applicable CTC policies on "Timely Use of Funds" as stated in Resolution G-06-04, adopted April 26, 2006, addressing the expenditure and reimbursement of TCR funds; and Resolution G-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 Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, **RECIPIENT** shall request that the State Fire Marshal review PROJECT PS&E to ensure PROJECT consistency with State fire protection standards.

L. Americans with Disabilities Act

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

M. Access for Persons with Disabilities

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

N. Disabled Veterans Program Requirements

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

O. Environmental Process

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

ARTICLE III – SPECIAL PROVISIONS

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

A. General Bond Provisions

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

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

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

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

Section 2. TCRP PROJECTS

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

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

Section 3. PROJECT MANAGEMENT

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

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

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

**SAN DIEGO METROPOLITAN
TRANSIT SYSTEM**

BY: _____
EZEQUIEL CASTRO, Chief (Interim)
State Transit Grants Branch

BY: _____
PAUL JABLONSKI
Chief Executive Officer

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

-2-

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

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

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

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

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

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

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

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

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



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

Agenda

Item No. 7

JOINT MEETING OF THE BOARD OF DIRECTORS
of the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

CIP 11309

**Draft for
Executive Committee
Review Date: 7/7/11**

July 14, 2011

SUBJECT:

LIGHT RAIL VEHICLE WHEEL-SCANNING MEASUREMENT SYSTEM - CONTRACT
AWARD

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to execute MTS Doc. No. L1016.0-11 (in substantially the same form as Attachment A) with KLD Labs, Inc. for the procurement of goods, services, and parts necessary for a light rail vehicle (LRV) wheel-scanning measurement system.

Budget Impact

This project would be federally funded under CIP 11309 (Light Rail Vehicle Wheel Scanning Measurement System) not to exceed \$493,305.38.

DISCUSSION:


MTS Policy No. 52 governing procurement of goods and services requires a formal competitive bid process for procurements exceeding \$100,000.

MTS solicited an invitation for bids for the procurement of a wheel-scanning system and services on March 3, 2011, and opened the bids received on May 10, 2011. This wheel-scanning system utilizes a structured laser-light source to illuminate the flange and tread of the wheel and captures computerized video images and performs measurement analyses and reports, which would reduce maintenance costs and improve recorded wheel-size accuracy and vehicle serviceability.

A total of two responsive bids were received on May 10, 2011 (see Bid Summary - Attachment B). KLD Labs, Inc. was the lowest responsive, responsible bidder. Staff conducted a cost comparison, found the cost to be 3% higher than the in-house estimate of \$475,000.00, and determined KLD Labs, Inc.'s pricing to be fair and reasonable.



Therefore, pursuant to MTS policy, staff recommends award of MTS Doc. No. L1016.0-11 to KLD Labs, Inc. for the procurement and installation of an LRV wheel-scanning measurement system for \$493,305.38.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contacts: Lee Summerlott, 619.595.4904, Lee.Summerlott@sdti.sdmts.com
Marco Yniguez, 619.557.4576, Marco.Yniguez@sdmts.com

JULY14-11.7.LRV WHEEL SCAN MEASUREMT.MYNIGUEZ

Attachments: A. Draft MTS Doc. No. L1016.0-11
B. Bid Summary

DRAFT

Att. A, AI 7, 7/14/11

STANDARD PROCUREMENT AGREEMENT

L1016.0-11

CONTRACT NUMBER

CIP 11309

FILE NUMBER(S)

THIS AGREEMENT is entered into this _____ day of _____ 2011, in the State of California by and between San Diego Metropolitan Transit System, a California public agency, and the following contractor, hereinafter referred to as "Contractor":

Name: KLD Labs. Inc.

Address: 300 Broadway

Form of Business: Corporation
(Corporation, partnership, sole proprietor, etc.)

Huntington Station, NY 11746

Telephone: 631 549-4222

Authorized person to sign contracts: Daniel L. Magnus Vice President
Name Title

The attached Standard Conditions are part of this Agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Provide materials, installation, integration, and commissioning of a light rail vehicle wheel-scanning measurement system on track C2 in Building C at 1535 Newton Avenue, San Diego, CA 92113, as stipulated in MTS's Invitation for Bids (IFB) Light Rail Vehicle Wheel Scanning Measurement System Projects, MTS Doc. No. L1016.0-11, including Addendum Nos. 1, and 2 in accordance with the Standard Procurement Agreement, including the Standard Conditions Procurement, Federal Requirements, MTS Safety Department SOP (SAF 016-03), and KLD Labs, Inc.'s Bid Proposal dated May 18, 2011 (herein Contract Documents). If there are any inconsistencies between the Contract Documents, the following order of precedence will govern the interpretation of this contract:

1. MTS's Invitation for Bids (IFB) Light Rail Vehicle Wheel Scanning Measurement System Project, Addendum Nos. 1 and 2;
2. KLD, Labs Inc.'s Bid Proposal dated May 18, 2011, and MTS Safety Department's SOP (SAF 016-03); and
3. Standard Procurement Agreement, including the Standard Conditions Procurement, and Federal Requirements.

This contract is effective August 1, 2011. Total contract expenditure shall not exceed \$493,305.38. Price includes all materials, labor freight, and sales tax. Payment terms shall be net 30 days from invoice approval date.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: _____ Chief Executive Officer	Firm: _____
Approved as to form:	By: _____ Signature
By: _____ Office of General Counsel	Title: _____

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$493,305.38	CIP 11309	2012

By: _____ Chief Financial Officer _____ Date

(___ total pages, each bearing contract number)

FURNISH AND INSTALLATION OF A LIGHT RAIL VEHICLE WHEEL-SCANNING MEASUREMENT SYSTEM
MTS DOC. NO. L1016.0-11

BID SUMMARY

			KLD Labs Inc.		IEM Corporation	
Item #	Description	Qty.	Unit Price	Ext. Price	Unit Price	Ext. Price
1	Wheel profile measurement system as specified including all materials required for installation.	1	\$ 357,490.00	\$ 357,490.00	\$ 402,077.95	\$ 402,077.95
2	Installation, testing, training and certification of wheel profile measurement system as specified. (Non-Taxable Labor)	1	\$ 102,410.00	\$ 102,410.00	\$ 59,886.68	\$ 59,886.68
		8.75% CA Sales Tax (on item 1 only)		\$ 31,280.38	\$ 35,181.82	
		Delivery		\$ 2,125.00	\$ 4,107.50	
		Subtotal		\$ 493,305.38	\$ 501,253.95	
		Payment Terms _____, Otherwise Net 30 (Subtract)		\$	\$	
		GRAND TOTAL (BASIS OF AWARD)		\$ 493,305.38	\$ 501,253.95	

Att. B, AI 7, 7/14/11

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Agenda

Item No. 8

JOINT MEETING OF THE BOARD OF DIRECTORS
for the
Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

**Draft for
Executive Committee
Review Date: 7/7/11**

July 14, 2011

SUBJECT:

INVESTMENT REPORT – MAY 2011

RECOMMENDATION:

That the Board of Directors receive a report for information.

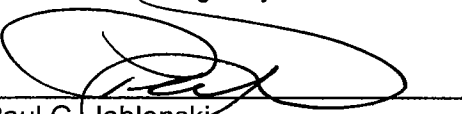
Budget Impact

None.

DISCUSSION:

Attachment A comprises a report of MTS investments as of May 2011. The combined total of all investments has decreased by \$2.2 million in the current month largely due to \$2.9 million in expenditures for capital projects and normal variances in the timing of receipts and disbursements, which was partially offset by the receipt of additional restricted Proposition 1B Transit Security Grant Program funds. The first column provides details about investments restricted for capital improvement projects and debt service—the majority of which are related to the 1995 lease and leaseback transactions. The funds restricted for debt service are structured investments with fixed returns that will not vary with market fluctuations if held to maturity. These investments are held in trust and will not be liquidated in advance of the scheduled maturities. The second column, unrestricted investments, reports the working capital for MTS operations allowing for employee payroll and vendors' goods and services.

During May, \$5 million was transferred from the short-term investment account at Local Agency Investment Fund to fund operating expenses.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Tom Lynch, 619.557.4538, tom.lynch@sdmts.com

Attachment: A. Investment Report for March 2011



**San Diego Metropolitan Transit System
Investment Report
May 31, 2011**

	<u>Restricted</u>	<u>Unrestricted</u>	<u>Total</u>	Average rate of return
Cash and Cash Equivalents				
Bank of America - concentration sweep account	\$ 5,291,772	\$ 13,618,126	\$ 18,909,898	0.00%
Total Cash and Cash Equivalents	<u>5,291,772</u>	<u>13,618,126</u>	<u>18,909,898</u>	
Cash - Restricted for Capital Support				
US Bank - retention trust account	1,913,299		1,913,299	N/A *
Local Agency Investment Fund (LAIF) Proposition 1B TSGP grant funds	<u>6,082,995</u>		<u>6,082,995</u>	0.41%
Total Cash - Restricted for Capital Support	<u>7,996,294</u>	<u>-</u>	<u>7,996,294</u>	
Investments - Working Capital				
Local Agency Investment Fund (LAIF) San Diego County Investment Pool		<u>3,435,218</u> <u>10,671,869</u>	<u>3,435,218</u> <u>10,671,869</u>	0.41%
Total Investments - Working Capital	<u>-</u>	<u>14,107,087</u>	<u>14,107,087</u>	
Investments - Restricted for Debt Service				
US Bank - Treasury Strips - market value (Par value \$39,474,000)	37,442,701	-	37,442,701	
Rabobank - Payment Undertaking Agreement	<u>83,556,240</u>	<u>-</u>	<u>83,556,240</u>	7.69%
Total Investments Restricted for Debt Service	<u>120,998,941</u>	<u>-</u>	<u>120,998,941</u>	
Total cash and investments	<u>\$ 134,287,007</u>	<u>\$ 27,725,213</u>	<u>\$ 162,012,220</u>	

N/A* - Per trust agreements, interest earned on retention account is allocated to trust beneficiary (contractor)



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Agenda

Item No. 9

JOINT MEETING OF THE BOARD OF DIRECTORS for the

Metropolitan Transit System,
San Diego Transit Corporation, and
San Diego Trolley, Inc.

July 14, 2011

**Draft for
Executive Committee
Review Date: 7/7/11**

SUBJECT:

SANDAG FY 2012 BUDGET AMENDMENT - LIGHT RAIL VEHICLE (LRV) CAR WASH
REPLACEMENT AND SUBSTATION SCADA DESIGN

RECOMMENDATION:

That the Board of Directors authorize the San Diego Association of Governments (SANDAG) to amend its FY 2012 Capital Improvement Program (CIP) budget and transfer \$200,000 from CIP 1144000 (Substation SCADA Design) to CIP 1128600 (LRV Car Wash Replacement).

Budget Impact

No change to the overall CIP amount. \$200,000 would be added to the LRV Car Wash Replacement Project (CIP 1128600) from the Substation SCADA Project (CIP 1144000) in SANDAG's CIP budget.

DISCUSSION:

SANDAG is constructing improvements to the LRV car wash facility, and additional funding is required to install higher-capacity electrical infrastructure, upgrade wash components to stainless steel, increase the cyclonic filter capacity for the reclaimed water system, and reinforce a new masonry wall. SANDAG is seeking approval from the MTS Board of Directors to transfer \$200,000 from CIP 1144000 (Substation SCADA Design) to CIP 1128600 (LRV Car Wash Replacement). The current budget CIP 1128600 is \$1,070,000. With the proposed changes, the new budget for CIP 1128600 would be \$1,270,000.

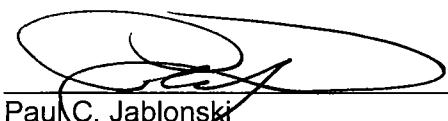


The existing LRV car wash equipment located in the Trolley Yard is beyond its useful life. Brushes, pumps, filters, and tanks would be replaced with new equipment. A drying system would be added as the current system does not include a system to dry the vehicles. Components to collect, filter, and recycle wash water would be removed and replaced. A concrete slab, masonry wall, and roof structure would be constructed to shelter the new equipment from exposure to water and sunlight. The existing fiberglass panels on the splash guard have been removed and replaced with new polycarbonate panels.

The following construction issues related to a design error, a design omission, and changes to the scope of the work have added to the cost of the project.

1. The proposed wash equipment will require a 400-amp electrical service due to the additional electric demand for the drying system. The existing electrical service is a 200-amp service, and the electric meter pedestal is located approximately 350 feet from the wash facility. A new 400-amp meter pedestal will be required, and the existing electrical wires from the meter to the wash facility will be removed and replaced with larger copper wires. This work was not included in the scope of the construction contract. The design consultant will be held financially responsible for increases in project costs due to construction delays and additional design work caused by this design omission. The estimated cost to install the new electrical service is \$65,000. This cost includes \$5,000 for administrative costs, \$5,000 for construction management costs, and \$5,000 for contingencies.
2. After consultations between SANDAG and MTS wash operation staffs, it was decided that wash equipment that is exposed to the wash water (such as brush mechanisms and pump assemblies) should be upgraded to stainless steel for increased durability. It was also decided that 2 additional cyclonic filters are necessary to properly clean the recycled water. The original design called for replacing the 2 existing filters only. The estimated cost of these wash upgrades is \$70,000 including administration, construction management, and contingencies.
3. An error in the construction drawings has compromised the strength of the proposed masonry wall. The wall has been constructed, and the design consultant is working on a proposal to strengthen the wall in place. The design consultant will be held financially responsible for increases in project costs for all rework and due to construction delays and additional design work caused by this design omission. The estimated cost to reinforce the wall is \$65,000. This cost includes \$5,000 for administrative costs, \$5,000 for construction management costs, and \$5,000 for contingencies.

Based on the current project schedule, the Substation SCADA Design Project will not be in need of the \$200,000 in the 2012 fiscal year. MTS may need to replace a portion of the funding in future fiscal years. Funding for all costs associated with design errors and omissions (including added cost of construction management and administration) would be returned to the Substation SCADA Design Project upon the receipt of the funds from the design consultant.



Paul C. Jablonski
Chief Executive Officer

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