

**ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM CRITICAL DATES**

(NOTE: Years shown apply to 2004/2005 grant cycles. Dates for future cycles will vary, however, the months shown should be fairly consistent from cycle to cycle—depending on when the State Budget is passed. )

<b><u>DATE</u></b>	<b><u>ACTIONS</u></b>
8/03	Date the State Resources Agency (RA) is scheduled to mail the EEM Application Packet to applicants on their mailing list.
11/03	Date the applications are due back to RA.
4/04	The RA publishes a "short list" of recommended projects and forwards to the California Transportation Commission (CTC) for funding consideration along with four (4) copies of each application. All project applicants will be notified of the status of their project at that time. Applicants making the short list should prepare "Request for CTC allocation vote and submit to District Local Assistance Engineer (DLAE)/District EEM Coordinator for July CTC meeting.
4/04	CTC provides two (2) copies of each application to Caltrans Headquarters EEM Program Coordinator.
4/04	Caltrans EEM Program Coordinator distributes one copy of each application to the appropriate district for review by the DLAE/EEM Coordinators and District Landscape Architect.
4/04	CTC requests final approved copy of Environmental Document (ED) for the EEM project from applicants on the "short list." No ED means project is taken off the list.
4/04 to 5/04	CTC, Caltrans EEM Program Coordinator and DLAE/EEM Coordinator, and if applicable, the District Landscape Architect and/or Right-of-Way, review project applications short list.
5/04	Final deadline for submitting final approved environmental documents to CTC, if not included in original application. Final Caltrans comments on applications submitted to CTC. District EEM Coordinators should begin working with applicants to submit their funding allocation request, for submittal at program adoption meeting.
6/04	RA's short list of EEM projects is presented as "information" item at June CTC meeting.
7/04	The CTC adopts the EEM program. It approves funding allocations as available. Caltrans HQ EEM Coordinator transmits "CTC Stamped" resolution for annual EEM Program to the Caltrans DLAE/EEM Coordinators and Applicants.
7/04 to 9/04	Period during which the CTC allocation vote must be approved by CTC, the Agreement must be executed, and Caltrans Local Program Accounting Office (LPA) must encumber the EEM funds.
4/07	Date the applicant should complete the project, submit a final invoice and final project expenditure report to the Caltrans' DLAE/EEM Coordinator to verify and approve project completion.
6/01/07	Deadline for DLAE/EEM Coordinator to submit final invoice to the Caltrans LPA Office.
6/30/07	Budget Authority expires for the expenditure of State funds. All remaining unexpended EEM funds for this cycle will revert.

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**SAMPLE RESOLUTION  
APPROVING AN EEM PROJECT**

Resolution No: \_\_\_\_\_

RESOLUTION OF THE \_\_\_\_\_  
(GOVERNING BODY)

OF \_\_\_\_\_ APPROVING  
(NONPROFIT ORGANIZATION/SPECIAL PURPOSE LOCAL AGENCY))

THE APPLICATION FOR GRANT FUNDS FOR THE ENVIRONMENTAL ENHANCEMENT AND

MITIGATION (EEM) PROGRAM UNDER SECTION 164.56 OF THE STREETS AND HIGHWAYS CODE

FOR THE FOLLOWING PROJECT:

\_\_\_\_\_  
(PROJECT NAME)

**WHEREAS**, Senate Bill 117 (Statutes of 1999, Chapter 739) established the EEM Program as a permanent program funded at \$10 million annually by the Legislature for grant funds to local, State and federal governmental agencies, and nonprofit organizations for projects to enhance the environment and mitigate the environmental impacts of modified or new public transportation facilities; and

**WHEREAS**, the State Resources Agency of California has established the procedures and criteria for reviewing grant proposals and is required to submit to the California Transportation Commission a list of recommended projects from which the grant recipients will be selected; and

**WHEREAS**, said procedures and criteria established by the State Resources Agency of California require a resolution certifying the approval of application by the applicant's governing body before submission of said application to the State; and

**WHEREAS**, the application contains assurances with which the applicant must comply; and

**WHEREAS**, the applicant, if selected, will enter into an agreement with the State of California, Department of Transportation, to carry out the environmental enhancement and mitigation project;

**NOW, THEREFORE, BE IT RESOLVED THAT THE**

\_\_\_\_\_  
(GOVERNING BODY)

1. Approves the filing of an application for the Environmental Enhancement and Mitigation Program for grant assistance.
2. Certifies that said applicant will make adequate provisions for operation and maintenance of the project.

3. Appoints \_\_\_\_\_ as agent of  
*(NAME AND TITLE)*

the \_\_\_\_\_ to  
*(NONPROFIT ORGANIZATION/SPECIAL PURPOSE LOCAL AGENCY)*

conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the aforementioned project.

Approved and Adopted the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_. I, the undersigned,

hereby certify that the foregoing Resolution Number \_\_\_\_\_ was duly

adopted by \_\_\_\_\_  
*(GOVERNING BODY)*

Following roll call vote:

Ayes: \_\_\_\_\_

Noes: \_\_\_\_\_

Absent: \_\_\_\_\_

\_\_\_\_\_  
*(CLERK/SECRETARY FOR THE GOVERNING BODY)*

**Distribution:** Local agency submits original with the EEM Application.

**REQUEST FOR CTC ALLOCATION VOTE**  
*Local Agency Letterhead*

To: (DLAE Name)  
District Local Assistance Engineer  
Caltrans, Office of Local Assistance  
(District Address)

Date: \_\_\_\_\_  
Project Number:  
Project Title:

Dear (DLAE Name):

We request the California Transportation Commission allocate from the Environmental Enhancement and Mitigation (EEM) \$ \_\_\_\_\_. This is the amount requested in the EEM program application for \_\_\_\_\_ (project location and description and what will be accomplished. The funding is for:

	<u>Total Cost</u>	<u>CTC Allocation Share</u>
Preliminary Eng.	\$ _____	\$ _____
Right-of-Way	\$ _____	\$ _____
Construction	\$ _____	\$ _____
Const. Eng.	\$ _____	\$ _____
Acquisition of Property	\$ _____	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>	<b>\$ _____</b>

**Status of Projects:**

Environmental:

- CEQA - Define project clearance type and date.
- NEPA - Define project clearance type and date (if applicable).

Engineering:

- The PS&E development was/will be completed on (date) (if applicable).
- R/W: The project right-of-way acquisition is scheduled to begin (date) (if applicable).
- Construction: The project advertisement is scheduled for (date) (if applicable).

The project was adopted in the CTC Program Adoption Resolution for FY20xx-20xx for amount of \$ \_\_\_\_\_ under EEM Program for FY 20xx-20xx. We request that CTC vote the funds at its next available meeting.

Please advise us as soon as the fund allocation has been voted. You may direct any questions to (Name) at (phone number) and (e-mail).

**CERTIFICATION:**

I hereby certify I will:

1. Sign the Applicant-State Agreement (Agreement) within 90 days of the date on the Agreement cover letter from Caltrans.
2. Begin this project as soon as the Agreement is executed.
3. Let Caltrans know by April of the fiscal year in which the funds were allocated if we will not be able to implement the project, this allowing another project to receive an allocation. We understand our project will be put at the bottom of the list.
4. If property is being acquired, an Agreement Declaring Restrictive Covenants will be recorded and submitted to Caltrans.

Sincerely,

Signed: \_\_\_\_\_  
Title: \_\_\_\_\_

This document is under "Policies, Procedures, Dates at website:  
<http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm>

**Distribution:** Local agency sends original to the DLAE

FOR CALTRANS USE:								
I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.								
Accounting Officer						Date:		\$
Chapter	Statutes	Item	Fiscal Year	Program	BC	Category	Fund Source	\$
<b>Note to LPA; check Exhibit D for payment to escrow account.</b>								

**APPLICANT-STATE AGREEMENT NO. \_\_\_\_\_**  
**ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM**

STATE PROJECT NUMBER: EEM-  
20xx/20xx FISCAL YEAR ALLOCATION

EA:

THIS AGREEMENT, made effective this \_\_\_ day of \_\_\_20xx, by and between \_\_\_\_\_ hereinafter referred to as "APPLICANT", and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

**WITNESSETH**

WHEREAS, as provided by Streets and Highways Code Section 164.56, Senate Bill 117 (Statutes of 1999, Chapter 739) established the EEM Program as a permanent program, funds have been allocated to APPLICANT by the California Transportation Commission (CTC) after the PROJECT submitted by APPLICANT had been recommended for funding by the Resources Agency; and as described in the application (APPLICATION);

WHEREAS, STATE and APPLICANT now desire to enter into an Agreement relative to fund transfers and cost sharing on the described PROJECT.

NOW, THEREFORE, the parties agree as follows:

**ARTICLE I - Project Administration and General Provisions**

1. PROJECT shall mean that EEM PROJECT described in the APPLICATION submitted by APPLICANT and summarized in Attachment A to this Agreement including financing information as set forth in Section III of Attachment A to this Agreement.
2. APPLICANT shall adhere to: California Transportation Commission (CTC) *Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects*, the *EEM Guidelines* at website: <http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm>, under "Policies and Procedures," and the Resource Agency's *Environmental Enhancement and Mitigation Program Guidelines* at <http://www.resources.ca.gov/eem.html>.

3. The PROJECT submitted by APPLICANT, together with all conditions and assurances contained therein, and specifically including information on how the PROJECT shall be financed, are made an express part of this Agreement. Should any conflict exist between the APPLICATION and the Agreement, the Agreement shall prevail.
4. APPLICANT shall complete PROJECT, which shall be acquired, developed, designed and constructed as provided in this Agreement.
5. If PROJECT is located on STATE-owned right-of-way, APPLICANT shall comply with all applicable STATE design and construction standards and practices. If PROJECT is not on STATE-owned right-of-way, APPLICANT shall comply with the applicable design and construction standards and practices of the local government having jurisdiction over the PROJECT location.
6. In cases where the CTC approved funding is less than the amount for which APPLICANT originally applied due to a Budget Reduction on the project required by the State Resources Agency, APPLICANT is obligated to complete PROJECT without downscoping it, unless specifically authorized to do so, in writing, by the State Resources Agency. This will be accomplished by APPLICANT supplementing PROJECT costs with another funding source or by finding a less costly way to complete the PROJECT.
7. The estimated total cost of PROJECT is as shown in Section III of Attachment A of this Agreement. While APPLICANT may, with the STATE's written approval, award a contract in an amount exceeding the estimated total PROJECT cost specified in Section III-A of Attachment A of the Agreement, the allocation of STATE funds for PROJECT will never be greater than the amount specified in Section III-C of Attachment A of this Agreement.
8. Section III of Attachment A specifies the APPLICANT's estimated total PROJECT cost, each party's proportionate percentage of those costs and the maximum amount of STATE funds the CTC has authorized for the PROJECT. The STATE's proportionate share of funding is a certain percent of the estimated total PROJECT cost and approved scope of the PROJECT (STATE's PROPORTIONATE SHARE) and will be used as the reimbursement ratio on this project. In the event the actual cost of PROJECT exceeds the estimated total cost of the PROJECT, the STATE shall pay its PROPORTIONATE SHARE of the cost only up to the amount specified in Section III-C of Attachment A of the Agreement.
9. In the event the PROJECT scope decreases, a decrease in the STATE's PROPORTIONATE SHARE shall be made. In the event the actual cost of PROJECT decreases for any reason from the estimated total PROJECT cost specified in Section III of Attachment A, the allocation of STATE funds will be decreased proportionately with any decrease in APPLICANT's participating contribution so that the STATE's PROPORTIONATE SHARE of costs relative to TOTAL PROJECT COST remains as specified in Section III-B of Attachment A of the Agreement.
10. No changes of any kind may be made to the PROJECT without prior written notice to and written acceptance by the STATE of the proposed change. The STATE shall acknowledge a written notice of proposed change by either accepting or rejecting the proposed change in writing. In the event the STATE responds to a proposed change by stating that the proposed change requires discussion and amendment, such action shall constitute a rejection of the proposed change and any work performed in spite of that rejection shall not be eligible for reimbursement unless and until there is a written, duly executed amendment to this Agreement which addresses that work. Any amendment to this Agreement shall not be effective until executed by both parties. In addition, the parties should take special notice of ARTICLE XII, paragraph 6 of this Agreement.

11. After completion and acceptance of PROJECT by both APPLICANT and STATE, STATE shall pay STATE's PROPORTIONATE SHARE of the cost of PROJECT to APPLICANT, within sixty (60) days after receipt of a signed invoice for payment submitted by APPLICANT. At the option of APPLICANT, monthly or quarterly pro rata progress payments in arrears may be made on a reimbursement basis upon submittal of invoices by APPLICANT and approval by STATE of the PROJECT costs incurred. Pro rata payments will be based on the amount of the STATE fund transfer authorized herein in proportion to the total cost of PROJECT, including APPLICANT's contributions. An invoice format document is included as Attachment D, Exhibit 20 D of this Agreement.
12. If PROJECT involves work anywhere on the State Highway System, a separate standard form of encroachment permit between STATE and APPLICANT must be prepared and executed before PROJECT work may commence.
13. APPLICANT shall comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Attachment C) and further agrees that any agreement or service contract entered into by APPLICANT with a third party for performance of work connected with the PROJECT shall incorporate Exhibit B as a part of such agreement.
14. Upon completion of all work under this Agreement and prior to the expiration of this Agreement, APPLICANT shall prepare and file with STATE one (1) original Final Project Expenditure Report. The Final Project Expenditure Report must be submitted with the final invoice on the PROJECT.

#### ARTICLE II - Rights-of-Way

1. The acquisition, clearance, and improvement of rights-of-way necessary for the development of PROJECT shall be the responsibility of APPLICANT. Right-of-way acquisition and clearance costs may be included as a participating item of total PROJECT costs if included as part of the PROJECT scope of work.
2. APPLICANT shall perform all PROJECT right-of-way activities in accordance with applicable state laws and regulations unless the STATE determines, in writing, that the State Uniform Relocation Assistance and Real Property Acquisition Policies Act (Government Code Section 7260-7277) do not apply to PROJECT.
3. APPLICANT, as part of its PROJECT design responsibility, shall identify and locate all utility facilities within the PROJECT area. All utility facilities, including those not relocated or removed in advance of construction, shall be identified on PROJECT plans and specifications.
4. If any existing public and/or private utilities conflict with the construction of PROJECT, APPLICANT will make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. If utility relocation is required within STATE right-of-way, APPLICANT shall conform to STATE standards, policies and procedures. If utility relocation is outside of STATE right-of-way, APPLICANT shall conform to local government policies.
5. APPLICANT shall certify as to legal and physical control of that PROJECT right-of-way once it is ready for construction, and that the PROJECT right-of-way was acquired in accordance with applicable State laws and regulations, subject to review and concurrence by STATE, prior to the advertisement for bids for construction/development of PROJECT.

6. If right-of-way acquisition and clearance costs are included as a participating item of PROJECT costs, STATE shall provide funds only for purchase of the actual right-of-way required for PROJECT. If APPLICANT acquires right-of-way, which includes excess land, STATE will not participate in the cost of the excess portion. In the event land initially acquired as part of PROJECT is declared excess at a later date, APPLICANT shall reimburse STATE, no later than one hundred twenty (120) days after PROJECT completion or upon the subsequent sale of that excess land, for either the pro rata fair market value of that excess at the time of disposal or, if that property is retained by APPLICANT, the pro rata fair market value of the excess land at that time. The pro rata fair market value shall be based on the total of the STATE fund transfer amount applied toward purchase of the property in proportion to the total purchase price of the property.

### **ARTICLE III - Safety**

1. APPLICANT shall comply with OSHA regulations regarding necessary safety equipment and procedures. If PROJECT work is to be performed within STATE right-of-way, APPLICANT shall also comply with safety instructions issued by the District Safety Officer and other STATE representatives. APPLICANT's and APPLICANT's personnel shall see that all individuals wear white hard hats and orange safety vests at all times while working within STATE right-of-way.
2. Pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas are within the limits of the PROJECT and are open to public traffic, APPLICANT shall comply with all the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. APPLICANT shall take all reasonably necessary precautions for safe operation of its vehicles and its agent's and the protection of the traveling public from injury and damage from such vehicles when performing work within STATE right-of-way.

### **ARTICLE IV - Inspection of Work**

1. APPLICANT and any of its PROJECT subcontractors shall permit STATE to review and inspect PROJECT activities at all reasonable times during the performance period of this Agreement, including review and inspection on a daily basis.

### **ARTICLE V - Equipment Purchase**

1. Prior authorization in writing by STATE shall be required before APPLICANT enters into any non-budgeted purchase order or subcontract exceeding \$500 for supplies, equipment, or consultant services. APPLICANT shall provide an evaluation of the necessity or desirability of incurring such costs.
2. For purchase of any item, service or consulting work not identified in APPLICANT's Cost Proposal and exceeding \$500 with written prior authorization by STATE, three (3) competitive quotations must be submitted with that request or the absence of bidding must be adequately justified.

3. Any equipment purchased as a result of this Agreement is subject to paragraph 3 of this Article V. APPLICANT shall maintain an inventory of all nonexpendable property, defined as property having a useful life of at least two years and an acquisition cost of \$500 or more. If purchased equipment needs replacement and is sold or traded in, STATE shall receive a proper refund or credit. Upon the expiration date of this Agreement, or if this Agreement is terminated, APPLICANT may either keep the equipment and credit STATE in an amount equal to its fair market value or sell such equipment at the best price obtainable at a public or private sale, in accordance with established STATE procedures, and credit STATE in an amount equal to the sales price. If APPLICANT elects to keep that equipment, fair market value shall be determined at APPLICANT's expense on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to STATE and APPLICANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by STATE.

#### **ARTICLE VI - Management and Maintenance of Property**

1. APPLICANT will operate, manage and maintain into the future all property acquired, developed, rehabilitated, or restored with funds transferred through this Agreement. With STATE's prior approval, APPLICANT or its successors in interest may transfer management and maintenance responsibilities over the property. If the property is not managed and maintained consistent with the PROJECT APPLICATION, APPLICANT or its successors in interest, at the discretion of STATE and within 45 days after receiving notice to APPLICANT by STATE, shall reimburse STATE an amount at least equal to the amount of STATE's funding participation in PROJECT together with all accrued interest at State Treasurer's pooled money investment account.
2. All real property, or rights thereto, acquired with these funds shall be subject to an appropriate form of restrictive title, or rights, covenants approved by STATE. If the PROJECT real property, or rights thereto, is sold, traded, condemned, or otherwise put to any use other than that use as approved in the Allocation for STATE funds, the State Highway Account, at the discretion of STATE and within 45 days notice to APPLICANT by STATE, shall be reimbursed an amount at least equal to the amount of the STATE's funding participation in PROJECT or the pro rata fair market value of the real property, or rights thereto, including improvements at the time of sale, whichever is higher. The pro rata fair market value shall be based on the proportions of the fund transfer amount applied toward the purchase of the property, or rights thereto, and the design and construction of improvements in proportion to the total purchase price of the real property, or rights thereto, and the cost of all improvements made prior to the time of sale.

#### **ARTICLE VII – Retention of Records/Audit Review Procedures**

1. For the purpose of determining compliance with Public Contract Code 10115, et seq., and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code 10532, APPLICANT, its contractors and their subcontractors and STATE shall each maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under this Agreement. STATE, the State Auditor, the Federal Highway Administration (FHWA), or any duly authorized representative of the federal government shall have access to any books, records, and documents of APPLICANT that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished by APPLICANT or its contractors, if requested.

2. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not satisfactorily disposed of by Agreement shall be reviewed by the Chairperson of the STATE Audit Review Committee (ARC). The ARC will consist of: the Assistant Director, Audits & Security (Chairperson); Deputy Director of Transportation Engineering; the Chief Counsel, Legal Division, or their designated alternates; and two representatives appointment by the Director of Transportation from private industry whose role will be advisory in nature only and without voting rights.
3. Not later than 30 days after issuance of the final audit report, APPLICANT may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the Chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the Chief Deputy Director. The Chief Deputy Director will make the final decision for STATE within one (1) month following the receipt of the notification of dispute or following the ARC meeting recommendation date, whichever is later in time.
4. Neither the pendency of a dispute nor its consideration by STATE will excuse APPLICANT from full and timely performance of its obligations in accordance with the terms of this Agreement.
5. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article VII.
6. Expenditures of EEM program funds are subject to financial and compliance audits by the State Controllers Office and Caltrans Office of Audits and Investigations. These guidelines may be found in *Local Assistance Procedures Manual*, Chapter 10, "Consultant Selection," Exhibit 10-N, "Accounting and Auditing Guidelines for Contracts with Caltrans." Website: <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm>

#### **ARTICLE VIII – Allowable Costs and Payments**

1. The method of reimbursement authorized by STATE for PROJECT expenditures made by APPLICANT under this Agreement will be based on actual costs incurred. STATE will reimburse the STATE's PROPORTIONATE SHARE of actual costs (based on Section III of Attachment A of this Agreement and including labor costs, employee benefits, travel, equipment rental costs, and other direct costs) incurred by APPLICANT in performance of the work. APPLICANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, fringe benefit rates, and other estimated costs set forth in APPLICANT's cost proposal (Attachment B this Agreement) unless additional reimbursement is provided for by Agreement amendment. In the event that STATE determines additional work beyond that specified in APPLICANT's cost proposal and this Agreement is required to produce a satisfactory PROJECT, the actual costs reimbursable by STATE may be increased by Agreement amendment to accommodate that additional work. The maximum total costs as specified in Section III of Attachment A of this Agreement, shall not be exceeded unless authorized by Agreement amendment.
2. Reimbursement for transportation and subsistence costs shall not exceed the rates to be paid nonrepresented/excluded State employees under then current State Department of Personnel Administration rules detailed in the Caltrans Travel And Expense Guide.
3. General and administrative PROJECT overhead is unallowable under the Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria* guidelines.
4. Progress payments will be allowed and may be made no less than monthly in arrears based on PROJECT work performed and allowable incurred costs authorized as part of the PROJECT.
5. APPLICANT may not commence any reimbursable PROJECT development work or services or PROJECT capital outlay work before both program adoption and funding allocation by the California Transportation

Commission and execution of this PROJECT agreement by both APPLICANT and STATE. Reimbursement is subject to annual appropriation by the Legislature in the State Budget for the Environmental Enhancement and Mitigation Program Fund.

6. APPLICANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by STATE's Local Program Accounting Office in the Division of Accounting of signed invoices. One original and two copies of the invoice (in the format shown in Attachment D of this Agreement) shall be submitted after the performance of work for which APPLICANT is billing. Invoices shall include detailed back-up information supporting the work performed. The final invoice must contain the final cost and all credits due STATE, including credits or reimbursements due STATE for any equipment purchased under the provisions of Article V of this Agreement. The final invoice shall be mailed to the Caltrans District Director, ATTN: District Local Assistance Engineer, for PROJECT completion and final invoice approval. Progress invoices shall be mailed directly to STATE at the following address:

DEPARTMENT OF TRANSPORTATION  
Division of Accounting, MS 33  
Local Program Accounting Branch  
P. O. Box 942874  
Sacramento, CA 94274-0001

### ARTICLE IX – Cost Principles

1. APPLICANT agrees to comply with: 1) The Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria* at: <http://resources.ca.gov/eem.html>, and 2) California Transportation Commission *Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects* and the *EEM Guidelines*, at: <http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm> under "Policies and Procedures."
2. APPLICANT agrees to comply with the following, as applicable:
  - A) The Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., which shall be followed to determine the allowability of individual items of cost for which reimbursement is sought.
  - B) 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments.
  - C) Office of Management and Budget Circular A-122, Cost Principles for Nonprofit Organizations, which shall be used to determine costs of grants, contracts and other agreements with nonprofit organizations (excluding colleges, universities and hospitals).
  - D) Office of Management and Budget Circular A-122, Cost Principles for Nonprofit Organizations, which shall be used to determine costs of grants, contracts and other agreements with nonprofit organizations (excluding colleges, universities and hospitals).
  - E) Office of Management and Budget Circular A-21, Cost Principles for Educational Institution establishing principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.
  - F) Office of Management and Budget Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations.

3. Any costs for which payment has been made to APPLICANT that are determined by subsequent audit to be unallowable under Paragraphs 1 and 2 of this Article IX are subject to repayment by APPLICANT to STATE. In addition, APPLICANT will remit any interest earned on EEM funds to the STATE immediately upon escrow close.
4. Should any conflict exist between the STATE guidelines as described in Paragraph 1 and 2 of this Article IX, the following order will prevail and be applied as follows: 1) Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria* at <http://resources.ca.gov/eem.html>, 2) *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects*, and *Caltrans EEM Program Guidelines* at: <http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm>, 3) 48 CFR, *Federal Acquisition Regulations System*, Chapter 1, Part 31 et seq.; 49 CFR, *Federal Acquisition Regulations System*, Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government*; OMB A-21, *Cost Principles for Educational Institutions*; OMB A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations*; OMB A-122, *Cost Principles for Nonprofit Organizations*; and OMB A-87, *Cost Principles for State and Local Government*.
5. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article IX.
6. Should APPLICANT fail to reimburse moneys due STATE within thirty (30) days of demand, or within such other period as may be agreed between the parties hereto, STATE is authorized to withhold future payments due APPLICANT from any source, including but not limited to the State Treasurer, the State Controller and the California Transportation Commission.

#### **ARTICLE X - Subcontracting**

1. APPLICANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by STATE, except that which is expressly identified in APPLICANT's Cost Proposal (Attachment B, Exhibit 20-D of this Agreement).
2. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement and shall be applicable to all subcontractors.
3. Any substitution of subcontractors must be approved in writing by STATE.
4. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article X.

#### **ARTICLE XI - Insurance**

1. If the scope of APPLICANT services will not require APPLICANT or a subcontractor to enter upon STATE highway right-of-way, then the APPLICANT is not required to show evidence of general comprehensive liability insurance.

2. In the event that APPLICANT or an agent, contractor or subcontractor of APPLICANT will be present or working on STATE right-of-way, prior to commencement of the work described herein, the APPLICANT shall furnish to STATE a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for APPLICANT and/or its agents, contractors, and subcontractors who will be working (in any manner) on STATE property with a Combined Single Limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
3. The Certificate of Insurance must provide:
  - A. That the insurer will not cancel the insured's coverage without 30 days prior written notice to the STATE.
  - B. That the STATE, its officers, agents, employees, and servants are also included as additional named insured, but only insofar as PROJECT operations under this Agreement are concerned.
  - C. That STATE will not be responsible for any premiums or assessments on the policy.
4. APPLICANT agrees that all bodily injury liability insurance or self-insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, APPLICANT agrees to provide at least thirty (30) days prior to said expiration date, a new Certificate of Insurance or Certificate of Self-Insurance evidencing coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New Certificates are subject to the approval of STATE and Department of General Services. In the event APPLICANT fails to keep coverage as herein provided in effect at all times, STATE may in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
5. If APPLICANT is self-insured, the EEM PROJECT APPLICANT shall submit a Certificate of Self-Insurance asserting that APPLICANT is covered for all purposes of liability for all work performed hereunder. STATE and APPLICANT acknowledge that only one Certificate of Self-Insurance will be required and that APPLICANT must maintain that level of Self-Insurance [not less than one million dollars (\$1,000,000)]. It is also understood that STATE, its officer, agents, employees, and servants, are included as covered for all purposes insofar as the operations of APPLICANT under this Agreement are concerned.

#### ARTICLE XII - Miscellaneous Provisions

1. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority, or jurisdiction delegated to APPLICANT under this Agreement. It is understood and agreed, that pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless STATE and its officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interest is at stake.
2. APPLICANT, the agents and employees of APPLICANT, in performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of STATE.

3. Following written notice and at least thirty (30) days to cure, STATE may terminate this Agreement with APPLICANT should APPLICANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, STATE may proceed with the PROJECT work in any manner deemed proper by STATE. If STATE terminates this Agreement with APPLICANT, STATE shall pay APPLICANT the sum of allowable costs due APPLICANT under this Agreement prior to termination, provided, however, that the cost of PROJECT completion to STATE shall first be deducted from any sum due APPLICANT under this Agreement, and the balance, if any, shall then be paid APPLICANT upon demand.
4. Without the written consent of STATE, this Agreement is not assignable by APPLICANT, either in whole or in part.
5. Time is of the essence in this Agreement. Two original signed copies must be returned within 90 days of date on the Caltrans cover letter.
6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
7. The consideration to be paid APPLICANT, as provided herein, shall constitute full compensation for all of APPLICANT's allowable approved costs and expenses incurred in the performance hereof, unless otherwise expressly so provided.
8. APPLICANT warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by APPLICANT for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this Agreement without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the price of consideration, or otherwise recover from APPLICANT, the full amount of such commission, percentage, brokerage, or contingent fee.
9. In accordance with Public Contract Code Section 10296, APPLICANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against APPLICANT within the immediate preceding two-year period because of APPLICANT's failure to comply with an order of a Federal court that orders APPLICANT to comply with an order of the National Labor Relations Board.
10. APPLICANT shall disclose any financial, business, or other relationship with STATE, the Resources Agency, or the California Transportation Commission (CTC) that may have an impact upon the outcome of this Agreement. APPLICANT shall also list current associates or clients who may have a financial interest in the outcome of this Agreement.
11. APPLICANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would be in conflict with the performance of this Agreement.
12. APPLICANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE or Resources Agency employee. For breach or violation of this warranty, STATE shall have the right in its sole discretion, to terminate the Agreement without liability, to pay only for the work actually performed, or to deduct from the Agreement price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

- 13. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or the Federal Government that may affect the provisions, terms, or funding of this Agreement in any manner.
- 14. This Agreement shall terminate on June 30, 20xx, or upon the earlier completion of PROJECT, whichever is first earlier in time, except that APPLICANT duties regarding the continuing operations and maintenance of PROJECT property, credits due STATE, and indemnification of STATE shall survive.

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

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

APPLICANT

By: \_\_\_\_\_  
Office of Program Management

By: \_\_\_\_\_  
Signature of APPLICANT Representative

Division of Local Assistance  
1120 "N" Street,  
Sacramento, California 95814

\_\_\_\_\_  
APPLICANT Representative Name and Title

\_\_\_\_\_  
Address Agency

DATE: \_\_\_\_\_

\_\_\_\_\_  
Address City, State, ZIP

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
E-mail Address of Project Manager

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## PROJECT DESCRIPTION AND FINANCING

(Applicant: To make changes, cross out incorrect information, write in new and initial. Do not retype.)

APPLICANT:  
PROJECT NAME:  
COUNTY:

**I. Project Location:**

**II. Project Description of Work Proposed (as set forth in Application No. \_\_\_\_):**

**III Proposed Project Funding:**

A. ESTIMATED TOTAL PROJECT COST: \$ \_\_\_\_\_

Is this amount different from that set forth in the APPLICATION?

Yes

No

**B. PROJECT FINANCING:**

State Funding	\$	=% of total project cost*
Applicant Funding	\$	=% of total project cost
Federal Funding (if any)	\$0	
<hr/>		
Total Project Funding	\$	=100% of total project cost

\* NOTE: This percentage is referred to in this Agreement as the STATE's PROPORTIONATE SHARE of costs and will be used as the reimbursement ratio on the project.

C. The maximum amount of STATE funding approved by the CTC that may be contributed to the PROJECT shall not exceed \$\_\_\_\_\_.

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### COST PROPOSAL

(This must be completed by APPLICANT for all projects, except for acquisition-only projects, and returned with Applicant-State Agreement to the STATE.)

APPLICANT:  
PROJECT NAME:  
COUNTY:

Direct Labor:  
(Labor rates must be calculated as actual dollar earned per hour and cannot include overhead costs.)

<u>Classification</u>	<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Project Manager			@	
			@	
			@	
			@	

Total Direct Labor Costs

Fringe Benefits:  
(Benefits, such as vacation, medical, and retirement, etc., must be calculated as rates earned per hour.)

Other Costs: (Itemize with description, quantity, unit price, and total cost. Estimates acceptable.)

Travel Costs:  
Equipment and Supplies:  
Other Direct Costs:

Subcontractor Costs:  
(Attach scope of work and detailed cost estimate for each subcontractor.)

Volunteer Services:

<u>Classification</u>	<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
Volunteer			@	
			@	
			@	

Total Volunteer Labor Costs

Donations:  
(Itemize with description, quantity, unit price, and total cost. Estimates acceptable.)

Materials:  
Other:

---

**Total Project Cost:**

**Distribution:** Local agency attach this with the application

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## FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, APPLICANT will not discriminate against any employee for employment because of race, sex, color, religion, ancestry, or national origin. APPLICANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. APPLICANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.
2. APPLICANT will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.
3. Remedies for Willful Violation:
  - a) The State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which APPLICANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the APPLICANT has violated the Fair Employment Practices Act and had issued an order, under Labor Code Section 1426, which has become final, or obtained an injunction under Labor Code Section 1429.
  - b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services hereunder shall be borne and paid for by APPLICANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or the thereafter may become due to APPLICANT, the difference between the price named in the Agreement and the actual cost thereof to STATE.

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**SAMPLE OF EEM PROJECT INVOICES**  
*(Prepare On Letterhead of Applicant)*

**Date of Invoice**

*(For Progress Invoice)*  
 Department of Transportation  
 Division of Accounting - MS 33  
 Local Program Accounting Branch  
 P.O. Box 942874  
 Sacramento, CA 94274-0001

*(For Progress Invoice)*  
**Name**, District Director  
 Department of Transportation  
 Attn.: Name, District Local Assistance Engineer  
**Street or P.O. Box**  
**City, CA Zip Code**

Billing No: **1,2,...., or Final**  
 Invoice No: **Local Agency's Invoice No**  
 Project Completion Date: **Final Date or "On-going" if not Final**  
 County: **County Name**  
 Expenditure Authorization No:

Reimbursement for Environmental Enhancement and Mitigation (EEM) funds is claimed pursuant to State Project No. \_\_\_\_\_, Applicant-State Agreement No. \_\_\_\_\_, Agreement Date \_\_\_\_\_.

Description of work covered by this Invoice: \_\_\_\_\_

	Preliminary Engineering	Construction Engineering	Acquisition and Incidentals	Construction Contract
Total Costs to Date**	_____	_____	_____	_____
Less: Nonparticipating Costs to Date	_____	_____	_____	_____
Total State Participating Costs to Date	_____	_____	_____	_____
Reimbursement Ratio	_____	_____	_____	_____
Subtotal of EEM Funding to Date	_____	_____	_____	_____
Less: Amount Claimed on previous invoice	_____	_____	_____	_____
Total Amount This Invoice	_____	_____	_____	_____

\*\* Note: The State will make the payment(s) on a reimbursement basis of its proportionate share of actual costs incurred to date after expenses and debts have been paid by the applicant. Timesheets, mileage logs, invoices, receipts, cancelled warrants, and other documents as applicable are required by the State as supporting documentation prior to each reimbursement.

**Distribution:** Local agency send to the location stated above, as appropriate.

(APPLICANT: Complete the section below for EEM projects involving acquisition of real property rights, or rights thereto, if you request that State funds be deposited directly into an Escrow Account. This invoice with the required documents must be submitted 60 days prior to the close of escrow. For the list of required documents, see Exhibit H (Invoice Payment Request Letter) of EEM Guidelines at website: <http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm>  
Caltrans will transfer funds to escrow account 30 days prior to escrow close.)

Pursuant to Attachment E (Remarks & Covenants) of above referenced Applicant-State Agreement,  
\_\_\_\_\_  
(Name of Applicant)  
requests and authorizes that the Environmental Enhancement and Mitigation (EEM) fund warrants be made out in the name of the \_\_\_\_\_ Title Company and mailed to  
(Title/ CompanyAddress) \_\_\_\_\_, Attention: \_\_\_\_\_  
Escrow No. \_\_\_\_\_, Title Company Tax I.D. No. is: \_\_\_\_\_, Escrow Close Date: \_\_\_\_\_

I certify that the work covered by this Invoice has been completed in accordance with approved plans and Specifications, the costs shown in this Invoice are true and correct, and the amount claimed is due and payable within the terms of the Agreement. I will remit to the State any interest accrued on EEM funds depositing into an escrow, or other, account.

I further certify, if applicable, that acquisition of real property, or rights thereto, (has been) (will be) acquired in accordance with applicable state laws and regulations.

I further certify, if property or a conservation easement was or is being acquired, that acquisition of real property or rights thereto, has been acquired in accordance with applicable state laws and regulations, AND

- attached is a signed, notarized Agreement Declaring Restrictive Covenant (ADRC) including the Legal Description of Property and the Original EEM program application; and
- immediately upon escrow closing the ADRC will be recorded and the original will be sent to the Caltrans address stated on the ADRC; or
- if escrow has closed, applicant will attach the signed, notarized and RECORDED ADRC, including the Legal Description of Property and the Original EEM program application here.

APPLICANT understands that failure to submit a RECORDED ADRC immediately upon escrow closing will put EEM project funding at risk.

**APPLICANT REPRESENTATIVE NAME & TITLE**

Approved For Payment:

CALTRANS: (check appropriate line)

- Approved For Payment For Direct Deposit into Escrow: (Invoice can only be approved if  Applicant has provided a signed and notarized ADRC, including a Legal Description AND the Original Application).
- Approved for Reimbursement: (Invoice can only be approved if the RECORDED ADRC with  Legal Description and original invoice is attached.)

**DISTRICT RIGHT-OF-WAY DIVISION CHIEF (if applicable)**

## REMARKS AND COVENANTS

(APPLICANT; If your **EEM** projects involve acquisition of real property, or rights thereto, and you request EEM funds be deposited directly into an escrow account, you **MUST** complete the following paragraph below when you sign the Applicant-State Agreement. It is required to ensure timely payment.)\*

Pursuant to the terms of Applicant-State Agreement No. \_\_\_\_\_, dated \_\_\_\_\_

and effective immediately, the \_\_\_\_\_

(Name of Applicant)

requests and authorizes that the EEM fund warrants be made out in the name of the

\_\_\_\_\_ and mailed to

(Name of Title Company)

\_\_\_\_\_

(Address of Title Company)

Phone No. \_\_\_\_\_ Attention: \_\_\_\_\_

(Name of Escrow Agent)

For Escrow No. \_\_\_\_\_ Title Company Tax I.D. # \_\_\_\_\_

Escrow Close Date: \_\_\_\_\_

\*APPLICANT will remit to the STATE interest accrued on this account immediately upon close of escrow.

**Distribution:** Local agency submits together with the Applicant-State Agreement to DLA HQ.

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Recording requested by and  
when recorded mail to:

(Name), Local Assistance Engineer  
State of California  
Department of Transportation, District (District No.)  
Office of Local Assistance  
(Address)  
(City, CA Zip)

(Space above for Recorder's use.)  
Applicant Must Record ADRC Immediately Upon  
Close of Escrow and Send Original to Caltrans, or  
Risk Project Funds.

**SAMPLE**

**AGREEMENT DECLARING RESTRICTIVE COVENANTS (ADRC)**

**State Project Number:** EEM- \_\_\_\_\_  
**Agreement Number:** \_\_\_\_\_

This Agreement Declaring Restrictive Covenants, hereinafter referred to as "ADRC", is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2xxx, by and between the \_\_\_\_\_, hereinafter referred to as "APPLICANT," and the California Department of Transportation, hereinafter referred to as the "CALTRANS."

- A. WHEREAS, APPLICANT acquires the real property described in Attachment A of Exhibit 20-E ADRC, attached hereto and incorporated herein by this reference, hereinafter referred to as "REAL PROPERTY," in fee simple; and
- B. WHEREAS, the REAL PROPERTY possesses wildlife and habitat values, hereinafter referred to collectively as CONSERVATION VALUES, of great importance to the CALTRANS, APPLICANT and the People of the State of California; and
- C. WHEREAS, APPLICANT is authorized to hold property in fee simple for these purposes pursuant to Governing Body Resolution, and other California Law; and
- D. WHEREAS, the REAL PROPERTY is intended to provide mitigation of certain direct and/or indirect impacts of the transportation project described in Attachment B, "Original EEM Application" of Exhibit 20-E ADRC, attached and hereto incorporated herein by this reference; and
- E. WHEREAS, the APPLICANT is intend to use the REAL PROPERTY only as detailed in Attachment B of Exhibit 20-E ADRC, and for no purpose that are inconsistent with Attachment A, attached hereto and incorporated herein by this reference, hereinafter referred to as "ENHANCEMENT AND MITIGATION REQUIREMENTS"; and
- F. WHEREAS, CALTRANS will provide funds allocated by the California Transportation Commission to Applicant to purchase REAL PROPERTY to satisfy said ENHANCEMENT AND MITIGATION REQUIREMENTS; and

G. WHEREAS, both CALTRANS and APPLICANT desire and intend permanently restrict the REAL PROPERTY uses to preserve, protect, enhance, monitor and restore in perpetuity the CONSERVATION VALUES of the REAL PROPERTY so that the State of California shall be benefited and each successive APPLICANT of all or part of said REAL PROPERTY shall be benefited by the preservation of the species and habitat preserved and protected on the REAL PROPERTY in accordance with the MITIGATION REQUIREMENTS, hereinafter referred to as the "CONSERVATION PURPOSES."

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenants and covenantees, and expressly for the substantial benefits to be derived therefrom, and to bind their successors in interest, the said parties agree as follows:

Comment [DLA1]: This word does not exist— even in legal dictionaries.

#### Management and Maintenance of Property

1. Only the detailed uses described in Attachment A of Exhibit 20-E ADRC, attached hereto and incorporated herein by this reference, shall be made of the REAL PROPERTY. Any uses inconsistent with the uses explicitly stated in Attachment A of Exhibit 20-E ADRC, are not allowed.
2. Applicant will own, use, manage and maintain now and in the future, the REAL PROPERTY pursuant to this ADRC and consistent with the CONSERVATION PURPOSES, the MITIGATION REQUIREMENTS and the ADRC. If Applicant or Applicant's successors or assignees fail to use, manage and maintain the REAL PROPERTY consistent with the terms of the CONSERVATION PURPOSES, the MITIGATION REQUIREMENTS and this ADRC, Applicant or Applicant's successors or assignees will be required to cure said noticed violation within forty-five (45) calendar days of becoming aware of that violation. If Applicant or Applicant's successors or assignees fail to cure the violation within forty-five (45) calendar days of becoming aware or where the violation cannot reasonably be cured within forty-five (45) calendar days, fails to begin curing such violation within that forty-five (45) calendar day period, or fails to continue diligently to cure such violation until finally cured, such failure will be deemed as a default of this ADRC. If default occurs, the CONSERVATION PURPOSES will have deemed violated and Applicant or Applicant's successors or assignees must comply with the requirements set forth in Section 4 below.
3. All the REAL PROPERTY acquired to satisfy the MITIGATION REQUIREMENTS shall be subject to this ADRC. If REAL PROPERTY is sold, transferred, traded, or taken by an exercise of the power of eminent domain, in whole or in part, Applicant or Applicant's successors or assignees, shall notify CALTRANS of the proposed sale, transfer, trade or taking by sending written notice to: State of California, Department of Transportation, Legal Division - MS 57, 1120 N Street, Sacramento, CA 95814.
4. In the event of a default, sale, transfer, trade or taking, Applicant or Applicant's successors or assignees shall reimburse an amount either equal to CALTRANS' funding participation of \$\_\_\_\_\_ for the purchase and/or improvements of the REAL PROPERTY (determined to be \_\_\_\_\_%) subsequent fair market value, including improvements at the time of default sale, trade, transfer or taking, whichever is higher. Applicant or Applicant's successors or assignees shall not be obligated to repay the CALTRANS if the CALTRANS agrees in writing that Applicant or Applicant's successors or assignees may utilize those proceeds for the preservation of real property for equivalent environmental value conforming to the CONSERVATION PURPOSES when protected by similar conditions to the extent applicable.
5. With CALTRANS's prior written approval, Applicant or Applicant's successors or assignees may modify or transfer the Application, use, management and maintenance responsibilities established by the REAL PROPERTY restrictive covenants.

**Term**

6. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the Amendment and Revocation provisions of this ADRC.

**Assignment**

7. Without the prior written consent of CALTRANS, this ADRC is not assignable in whole or in part by Applicant or Applicant's successors or assignees.

**Amendment and Revocation**

8. Conditional upon CALTRANS receiving full fair market value return in the event of any reduction in the restrictions placed on the use of this REAL PROPERTY, unless the DEPARTMENT agrees in writing that Applicant or Applicant's successors or assignees may utilize the value received for the preservation of real property for equivalent environmental value conforming to the CONSERVATION PURPOSES when protected by similar conditions to the extent applicable, this ADRC and any amendments to it may be amended in any respect by the execution by the DEPARTMENT and Applicant or Applicant's successors or assignees of any written instrument amending or revoking this ADRC. The amending or revoking instrument shall make appropriate reference to this ADRC, and its amendments and shall be signed by both parties thereto, acknowledged and recorded in the Office of County Recorder of the counties in which the property is located.

**Enforcement**

9. Enforcement shall be by proceedings at law or in equity against any person or persons or party or parties violating or attempting to violate any covenant either restraining violation or to recovery of damages.

**Indemnification**

10. Neither the DEPARTMENT nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT or Applicant's successors or assignees under or in connection with any work, authority or jurisdiction delegated to APPLICANT or Applicant's successors or assignees under this ADRC. It is understood and agreed that pursuant to Government Code Section 895.4, APPLICANT or Applicant's successors or assignees shall fully defend, indemnify and save harmless the DEPARTMENT and all of its officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code 810.8) occurring by reason of anything done or omitted to be done by Applicant or Applicant's successors or assignees under or in connection with any work, authority or jurisdiction delegated to Applicant or Applicant's successors or assignees under this ADRC. The DEPARTMENT reserves the right to represent itself in any litigation in which DEPARTMENT's interests are at stake.

**Purpose of ADRC**

11. This ADRC is solely for the purpose of protecting and maintaining the present and future restricted use of all the REAL PROPERTY solely for the MITIGATION REQUIREMENTS and these enhancements tied to the preservation of the CONSERVATION PURPOSE.

**Severability**

12. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this ADRC by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

APPLICANT'S NAME

Signature certifies ADRC-Attachments A and B are attached and ADRC has been signed and notarized by the Applicant.

Signature certifies ADRC-Attachments A and B are attached and the entire document will be recorded with the original and returned to Caltrans.

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Applicant's Representative Signature)

\_\_\_\_\_  
(Name), District Right-of-Way Division Chief

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Agency)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(Phone no.)



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## LEGAL DESCRIPTION OF REAL PROPERTY

*(Insert the legal description of the property to be purchased by Applicant to satisfy the*  
**MITIGATION REQUIRMENTS.**)

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## ORIGINAL EEM APPLICATION

*(Attach a clean copy of the original application sent to the Resource Agency for this project.)*

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RECORDING REQUESTED BY,  
AND WHEN RECORDED, MAIL TO:

SPACE BELOW FOR RECORDER'S USE  
Applicant Must Record RCACE Immediately upon Close of  
Escrow and send Original to Caltrans, or Risk Project Funds.

District \_\_\_ Local Assistance Engineer  
State of California  
Department of Transportation  
Division of Local Assistance  
Address  
City, CA, ZIP

**ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM  
RESTRICTIVE COVENANTS AGREEMENT FOR CONSERVATION  
EASEMENT (RCACE)**

**State Project Number:** \_\_\_\_\_  
**Agreement Number:** \_\_\_\_\_

This Restrictive Covenants Agreement for Conservation Easement, hereinafter referred to as "RCACE", is entered into as of this \_\_\_ day of \_\_\_\_\_, 20xx, by and between the State of California, acting by and through the California Department of Transportation, hereinafter referred to as "STATE", and \_\_\_\_\_, hereinafter referred to as "APPLICANT".

**Recitals**

WHEREAS, APPLICANT acquires the Conservation Easement described in Attachment A, "Legal Description of Conservation Easement," of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference hereinafter referred to as "EASEMENT," for the public purpose of undertaking EASEMENT as an EEM Program project;"

WHEREAS, APPLICANT will be the owner of the EASEMENT to be acquired which is described in Attachment A of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference;

WHEREAS, the EASEMENT to be acquired, developed, rehabilitated or restored pursuant to the Applicant-State Agreement No. \_\_\_\_\_ by the APPLICANT, will be operated, managed, and maintained into the future consistent with the description in Attachment B, "EEM Original Application" of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference;

WHEREAS, STATE has allocated funds to APPLICANT for EASEMENT as provided in section 164.56 of the Streets and Highways Code; and

WHEREAS, both APPLICANT and STATE desire and intend to restrict the EASEMENT uses to environmental enhancement and mitigation purposes and each successive owner of said EASEMENT shall be benefited by the preservation of EASEMENT for environmental enhancement and mitigation purposes.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenantors and covenantees, and expressly for the substantial benefits to be derived there from, and to bind their successors in interest, the said parties agree as follows:

**Condemnation Grid**

If the EASEMENT described in Attachment A of Exhibit 20-E1 RCACE, of this Agreement, is taken, in whole or in part, by exercise of the power of eminent domain by any public, corporate, or other authority, the STATE shall make the determination if such a taking creates a loss of use as described in Attachment B of Exhibit 20-E1 RCACE, due to an unsustainable environmental habitat resulting from the material loss of water, access, ground water flows, etc., so as to annul the purposes intended to be achieved by the Conservation Easement. If the STATE determines there is such a loss, the Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Grantee's and Grantor's interests at the time of this grant, it being expressly agreed that the Conservation Easement constitutes a compensable property right. Grantee shall be entitled to compensation in accordance with applicable law for the value of the EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken. The ratio of the value of the easement to the value of the underlying Fee is \_\_\_\_\_%, such amount having been determined at the time of the grant of this EASEMENT by that certain real property appraisal prepared by \_\_\_\_\_, dated \_\_\_\_\_, on file with the Grantee.

The EEM grant made to the Grantee is for the purpose of acquiring an EASEMENT in the amount of \$\_\_\_\_\_ (the "EEM Grant"). The EEM Grant represents \_\_\_\_\_% (the "EEM Share") of the total cost of the Easement. If the EASEMENT is proposed to be taken in whole or in part, by exercise of the power of eminent domain, the condemning authority shall notify STATE of the proposed taking by sending written notice to: State of California, Department of Transportation, Attn: Legal Department, 1120 "N" Street - MS 57, Sacramento, California 95814, and the State Highway Account shall be reimbursed as follows: Grantee shall pay STATE the EEM Share, \_\_\_\_\_%, of net proceeds received by Grantee from any taking of the EASEMENT (after Grantee deducts costs incurred by Grantee from the gross proceeds received by Grantee in connection with the condemnation) to reimburse STATE for the EEM Grant.

Grantee shall not be obligated to pay STATE as set forth above if STATE approves in writing Grantee's use of those proceeds for the protection of equivalent environmental resources protected by similar conditions to the extent applicable.

If the EEM Share, \_\_\_\_\_%, of the net proceeds received by Grantee is less than the EEM Grant, \$\_\_\_\_\_, then Grantee shall pay STATE, from the balance of the net proceeds received by Grantee (i.e., the remaining \_\_\_\_\_% of the net proceeds which shall be referred to herein as the "Remainder Proceeds"), an amount sufficient that STATE is reimbursed a total of the EEM Grant, \$\_\_\_\_\_, or as close thereto as the Remainder Proceeds will allow. Grantee shall not be obligated to pay STATE any portion of the Remainder Proceeds, if the Remainder Proceeds are contractually required to be paid to any other source who provided funds for the acquisition of the Easement, or if STATE approves in writing Grantee's use of the Remainder Proceeds for the protection of alternative environmental resources subject to the protection of STATE's interests in those resources with similar conditions to the extent applicable.

**Term**

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the Amendment and Revocation provisions of this Agreement.

**Assignment**

Without the written consent of STATE, this Agreement is not assignable in whole or in part by APPLICANT.

**Enforcement**

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

**Indemnification**

Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless the State of California, all officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Gov. Code #8108) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.

**Purpose of Agreement**

This Agreement is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Environmental Enhancement and Mitigation (EEM) Program Applicant-State Agreement No. \_\_\_\_\_, or the application for funds as prepared by APPLICANT.

**Severability**

Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereby execute this Agreement by their duly authorized officers as of the date set forth above and agree to be bound hereby:

**STATE OF CALIFORNIA**  
**DEPARTMENT OF TRANSPORTATION**

**APPLICANT**

By: \_\_\_\_\_  
*(Signature)*

By: \_\_\_\_\_  
*(Applicant Representative Signature)*

\_\_\_\_\_  
*(Name), District Right-of-Way Division Chief*

\_\_\_\_\_  
*(Name and Title)*

\_\_\_\_\_  
*(Agency)*

\_\_\_\_\_  
*(City, CA, Zip)*



**LEGAL DESCRIPTION OF CONSERVATION EASMENT**

*(For this EEM project, insert the legal description of the conservation easement to be purchased by the applicant consistent with the project application, or as approved by CTC or State.)*

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**EEM ORIGINAL APPLICATION**

*(Insert the original EEM application that was submitted to the Resources Agency.)*

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CHANGE OF EEM APPLICANT STATUS REQUEST LETTER: PRE-ALLOCATION VOTE

(On original applicant's letterhead)

(Name), Local Assistance Engineer
Department of Transportation, District \_\_\_\_
Office of Local Assistance
(Address)
(City), CA (ZIP)

Date:

Dear M\_\_\_\_\_:

We hereby request to be placed on the next California Transportation Commission (CTC) agenda for approval to change applicant status from the (original applicant agency) to the (new applicant agency) for the Environmental Enhancement and Mitigation (EEM) Program (project name), Project No.\_\_\_\_. Attached is a completed and signed Resources Agency EEM Program Application cover page, along with signed Assurances from the same application for the (new applicant agency). Also enclosed is an adopting Resolution by their governing board certifying willingness to carry out the project, and a 501(c)(3) (if applicable). The (new applicant agency) also agrees to execute an EEM Program Applicant-State Agreement in their name, along with providing tax identification information to the Caltrans Local Program Accounting Office in order to do business with Caltrans.

We also hereby request to be placed on the CTC agenda for an allocation vote along with the change of applicant status request. If the CTC approves the transfer of applicant status, the allocation vote will be in the name of the (new applicant agency). It is hereby mutually agreed by the signatures below that all rights, duties, obligations, responsibilities, benefits, payments, maintenance, and title of APPLICANT for this project be transferred from the (original applicant agency) to the (new applicant agency).

Please have documentation prepared with the (new applicant agency) as the sole responsible applicant.

(Signature)
(Name and title)
(Old applicant agency)
(Address)
(City), CA (ZIP)

(Signature)
(Name and title)
(New applicant agency)
(Address)
(City), CA (ZIP)
E-mail address:

**CTC and CALTRANS APPROVED/DISAPPROVED:**

**CALTRANS EEM PROGRAM MANAGER**

Department of Transportation,  
1120 "N" Street - MS 1  
Sacramento, CA 95814

**Attachments**

**Distribution:** Local agency sends to the location stated above.

CHANGE OF EEM APPLICANT STATUS REQUEST LETTER: POST-ALLOCATION VOTE

(On original applicant's Letterhead)

(Name), Local Assistance Engineer
Department of Transportation, District \_\_\_\_
Office of Local Assistance
(Address)
(City), CA (ZIP)

Date:

Dear M \_\_\_\_\_:

We hereby request approval from the California Transportation Commission (CTC) to transfer the applicant status from the (original applicant agency) to the (new applicant agency) for the Environmental Enhancement and Mitigation (EEM) Program project (project name and number). We also request to be placed on the next CTC agenda for their approval.

Attached is a completed and signed EEM Program Application cover page and signed Assurances for the same application from the (new applicant agency). Also attached is an adopting resolution by their governing board certifying willingness to carry out the project, and their classification as nonprofit organization under section 501(c)(3) of the IRS code (if applicable). The (new applicant agency) agrees to execute an EEM Program Applicant-State Agreement, along with providing tax identification information to the Caltrans Local Program Accounting Office in order to do business with Caltrans.

It is understood the CTC's approval is conditioned upon receipt of a signed Assignment and Assumption Agreement (AAA) by (original applicant agency) and (new applicant agency). The AAA will include as attachments the previously executed Applicant-State agreement and the original application.

Please have all necessary documentation prepared with the (new applicant agency) listed as the sole responsible applicant.

(Signature)
(Name and Title)
(Original Applicant Agency)
(Address), (City), CA (ZIP)

(Signature)
(Name and Title)
(New Applicant Agency)
(Address), (City), CA (ZIP)
E-mail Address \_\_\_\_\_

CTC and CALTRANS APPROVED/DISAPPROVED:

CALTRANS EEM PROGRAM MANAGER
Department of Transportation,
1120 "N" Street - MS 1
Sacramento, CA 95814

Distribution: Local Agency sends to the location stated above.

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**INVOICE PAYMENT REQUEST MEMO FOR PROJECTS INVOLVING  
ACQUISITION OF REAL PROPERTY OR A CONSERVATION EASEMENT**

*(Prepared by applicant on applicant’s letterhead. Invoices with requests for direct deposit of EEM funds into an escrow account MUST be submitted to the District Local Assistance Engineer 60 days before the close of escrow date.)*

**To:** District \_\_\_ Local Assistance Engineer (DLAE) **Date:** \_\_\_\_\_  
California Department of Transportation  
Office of Local Assistance  
*(Address)* \_\_\_\_\_

**From:** *(Applicant Name and Address)*

**Subject:** *(EEM Project Name, County)*

(Applicant: Select A or B, depending on action needed, and attached appropriate documents.)

A. Please remit EEM funds into Escrow Account as previously directed in the Applicant-Status Agreement, Attachment E, “Remarks and Covenants.” Please find the following required documents attached.

1. One original unrecorded EEM Agreement Declaring Restrictive Covenants or EEM Restrictive Covenants Agreement for Conservation Easements, with notarized signatures (with completed Exhibits), or other State-approved restrictive rights covenants agreement.
2. One original and two copies of the signed Invoice. *(On applicant’s letterhead)*
3. Copy of escrow instructions.
4. Copy of current appraisal.
5. Copy of Preliminary Title Report, with legal description of property or easement.
6. Close of escrow date \_\_\_\_\_ (must show date).

At close of escrow we will record the ADRC or RCACE and send you the original with other documents shown below.

B. We have closed escrow. Attached are the documents to close out the project.

1. Certified copy of recorded Grant Deed or Deed of Conservation Easement (CE).
2. Copy of closing escrow statement.
3. One original signed Final Project Expenditure Report\* *(On applicant’s letterhead)*.
4. One original recorded ADRC.

*(Applicant’s Representative Signature)*

\_\_\_\_\_  
*(Name and Title)*

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**INVOICE PAYMENT REQUEST MEMO FOR PROJECTS INVOLVING ACQUISITION OF REAL  
PROPERTY OR CONSERVATION EASEMENT**

*(Prepared by District. Do not submit to Local Program Accounting until 60 days prior to close of escrow.)*

**To:** Local Program Accounting  
Accounting Office - MS 33  
California Department of Transportation

Date:

**Cc.** HQ EEM Program Coordinator  
Local Assistance Division - MS 1

**From:** District\_\_\_\_, Local Assistance Engineer: \_\_\_\_\_

**Subject:** *(EEM Project Name, County)*

*(District: Circle A or B, depending on action needed, and attach appropriate documents.)*

A. Attached are the documents needed to release funds to escrow account. I understand that Caltrans cannot remit the EEM funds until 30 days prior to escrow close date as shown below.

1. One original signed Invoice\* and two copies *(on applicant's letterhead)*.
2. Copy of escrow instructions.
3. Signed original and two copies of the Final Project Expenditure Report *(prepared by applicant on applicant's letterhead)*.
4. Copy of current appraisal.
5. Copy of Preliminary Title Report, with legal description of property or easement.
6. Close of escrow date \_\_\_\_\_ (must show date).

B. Escrow has closed. Attached are documents to close out the project.

1. Certified copy of recorded Grant Deed or Deed of Conservation Easement (CE)
2. Copy of closing escrow statement
3. One original signed Final Project Expenditure Report\* (on Applicant's letterhead)
4. Final Invoice

**Invoice Payment Request Memo for Projects Involving Acquisition of Real Property  
or a Conservation Easement – (Prepared By District)**

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(District: Send the original recorded EEM Agreement Declaring Restrictive Covenants or EEM Restrictive Covenants Agreement for Conservation Easements with notarized signatures (with completed Exhibits) to EEM Coordinator HQ.

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District Local Assistance Engineer

c: EEM Program Coordinator (with copies of attachments)

**PROCEDURES FOR EEM PROJECTS  
INVOLVING ACQUISITION OF REAL PROPERTY OR CONSERVATION EASEMENT**

1. CTC adopts the annual EEM Program.
2. Applicant requests CTC funding allocation for the specific EEM project.
3. HQ EEM Program Coordinator prepares and forwards the following materials to the Applicant:
  - One (1) copy of the CTC-Stamped Resolution allocating funds to the project (when available).
  - One (1) original copy of the Applicant-State Agreement (Exhibit 20-D).
  - One (1) original copy of the Agreement Declaring Restrictive Covenants (ADRC) (Exhibit 20-E) or EEM Restrictive Covenants Agreement for Conservation Easement (Exhibit 20-E1).

One (1) cover letter which gives website location for: *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Funds for Local Assistance Projects and EEM Guidelines* at <http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm> under Policies and Procedures, and Resources Agency's *EEM Program Procedures and Criteria* at: <http://resources.ca.gov/>.

Preparation of the **Applicant-State Agreement** by the HQ EEM Program Coordinator (except where noted) includes:

- Providing an Applicant-State Agreement Number.
- Providing a Project Number (application number).
- Providing the Expenditure Authorization (EA) Number.
- Stating the effective date of the Agreement.
- Stating the Applicant's name (must be consistent with CTC Resolution adopting EEM Program, if not, a "Change of EEM Applicant Status Request Letter" form must be completed).
- Completing Attachment A "Project Description and Financing" of Exhibit A, including project location, establishing EEM funding and local contributions along with percentages.
- Defining specific roles and responsibilities for all entities involved in performing the work on the project including management and maintenance of property, records retention, and audits.
- If Applicant wishes that State EEM funds to be deposited directly into an escrow account, Attachment E "Remarks and Covenants" of Exhibit D, must be completed by Applicant as follows:

"Pursuant to the terms of Applicant-State Agreement No. \_\_\_\_\_, dated \_\_\_\_\_ and effective immediately, the (*Name of Applicant*) \_\_\_\_\_ requests and authorizes the EEM fund warrants be made out in the name of the \_\_\_\_\_ (Escrow company) and mailed to \_\_\_\_\_ (Escrow Address) Attention: *Name of Escrow Agent* for Escrow No. \_\_\_\_\_ Phone # \_\_\_\_\_, Close of Escrow Date \_\_\_\_\_, Title Company Tax I.D.# \_\_\_\_\_."

Preparation by the HQ EEM Program Coordinator of the **Agreement Declaring Restrictive Covenants** (ADRC) for projects involving acquisition of property in fee title or the **Restrictive Covenants Agreement for Conservation Easement (RCACE)** for acquisition of a conservation easement includes:

- Providing the Project Number (application number), Applicant-State Agreement Number and Name,

- Effective date of the ADRC or Restrictive Covenants Agreement (to be completed by applicant),
  - Including Exhibit 20-E (Attachment A "Legal Description of Real Property"), (Attachment B "Original EEM Application) to the ADRC or Exhibit 20 - E1 (Attachment A "Legal Description of Conservation Easement") and (Attachment B "Original Application") to RCACE, and
- For the acquisition of a conservation easement, the Applicant may, in lieu of executing the Restrictive Covenants Agreement, may include the following State-approved "condemnation" language in the Deed of Conservation Easement":

**CONDEMNATION:** The Conservation Easement ("EASEMENT"), described in Attachment A, Exhibit 20-E1\_\_\_ ("*Legal Description of Conservation Easement*" consistent with *EEM Grant Application*), attached hereto and incorporated herein by this reference, to be acquired, developed, rehabilitated or restored pursuant to the Applicant-State Agreement No. \_\_\_\_\_ by the APPLICANT, will be operated, managed, and maintained into the future consistent with Attachment B, Exhibit 20-E ("*Original EEM Grant Application*"), attached hereto and incorporated herein by this reference. If the EASEMENT is taken by the exercise of the power of eminent domain by any public, corporate, or other authority, the State of California, Department of Transportation ("STATE") shall make the determination if such a taking creates a loss of use, as described in Attachment B, Exhibit 20-E ("*Original EEM Grant Application*"), due to an unsustainable environmental habitat resulting from the material loss of water, access, ground water flows, etc., so as to annul the purposes intended to be achieved by this EASEMENT.

If the STATE determines there is such a loss, the Grantee shall be entitled to compensation in accordance with applicable law for the value of the Conservation EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken.

The Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Grantee's and Grantor's interests at the time of this grant, it being expressly agreed that this EASEMENT constitutes a compensable property right. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds.

Grantee shall be entitled to compensation in accordance with applicable law for the value of the EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken. The ratio of the value of the EASEMENT to the value of the underlying Fee is \_\_\_\_\_%, such amount having been determined at the time of the grant of this EASEMENT by that certain real property appraisal prepared by \_\_\_\_\_, dated \_\_\_\_\_, on file with the Grantee.

The EEM grant made to the Grantee is for the purpose of acquiring the EASEMENT in the amount of \$\_\_\_\_\_. The EEM Grant represents \_\_\_\_\_% (the "EEM Share") of the total cost of the Easement. If the EASEMENT is proposed to be taken in whole or in part by exercise of the power of eminent domain, the condemning authority shall notify STATE of the proposed taking by sending written notice to: State of California, Department of Transportation, Attn: Legal Department - MS 57, 1120 N Street, Sacramento, California 95814, and the State Highway Account shall be reimbursed as follows: Grantee shall pay STATE the EEM Share, \_\_\_\_\_%, of net proceeds received by Grantee from any taking of the EASEMENT (after Grantee deducts costs incurred by Grantee from the gross proceeds received by Grantee in connection with the condemnation) to reimburse STATE for the EEM Grant.

Grantee shall not be obligated to pay STATE as set forth above if STATE approves in writing Grantee's use of those proceeds for the protection of equivalent environmental resources protected by similar conditions to the extent applicable.

If the EEM Share, \_\_\_\_\_%, of the net proceeds received by Grantee is less than the EEM Grant, \$\_\_\_\_\_, then Grantee shall pay STATE, from the balance of the net proceeds received by Grantee (i.e., the remaining \_\_\_\_\_% of the net proceeds which shall be referred to herein as the "Remainder Proceeds"), an amount sufficient that STATE is reimbursed a total of the EEM Grant, \$\_\_\_\_\_, or as close thereto as the Remainder Proceeds will allow. Grantee shall not be obligated to pay STATE any portion of the Remainder Proceeds if the Remainder Proceeds are contractually required to be paid to any other source who provided funds for the acquisition of the EASEMENT, or if STATE approves in writing Grantee's use of the Remainder Proceeds for the protection of alternative environmental resources subject to the protection of STATE's interests in those resources with similar conditions to the extent applicable.

4. Applicant:

- Reviews the Applicant-State Agreement for accuracy and completeness.
- Forwards two (2) original signed Applicant-State Agreement to HQ EEM Program Coordinator for immediate processing, and sends one copy of the Applicant-State Agreement to the DLAE.
- Signs each original agreement discussed under Step 3. Signatures must be notarized to be approved.
- Prepares Invoice (See Attachment D of Exhibit 20-D, Applicant-State Agreement) only for applicants requesting direct deposit of EEM funds into an escrow account and includes Title Company information (for applicants seeking reimbursement of EEM funds after the close of escrow, see Section 20.8, Item 10 of this chapter for preparation of invoice).
- Obtains copy of Preliminary Title Report (covering subject acquisition) with legal description of property or easement.
- Obtains a copy of the Deed of Conservation Easement.
- Compiles draft escrow instructions.
- Obtains copy of current appraisal (supporting the purchase price agreed to between the seller and the applicant).
- If the warrant is to be picked up by Applicant's courier, compiles information with name of courier and Applicant's account number.
- Compiles all above required acquisition documents and sends entire package to DLAE along with the Invoice Payment Request Memo (Exhibit 20-H).

5. Caltrans HQ EEM Program Coordinator:

- Assigns project Expenditure Authorization (EA) number to Agreement.
- Forwards two (2) original Applicant-State Agreements to LPA.

6. Local Program Accounting:

- Encumbers project funds and certifies Agreements.
- Returns the Agreements to HQ EEM Program Coordinator to be conformed.

7. HQ EEM Program Manager:

- Returns one (1) original of the Applicant-State Agreement to Applicant.
- Conforms the original retained Applicant-State Agreement and forwards one copy each to the DLAE, LPA and EEM files.

8. District Local Assistance Engineer:

- Forwards acquisition documents to the District Right-of-Way Division Chief along with a copy of the

original EEM Grant Application and copy of the Applicant-State Agreement for Right-of-Way review and approval of acquisition.

9. District Right-of-Way Division Chief:

- Assures that the real property or conservation easement acquired is a part of the approved project (see Exhibit 20-D, "Applicant-State Agreement," Attachment A, "Project Description and Financing").
- Reviews the preliminary title report and assures it adequately covers the property or conservation easement for which the EEM funds have been allocated. Also assures the title for the property or conservation easement is sufficient for the proposed use and no adverse conditions affect title (see Exhibit 20-E, "Agreement Declaring Restrictive Covenants," Attachment A "Legal Description of Real Property" or Exhibit 20-E1, "EEM Restrictive Covenants Agreement for Conservation Easement", Attachment A "Legal Description of Conservation Easement").
- Assures the management and maintenance of the real property or conservation easement (see Exhibit 20-E, "Agreement Declaring Restrictive Covenants," Attachment B "Original EEM Application" or Exhibit 20-E1, "EEM Restrictive Covenants Agreement for Conservation Easement," Attachment B " EEM Original Application) is consistent with the original Grant Application and the "Applicant-State Agreement.
- Drafts further instructions to escrow agent by providing additional Caltrans instructions to the Title Company escrow instructions. If EEM funds are to be direct deposited into an escrow account, the instructions should include how the funds are to be used (i.e., for the purchase of the subject real property or conservation easement when escrow requirements have been met); requests that the ADRC or EEM Restrictive Covenants Agreement for Conservation Easements is recorded; a certified copy of the recorded Grant Deed, or Deed of Conservation Easement; and Closing Escrow Statement are forwarded to the District EEM Coordinator upon close of escrow.
- Assures that the "Condemnation" language is included in the Deed of Conservation Easement, if there is no Restrictive Covenants Agreement.
- Reviews the appraisal to assure the settlement price for the acquisition or conservation easement does not unreasonably exceed or fall below the fair market value for the property or easement. For most projects, this can be accomplished with a "desk review."
- Reviews the Deed of Conservation Easement or EEM Restrictive Covenants Agreement for Conservation Easements to ensure it contains adequate language to protect the State's investment if the easement is ever taken by the power of eminent domain.
- Approves the Invoice for payment, at this time, only for projects with direct deposit of EEM funds to an escrow account.
- Signs and notarize the ADRC or EEM Restrictive Covenants Agreement.
- Returns the documents to the DLAE.

10. District EEM Coordinator:

- Makes a copy of the signed, notarized ADRC or Restrictive Covenants Agreement and escrow instructions, then sends original ADRC, or Restrictive Covenants Agreement and escrow instructions to the title company.
- Forwards one original and two copies of the Invoice at this time only for projects with direct deposit of EEM funds to an escrow account along with Exhibit 20-H, "Invoice Payment Request Memo," to HQ Local Program Accounting (LPA) for processing not more than 60 days prior to the close of escrow (for reimbursement of EEM funds after the close of escrow see Section 20-8, Item 10, "Invoice and Reimbursement Process" and Final Project Expenditure Report to close out of the project).

11. LPA:

- Ensures Title Company has a tax ID number on file with State, if not, LPA will contact applicant for necessary tax information to pay out EEM funds.
- Process the invoice for payment of EEM funds at this time only for direct deposit of EEM funds to escrow account, and forwards to Accounts Payable.

12. Accounts Payable:

- Processes request and forwards to State Controllers Office.

13. State Controller's Office:

- Sends check to Title Company.

14. Title Company:

- Records the grant deed and Agreement Declaring Restrictive Covenants or Restrictive Covenants Agreement with the county where property is purchased.
- Recorded ADRC or Restrictive Covenants Agreement is returned to District EEM Coordinator by county where property is purchased.
- Sends a copy of recorded grant deed or Deed of Conservation Easement and copy of closing escrow statement to District EEM Coordinator.

15. District Local Assistance:

- Forwards original recorded ADRC or Restrictive Covenants Agreement, copy of recorded grant deed or Deed of Conservation Easement, and closing escrow statement along with completed final report (see Chapter 20, Exhibit 20-M) to the Caltrans HQ EEM Program Coordinator.
- Forwards copy of closing escrow statement to LPA to close out project, along with Final Report.
- For Applicants with acquisition projects requesting reimbursement of EEM funds after the close of escrow, see Section 20-8, Item 10, "Invoice and Reimbursement Process" for processing the final invoice and Final Project Expenditure Report to close out of the project.

16. HQ EEM Coordinator

- Forwards copies of the recorded grant deed and ADRC or Restrictive Covenants Agreement to the Headquarters Office of Right-of-Way Engineering and Operations Research.
- Confirms original recorded ADRC or Restrictive Covenants Agreement and sends copies to applicant and District EEM Coordinator, and files original in DLA archives.

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**CALIFORNIA TRANSPORTATION COMMISSION**  
**Guidelines for Allocating, Monitoring, and**  
**Auditing of Funds for Local Assistance Projects**

**Resolution G-99-25**  
**Amending Resolution G-99-05**

- 1.1 WHEREAS, Government Code 14529.1, requires the Commission to establish Guidelines for Allocating, Monitoring, and Auditing of Funds for Local Assistance Projects, and
- 1.2 WHEREAS, on October 28, 1998, the Commission requested Caltrans to develop Guidelines for Allocating, Monitoring, and Auditing of Funds for Local Assistance Projects and submit them to the Commission in January 1999, and
- 1.3 WHEREAS, the Caltrans proposed Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects were presented and discussed at the January 14, 1999, Commission meeting, and
- 1.4 WHEREAS, the Commission adopted such Guidelines by Resolution G-99-05 on February 17, 1999, and
- 1.5 WHEREAS, the Commission conducted a public hearing on July 15, 1999, to consider proposed amendments to the Guidelines to more clearly address Environmental Enhancement and Mitigation (EEM) projects, and
- 1.6 WHEREAS, subsequent to July 15, 1999, two technical adjustments were proposed making the Guidelines consistent with the proposed STIP Guidelines relative to transfer of funds to Federal Transit Administration and clarifying the Guidelines relative to statutes related to Proposition 116 Bond Funds.
- 2.1 NOW THEREFORE BE IT RESOLVED, the Commission hereby adopts the amended\_Guidelines for Allocating, Monitoring, and Auditing of Funds For Local Assistance projects thereby replacing the Guidelines adopted by Resolution G-99-05, and
- 2.2 BE IT FURTHER RESOLVED, the Commission requests Caltrans in cooperation with the Commission staff, to distribute copies of the Guidelines to each regional agency, each county transportation commission and representatives of local agencies and transit agencies.

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**CALIFORNIA TRANSPORTATION COMMISSION  
GUIDELINES FOR ALLOCATING, MONITORING, AND AUDITING  
OF FUNDS FOR LOCAL ASSISTANCE PROJECTS**

Resolution G-99-25  
Amending Resolution G-99-05

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**CALIFORNIA TRANSPORTATION COMMISSION  
GUIDELINES FOR ALLOCATING, MONITORING, AND AUDITING  
OF FUNDS FOR LOCAL ASSISTANCE PROJECTS**

Resolution G-99-25  
Amending Resolution G-99-05

**I Authority and Purpose**

The Commission is required by Section 14529.1 of the Government Code, as amended by Chapter 622, 1997 statutes (SB 45), to establish guidelines for Commission allocation of funds for local entity projects. The statutory intent of the guidelines is to protect the State's funds and to verify funds are used in a timely manner. The statutes provide the Commission the authority to establish guidelines to verify an entity receiving funds has the resources and capability to implement projects on a timely schedule, to establish a process for monitoring progress in implementing projects and expending funds and to require audits of allocated funds and project expenditures if necessary.

These guidelines become effective when adopted by the Commission. The Commission may revise these guidelines at any time after first giving notice of proposed amendments and conducting at least one public hearing.

**II Scope Of Allocation Guidelines**

These guidelines shall apply to all funds allocated by the Commission for all projects programmed in the STIP that are implemented by entities other than Caltrans. Funds allocated by the Commission for projects funded under the Environmental Enhancement and Mitigation (EEM) Demonstration Program shall be administered consistent with Section IX of these guidelines. For purposes of these guidelines, the term "local entity" includes regional agencies, local agencies, transit agencies, and for EEM projects, nonprofit agencies. The guidelines are intended to provide policy guidance and direction for actions as well as activity processes and procedures related to allocations for local grant projects (projects not implemented by Caltrans). Specific activities governed by these guidelines include requests for Commission allocations, Caltrans review of allocation requests, allocation of funds, expenditure of funds, reimbursements, monitoring and reporting and audits.

The statutes stress that the allocation guidelines shall be kept to a minimum needed to protect State funds and to provide for timely use of funds. In keeping with this statutory intent and with the Commission's objective that the STIP be implemented stressing, accountability, flexibility and simplicity, it is the Commission's intent that these allocation guidelines provide the basic policy guidance for allocation and expenditure of funds. The Commission further intends that Caltrans, in consultation with local entities and Commission staff, develop and maintain detailed procedures for administering the allocation and expenditure of funds for local entity grant projects. The procedures shall include but not be limited to instructions for initiating requests for fund allocation, for authorization to proceed with work, for submittal of invoices, for reimbursement of costs, for project closeouts and for audits. The procedures shall be consistent with the Commission's STIP Guidelines and with federal and State funding and accounting requirements.

### **III Local Entity Resources And Capability**

The Commission will allocate funds for a local project only after the Commission is assured the responsible local entity has the resources and capability to implement the project as programmed, and to complete expenditure of funds in compliance with the timely use of funds requirements as specified in section V of these guidelines.

For streets and highway projects, an entity's resources and capabilities will be judged acceptable by the Commission with the approval of a Master Agreement between Caltrans and the entity. Master Agreement shall be amended to include new projects by approval of a Program Supplement to the Master Agreement. Caltrans will continue to assess local entity compliance with federal-aid and state local assistance statutes, regulations and procedures through the Caltrans Process Review Program.

For rail transit guideway projects, an entity's resources and capabilities shall be judged acceptable by the Commission upon Caltrans' approval of the Senate Bill (SB) 580 review required by Sections 14085 - 14088 of the Government Code. SB 580 requires a two-part review. The first part is focused on the entity and is generally a one-time review unless there are significant changes in the management, accounting, and reporting procedures of the entity. The second part of the review is focused on the proposed funding and schedule for the project.

For projects other than streets and highways and rail transit guideways, an entity's resources and capabilities will be judged acceptable by the Commission upon Caltrans' review and approval of the overall project description, scope of work, and financial plan submitted by the entity as part of the allocation request package.

### **IV Allocation Of Funds**

The Commission will consider allocation of funds for a project or project component when it receives an allocation request and recommendation from Caltrans. All allocation requests shall be rounded to the nearest \$1,000. The request will include a determination of the availability of funding and a recommendation on the source of funding. The recommendation on the source of funding shall include the amounts by fund account i.e., State Highway Account or Public Transportation Account as well as the fund type within the account including type of federal funds. Caltrans' recommendation to the Commission for State, only funding of a project will be made in accordance with Caltrans current policy for exceptions to federal funding. The final determination of fund type available for a project will be made in the Commission's allocation of funds to the project. The Commission will approve the allocation only if the funds are available and are necessary to implement the project as programmed in the STIP. Allocations for right-of-way acquisition or construction will be made only after documentation of the required environmental clearance for the project. In compliance with Section 21150 of the Public Resources Code, Commission allocations to local agencies for project costs, other than for environmental studies and permits, will be made only after documentation of environmental clearance under the California Environmental Quality Act. All funds allocated are subject to the timely use of funds provision as described in Section V of these guidelines.

All allocations shall be rounded to the nearest \$1,000. The Commission will consider making an allocation which exceeds the amount programmed in the STIP, if a region or the interregional program have adequate reserves in the STIP, or if the Commission finds it can approve an advance to the county share or to the interregional share from STIP reserves. Unallocated amounts are available for allocation until the end of the fiscal year in which they are programmed in the STIP. Funds not allocated are subject to the timely use of funds provision described in Section V of these guidelines.

If a project or project component is ready for implementation earlier than the fiscal year that it is programmed in the STIP, the implementing agency may request an allocation in advance of the programmed year. The Commission will consider making advanced allocations based on making a finding that the allocation will not delay availability of funding for other projects programmed in earlier years than the project to be advanced and with the approval of the responsible regional agency if county share funds are to be advanced.

When a local entity is ready to implement a project or project component, the entity will submit a request to Caltrans. Caltrans will review the request, prepare appropriate agreements with the entity and recommend the request to the Commission for action. The typical time required after receipt of the application to complete Caltrans review and recommendation and Commission allocation is 60 days. The specific details and instructions for the allocation, transfer and liquidation of funds allocated to local entities are included in the Procedures For Administering Local Grant Projects In The STIP in consultation with the Commission, regional agencies, local agencies and transit agencies.

The US Department of Transportation regulations require that transit projects using federal funds be transferred from Caltrans to the Federal Transit Administration (FTA) for the administration of the federal funds. The transfer requires FTA approval of a Grant Application from the responsible entity. In order to facilitate the transfer and assure timely use of funds, the Commission encourages all entities to submit a Grant Application to FTA soon after the project is programmed in the STIP to avoid delays in Commission allocation of funds for the project.

The Commission may delegate authority to Caltrans for making some fund allocations to local entities. If the Commission delegates such authority, Caltrans shall apply the conditions and standards in these guidelines to protect State funds and maintain local entity accountability for the project.

**V Timely Use of Funds**

Funds allocated for local entity project development or right-of-way costs must be expended by the end of the second fiscal year following the fiscal year in which the funds were allocated. For local grant projects, the local agency must invoice Caltrans for these costs no later than 180 days after the fiscal year in which the final expenditure occurred.

Funds allocated for construction, or for purchase of rail/transit equipment must be encumbered by the award of a contract within twelve months of the date of the allocation of funds. After the award of the contract, the local entity has up to 36 months to complete (accept) the contract. At the time of fund allocation, the Commission may extend the deadline for completion of work and liquidation of funds if necessary to accommodate the proposed expenditure plan for the project. Federal funds, which are transferred to FTA after Commission allocation, as discussed in Section IV of these guidelines, will be considered encumbered and expended. The local entity has 180 days after contract acceptance to make the final payment to the contractor or vendor, prepare the final Report of Expenditure, and submit the final invoice to Caltrans for reimbursement.

The Commission may extend the deadlines for allocation of funds, for award of a contract, for transfer to FTA, for expenditures for project development or right-of-way, or for contract completion no more than one time, and only if it finds that an unforeseen and extraordinary circumstance beyond the control of the responsible agency has occurred that justifies the extension. The extension will not exceed the period of delay directly attributed to the extraordinary circumstance, and will in no event be for more than 20 months.

Whenever allocated funds are not encumbered by the award of a contract or transferred to FTA, or expended within the deadlines specified above, all unencumbered or unexpended funds from the allocation will be rescinded except for Proposition 116 funds, in accordance with section 99612 of the Public Utilities Code. The Commission will not adjust the county or interregional share for any unencumbered balance of the allocation.

#### **VI Monitoring And Reporting**

Caltrans shall monitor funds allocated for project construction and purchase of equipment and provide monthly reports to the Commission of all projects for which a contract has not been awarded within six-months of the Commission's allocation.

Caltrans shall provide the Commission status reports on all fund allocations that are made by Caltrans in accordance with Commission delegation, which may have been made as specified in Section IV of these guidelines.

It is the Commission's intent that Caltrans, in consultation with regional agencies, develop and implement a process and mechanism to monitor and track local entity projects from the allocation of funds through project completion. The process should facilitate regional agency accountability, and provide for reporting to the Commission on the status of projects, expenditures, and reimbursements.

#### **VII Authorization To Proceed And Reimbursements**

Generally, the earliest date for which work will be reimbursed is the date of the fund allocation by the Commission. If federal funds are included in the allocation, the date of the allocation or date of approval of the Federal Authorization to Proceed (E-76), whichever is latest, establishes the earliest date for which work will be reimbursed.

All reimbursements for expenditures and costs are subject to the allocated funds being appropriated in the State budget approved by the Governor and execution of a Program Supplement, or a Fund Transfer Agreement. In no case shall reimbursements exceed the amount of funds allocated by the Commission. Reimbursements shall not be allowed for work, which is not included in the approved agreements with Caltrans. All reimbursed costs must be supported by an invoice documenting expenditures and costs.

#### **VIII Project Completion And Audits**

Local entities shall be responsible for establishing and maintaining records of project allocations, costs, expenditures and reimbursements. Upon completion of a project, the responsible entity shall be responsible for preparing a final project expenditure report documenting all project expenditures and reimbursements for submittal to Caltrans. Caltrans shall document and report on all allocated funds that were not expended.

Local entities receiving federal funds are subject to audit requirements of the Federal Office of Management and Budget's Circular A-133. A single audit is required if an entity receives more than \$300,000 in federal funds from all sources. Local entity expenditures for all local assistance programs are subject to financial and compliance audits by the State Controller's Office and by Caltrans' Office of External Audits. Normally, project audits are not necessary if expenditures for a project are covered by a single audit report accepted by the appropriate federal agency.

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**IX EEM Program**

**General.** The EEM Program is an annual program of projects separate from the STIP. The EEM Program is funded with State Gas Tax Revenues from the State Highway Account. EEM projects must be consistent with the requirements of Article XIX of the State Constitution. The EEM Program shall be administered consistent with Section IX of these guidelines as well as the Environmental Enhancement and Mitigation Program Procedures and Criteria developed by the State Resources Agency, and the Applicant-State Agreement, Environmental Enhancement and Mitigation Program developed by Caltrans.

**Eligible Costs.** Generally, except as noted herein, all direct costs attributable to an EEM project are eligible for EEM funding. Eligible costs include: project development costs, *real property* acquisition costs, acquisition support costs, construction costs, and construction engineering costs. Ineligible costs include: general program administration and overhead costs, and costs incurred prior to Commission allocation of project funding, financial costs associated with borrowing funds to implement the project, costs of audits, and costs incurred after the end of the second fiscal year following the year in which the funds were allocated by the Commission.

**Project Funding and Timely Use of Funds.** When an entity is ready to implement a project, the entity will submit an allocation vote request to the appropriate Caltrans District. Caltrans will review the request, prepare appropriate agreements and recommend the request to the Commission for allocation action. The entity should allow up to sixty-days from the date of submittal until Commission action. The entity will advise Caltrans of changes in funding amounts and fund sources, and if the project will be re-advertised if bids are too high. Caltrans will approve minor changes in project scope, cost and shifting of funding between project elements. Commission approval is required on substantive changes in project scope. Cost increases must be covered with the applicant's own sources of funding.

Projects that cannot be made ready for Commission funding allocation during the State fiscal year, the program adopted will be dropped from the EEM program. Funding from the dropped project will be assigned to projects further down on the EEM program priority list, or elsewhere in the program. A project dropped from the program may compete for the EEM program in the following years.

The Commission will allocate funds for a project only during the fiscal year in which the project is programmed. The entity must complete the contract and receive reimbursement no later than the end of the second fiscal year following the year in which the funds were allocated. Allocated funds not expended by this deadline will be rescinded.

**Reimbursements and Audits.** The earliest date for which work will be reimbursed is the date of the fund allocation by the Commission. All reimbursements are subject to the allocated funds being appropriated in an adopted State budget. All expenditures will be subject to financial and compliance audits by the State Controller's Office and by Caltrans' Office of External Audits.

All reimbursements will be limited to the State's pro rata share of the project costs as stated in the Commission's fund allocation and in the Applicant-State Agreement.

Payments of EEM funds by the State to local entities will normally be made on a reimbursement basis after costs are incurred by the local entity. The local entity may request progress payments on a monthly or quarterly basis. At the request of an entity and Caltrans, the Commission may consider approving a one-time cash advance of funds if it can be demonstrated that such cash advance is necessary to ensure timely completion of the project.

This document is under "Policies and Procedures at website:  
<http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm>

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**ASSIGNMENT AND ASSUMPTION AGREEMENT (PRIVATE)**

**RECORDING REQUESTED BY AND  
WHEN RECORDED, PLEASE MAIL TO:**

Department of Transportation  
Environmental Enhancement and Mitigation Program  
Attn: Susan Harrington, Coordinator  
1120 N Street (95814)  
P. O. Box 942874 - MS 1  
Sacramento, CA 94274-0001

Recorder stamp: Applicant must record or funds are at risk.
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**ASSIGNMENT AND ASSUMPTION AGREEMENT (PRIVATE)**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (AAA)** is entered into, effective this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between the \_\_\_\_\_ ("Assignor"), the STATE OF CALIFORNIA, ACTING BY AND THROUGH THE DEPARTMENT OF TRANSPORTATION ("Department") and the \_\_\_\_\_ ("Assignee").

**RECITALS**

- A. Assignor executed an Environmental Enhancement and Mitigation Agreement \_\_\_\_\_, dated \_\_\_\_\_, to acquire certain portions of real property located \_\_\_\_\_ County, California, more particularly described on Exhibit AAA-A (the "Property"), attached hereto and incorporated herein by this reference. Assignor, as the applicant for conservation land funds through the Environmental Enhancement and Mitigation Program administered by Department, has received or will receive funding which will allow Assignor to acquire the Property, and subsequently, convey the Property to Assignees. The Property is the total land \_\_\_\_\_ acquired by Assignor with funds from the Environmental Enhancement and Mitigation Program (the "Overall Project"). However, Assignor will convey property title as follows:
- B. As set forth in the Environmental Enhancement and Mitigation Program. Application submitted by Assignor, as "Applicant", (the "Application") attached hereto together with Exhibit of the Application, as Exhibit B, incorporated herein by reference, the purposes for acquiring the Property are broad. Furthermore, it is understood by Assignee that all uses, operations and maintenance of the Property will be to ensure in perpetuity the preservation, enhancement and protection of these stated Purposes.
- C. As a condition to Assignor's receipt of funds from the Environmental Enhancement and Mitigation Program for Overall Project, Assignor entered into an Applicant-State Agreement No. \_\_\_\_\_ Environmental Enhancement and Mitigation (EEM) Program, executed n \_\_\_\_\_, with Department, hereinafter referred to as "EEM Agreement". That EEM Agreement set forth provisions for the fund transfers and cost sharing of Applicant for the Overall Project, as described by Assignor, in the Application. As specified in Article XII, Paragraph 14 of the EEM Agreement, certain

provisions survive beyond the EEM Agreement termination date, and as such, Assignee will assume such obligations and responsibilities upon assignment thereof relative to the Property acquired by Assignee. Those provisions are set forth in Exhibit AAA-C, attached hereto and incorporated herein by this reference. If any reimbursement is required pursuant to Article VI of Exhibit AAA-C, said reimbursement amount shall be calculated at the same proportional rate as the ratio between the Property and the Overall Project.

- D. As another condition to Assignor's receipt of such funds from Department, Assignor executed an Agreement Declaring Restrictive Covenants (ADRC) dated \_\_\_\_\_, with Department. The ADRC provides among other things, that any owner of the Property will enter into covenant and agree to operate and maintain the Property pursuant to conditions and obligations described therein, and as set forth in the Application and EEM Agreement. The ADRC shall be recorded concurrently, with Assignor's acquisition of the Property as an encumbrance on the Property. After its acquisition, Assignor will convey the Property to Assignees, subject to the terms and conditions of the ADRC, and therefore, wishes to assign the obligations contained in the ADRC Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above, to Assignees upon Assignees' acquisition of the fee interest in the Property.
- E. The ADRC provides that Assignor may assign the ADRC, its rights and obligations thereunder to Assignees, subject to the written consent of Department. Assignor desires hereby to assign the ADRC, the Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above, and its rights and obligations thereunder to Assignees, and Assignees' desires to assume Assignor's rights and obligations under the ADRC, the Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above.
- F. All capitalized terms used in this AAA and not otherwise defined herein shall have the meanings attributed to them in the ADRC.

**NOW, THEREFORE**, in consideration of the mutual promises of the parties hereunder and the mutual agreements set forth herein, the parties hereby agree as follows:

1. Assignor hereby assigns, transfers and conveys to Assignees all of Assignor's rights, title and interest as "Applicant" in and to the ADRC, the Application and EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above. Assignees hereby assumes and agrees to completely and timely perform, comply with and discharge, each and every obligation, covenant, representation, warranty, indemnification, duty and liability of Assignor under the ADRC, the Application and the EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above, in order to preserve, enhance and protect in perpetuity those Purposes stated above and identified in the EEM Application.
2. Department hereby consents to the assignment by Assignor and assumption by Assignee of Assignor's rights and obligations under the ADRC, the Application and EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above.
3. This AAA shall be recorded immediately following the recordation of the ADRC, which shall be recorded prior to the Grant Deed executed by MAS conveying the Property to Assignee being recorded.
4. If any party commences an action against another party arising out of, or in connection with this AAA, the prevailing party shall be entitled to recover from the losing party or parties its court costs and attorneys' fees and costs.

5. This AAA shall be governed by and construed in accordance with the laws of the State of California. Time is of the essence of this AAA. This AAA shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. This AAA constitutes the entire agreement of the parties hereto on the matters covered. The invalidity or unenforceability of any provision(s) of this AAA shall not render any other provision(s) invalid or unenforceable.

6. This AAA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement.

IN WITNESS of the foregoing provisions the parties have signed this AAA as of the date set forth below.

ASSIGNOR

ASSIGNEE:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

CONSENTED AND AGREED TO:

STATE OF CALIFORNIA, DEPARTMENT  
OF TRANSPORTATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Notary Acknowledgments

LEGAL DESCRIPTION OF THE PROPERTY

(See attached)

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**ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM ORIGINAL  
APPLICATION**

(See attached)

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**FINAL PROJECT EXPENDITURE REPORT**

(AGENCY LETTER HEAD)

**Date:**

*Name*, District Director  
Department of Transportation  
*Street* or **P.O. Box**  
*City*, CA *Zip Code*  
Attention: *Name*, District Local Assistance Engineer

**Final Project Expenditure Report**

Description/Location of Work:  
Project Completion Date:  
Expenditure Authorization State Project Number:  
State-Local Entity Agreement Number:

State Funds Allocated:  
Expenditures Incurred:

Total \$

- A. Payment to Contractor (Attach final pay estimate)
- B. Other Project Costs:
  - Preliminary Engineering
  - Construction Engineering
  - Any Additional Construction
  - Right-of-Way (Capital and Support)
- C. Liquidation Damages
- D. Outstanding Contractors Claims
- E. Property Acquisition (for land acquisition projects only)
- F. Others (specify)

Sources and Amounts of Additional Funds used:

State Funds Allocated but not used:

**CERTIFICATION**

**I CERTIFY THAT:** to the best of my knowledge and belief, the information in this report is a true and an accurate record of project costs. The work was performed in accordance with the CTC approved scope and State funding for the project.

\_\_\_\_\_  
Signature, Title and Unit of Local Agency Representative

**PROJECT VERIFICATION:** This verification of completion also constitutes approval to pay costs shown in the Final Invoice included in the Report of Expenditures. I have reviewed the job site and found the project completed in accordance with the scope and description of the project authorization document.

**SIGNATURE:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
District Local Assistance Engineer

**SIGNATURE:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
District Landscape Architect (if applicable)

This document is under "Policies and Procedures" at website:  
<http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm>

**SCOPE CHANGE REQUEST**  
*(USE Local Agency Letterhead)*

Date:

TO District Local Assistance Engineer: \_\_\_\_\_  
Attention: *EEM Coordinator*: \_\_\_\_\_  
Address of District Office: \_\_\_\_\_

RE: Request to Amend Project Scope for project # *EEM 20xx(XXX)*

Dear \_\_\_\_\_:

The (*Local Agency*) requests that the Department of Transportation approve proposal to amend the project scope for the above-captioned project to permit (*explain request and attach a chart comparing the original project commitments—what the money was going to purchase—and what the new proposal is*). The new project scope will still fulfill the commitments, goals, intentions made in project scope as stated in the (*Applicant-State Agreement #*) and the application for project *EEM 20xx (XXX)*. (*Attach a map if the request includes change of location from original location approved.*)

Please refer to the attached supporting documentation for additional information and a comparison of the original proposal to the new proposal. The proposed funding is

Original CTC Request	New CTC Request
\$	\$

Status of Project:

Environmental:

- CEQA – Categorical Exemption Section 15313, Class 13. To be filed upon approval of scope change.
- NEPA – NEPA is not required for this project.

Engineering:

- The PS&E development is not applicable to this project.
- Construction: Is not applicable to this project.

The project was adopted in the 20xx/20xx Environmental Enhancement and Mitigation program. Please advise us as soon as Caltrans has made a determination regarding this scope change. You may direct any questions to (*Name*) at (*phone*) and (*e-mail*).

Sincerely,

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature

Attachments

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