

FUND TRANSFER AGREEMENT

THIS FUND TRANSFER AGREEMENT (FTA), IS ENTERED INTO EFFECTIVE ON (date), between the State of California, acting by and through its Department of Transportation, referred to herein as **DEPARTMENT**, and the (**AGENCY NAME**), hereinafter referred to as **AGENCY**.

RECITALS

1. **DEPARTMENT** and **AGENCY**, pursuant to Section 134 of Title 23 of the United States Code (23 USC 134) and Section 450.104 of the Title 23 of Code of Federal Regulations (23 CFR 450.104), are authorized to enter into this FTA pertaining to Federal funding for Transportation studies and planning within the regional area under the jurisdiction of **AGENCY**.
1. **DEPARTMENT** and **AGENCY**, pursuant to Streets and Highways Code section 114(b), Section 134 of Title 23 of the United States Code (23 USC 134) and Section 450. 104 of the Title 23 of Code of Federal Regulations (23 CFR 450.104), are authorized to enter into this FTA pertaining to State and Federal funding for Transportation studies and planning within the regional area under the jurisdiction of **AGENCY**.
1. **DEPARTMENT** and **AGENCY**, pursuant to Streets and Highways Code section 114 (b), are authorized to enter in this FTA pertaining to State funding committed for Transportation studies and planning within the regional area under the jurisdiction of **AGENCY**.
2. **AGENCY** has agreed to implement (enter Project name here), hereinafter the Project, subject to the terms and conditions of this FTA. The Project Description (Scope of Work and Cost Estimate) is attached hereto as Attachment III.
3. The resolution authorizing **AGENCY** to execute this FTA pertaining to above described Project is attached hereto as Attachment II.
4. All services performed by **AGENCY** pursuant to this FTA are intended to be performed in accordance with all applicable Federal, State, and **AGENCY** laws, ordinances, regulations; **DEPARTMENT's** encroachment permits; and **DEPARTMENT'S** published manuals, policies, and procedures.
5. Project funding is as follows:

<u>FUND TITLE</u>	<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
XXXXXX	XXXXXX	XXXXXX
6. This FTA is exempt from legal review and approval by the Department of General Services, pursuant to Public Contract Code section 10295.

SECTION I

AGENCY AGREES:

To timely and satisfactorily complete all Project Work described in Attachment III.

SECTION II

DEPARTMENT AGREES:

DEPARTMENT agrees that when conducting an audit of the costs claimed by **AGENCY** under the provisions of this FTA, **DEPARTMENT** will rely to the maximum extent possible on any prior audit of **AGENCY** performed pursuant to the provisions of applicable State and Federal laws.

SECTION III

IT IS MUTUALLY AGREED:

In consideration of the foregoing and the mutual promises of the parties hereto, **AGENCY** and **DEPARTMENT** agree as follows:

1. Notification of Parties

- a. **AGENCY's** Project Manager is (NAME & PHONE NUMBER)
- b. **DEPARTMENT's** Contract Manager is (NAME & PHONE NUMBER)
- c. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at their respective addresses:

(AGENCY (REAL NAME)
Attention: (PROGRAM MANAGER)
(PROGRAM MANAGER TITLE)
AGENCY STREET ADDRESS
CITY, STATE, ZIP

California Department of Transportation
(DISTRICT/DIVISION)
Attention: (CONTRACT MANAGER)
STREET ADDRESS
CITY, STATE, ZIP

2. Period of Performance

Reimbursable work under this FTA shall begin no earlier than on (DATE), contingent upon approval of this FTA by **DEPARTMENT**, and will terminate on (EXPIRATION DATE).

3. Changes in Terms/Amendment

This FTA may only be amended or modified by mutual written agreement of the parties.

4. Termination

This FTA may be terminated by either party for any reason by giving written notice to the other party at least thirty (30) days in advance of the effective date of such termination. In the event of termination by said notice, funds reimbursed to **AGENCY** will include all allowable authorized non-cancelable obligations and prior costs incurred.

5. Cost Limitation

- a. The total amount reimbursable to **AGENCY** pursuant to this FTA by **DEPARTMENT** shall not exceed \$X,XXX.XX.
- b. It is agreed and understood that this FTA fund limit is an estimate and that **DEPARTMENT** will only reimburse the cost of services actually rendered as authorized by the **DEPARTMENT** Contract Manager at or below that fund limitation established hereinabove.

6. Allowable Costs

- a. The method of payment for this FTA will be based on actual allowable costs. **DEPARTMENT** will reimburse **AGENCY** for expended actual allowable direct and indirect costs, including, but not limited to labor costs, employee benefits, and travel (overhead is reimbursable only if the **AGENCY** has an approved indirect cost allocation plan) and contracted consultant services costs incurred by **AGENCY** in performance of the Project work, not to exceed the cost reimbursement limitation set forth in 5.a, above. Actual costs shall not exceed the estimated wage rates, labor costs, travel and other estimated costs and fees set forth in Attachment III without prior written agreement between **DEPARTMENT** and **AGENCY**.
- b. Reimbursement of **AGENCY** expenditures will be authorized only for those allowable costs actually incurred by **AGENCY** in the performance of the Project work. **AGENCY** must not only have incurred the expenditures on or after the Effective Date of this FTA and before the Termination Date, but must have also paid for those costs to claim any reimbursement.
- c. Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates were not then commercially available to **AGENCY**, its contractors, its subcontractors, and/or its subrecipients, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process.
- d. **DEPARTMENT** will reimburse **AGENCY** for all allowable Project costs no more frequently than monthly in arrears as promptly as **DEPARTMENT** fiscal procedures permit upon receipt of itemized signed invoices in triplicate. Invoices shall reference this FTA Number and shall be signed and submitted to the Contract Manager at the following address:

California Department of Transportation
(District-Division)
Attention: (Contract Manager)
[Contract Manager's address – (Two Lines)]
- e. Invoices shall include the following information:
 1. Names of the **AGENCY** personnel performing work
 2. Dates and times of service
 3. Locations of service (**AGENCY** - address)

7. Reports

- a. **AGENCY** shall submit written progress reports with each set of invoices to allow the **DEPARTMENT's** Contract Manager to determine if **AGENCY** is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.
- b. Any document or written report prepared as a requirement of this FTA shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of those documents or reports.
- c. **AGENCY** will provide five (5) copies and one (1) electronic version of the final written report to the **DEPARTMENT's** Contract Manager.

8. Local Match Funds

- a. Except where expressly allowed in writing herein, reimbursement of credits for local matching funds will be made or allowed only for work performed on and after the start date and prior to the termination date of this FTA, unless expressly permitted as local match expenditures made prior to the effective date of this FTA pursuant to Government Code section 14529.17 or by prior executed SB 2800 FTA for Local Match Fund Credit.
- b. **AGENCY** agrees to contribute the statutorily required local contribution of matching funds (other than state or federal funds), if any is specified within this FTA or in any Attachment hereto, toward the actual cost of the services described in Attachment III or the amount, if any described in an executed SB 2800 (Streets and Highways Code section 164.53) agreement for local match fund credit, whichever is greater. **AGENCY** shall contribute not less than its required match amount toward the services described herein on a proportional monthly or quarterly basis coinciding with its usual invoicing frequency.

9. Cost Principles

- a. **AGENCY** agrees to comply with Office of Management and Budget Circular A-87, Cost Principles for State, Local and Tribal Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- b. **AGENCY** agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items and (b) all parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving Project funds as a contractor, subcontractor, or sub-grantee under this FTA shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- c. Any Project costs for which **AGENCY** has received payment or credit that are determined by subsequent audit to be unallowable under Office of Management and Budget Circular A-87, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are

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

- d. **AGENCY** agrees to include Project in the schedule of projects to be examined in **AGENCY**'s annual audit and in the schedule of projects to be examined under any single audit prepared in accordance with Office of Management and Budget Circular A-133.
- e. Prior to **AGENCY** seeking reimbursement of indirect costs, **AGENCY** must prepare and submit annually to **DEPARTMENT** an indirect cost rate proposal and a central service costs allocation plan (if any) in accordance with Office of Management and Budget Circular A-87 and Local Program Procedures Manual (LLP 04-10).

10. Americans with Disabilities Act

By signing this FTA, **AGENCY** assures **DEPARTMENT** that in the course of performing Project work, it will fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

11. Indemnification

- a. Nothing in the provisions of this FTA is intended to create duties or obligations to or rights in third parties to this FTA or affect the legal liability of either party to the FTA by imposing any standard of care with respect to the development, design, operation, maintenance and repair of State Highways and **AGENCY** facilities different from the standard of care imposed by law.
- b. Neither **DEPARTMENT** nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by **AGENCY** under or in connection with any work, authority or conduct conferred upon **AGENCY** under this Agreement. It is understood and agreed that, **AGENCY** shall fully defend, indemnify and save harmless **DEPARTMENT** and all of its officers and employees from all claims, suits or actions of every name, kind and description arising out of this Agreement, including but not limited to, any tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by **AGENCY** under or in connection with any work, authority or conduct delegated to **AGENCY** under this Agreement.

12. Non-Discrimination

- a. During the performance of this FTA, **AGENCY** and all of its subcontractors and its subrecipients, if any, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status,

denial of family and medical care leave, and denial of pregnancy disability leave. **AGENCY**, its subcontractors, and subrecipients shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. **AGENCY**, its subcontractors and subrecipients shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this FTA by this reference and are made a part hereof as if set forth in full. **AGENCY**, its subcontractors, and sub-recipients shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other collective bargaining agreements in place.

- b. **AGENCY** shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this FTA.
- c. Appendix A, relative to nondiscrimination on federally assisted projects is included as Article 30.
- d. **AGENCY** shall comply with Title VI of the Civil Rights Act of 1964, as amended. Accordingly, 49 CFR 21 through Appendix C and 23 CFR 710.405 (b) are applicable to this FTA and enforceable against **AGENCY** by this reference.

13. Funding Requirements

- a. It is mutually understood between the parties that this FTA may have been written for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the FTA was executed only after ascertaining the availability of a congressional or legislative appropriation of funds.
- b. This FTA is valid and enforceable only if sufficient funds are made available to **DEPARTMENT** by the United States Government and/or the California State Legislature for the purpose of this Project. In addition, this FTA is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this FTA in any manner.
- c. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program and Project, this FTA shall be amended to reflect any reduction in funds.
- d. **DEPARTMENT** has the option to void this FTA under the thirty (30) day termination clause or to amend this FTA to reflect any reduction of funds. In the event of an unscheduled termination, the **DEPARTMENT** Contract Manager may reimburse allowable **AGENCY** costs in accordance with the provisions of Article 4 of this Section III.

14. Records Retention

- a. **AGENCY**, its contractors, subcontractors and sub-recipients shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of **AGENCY**, its contractors, all subcontractors, and sub-recipients shall

conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **AGENCY**, its contractors, subcontractors and sub-recipients connected with Project performance under this FTA shall be maintained for a minimum of three (3) years from the date of final payment to **AGENCY** and shall be held open to inspection, copying, and audit by representatives of **DEPARTMENT**, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by **AGENCY**, its contractors, its subcontractors and sub-recipients upon receipt of any request made by **DEPARTMENT** or its agents. In conducting an audit of the costs and match credits claimed under this FTA, **DEPARTMENT** will rely to the maximum extent possible on any prior audit of **AGENCY** pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by **AGENCY's** external and internal auditors may be relied upon and used by **DEPARTMENT** when planning and conducting additional audits.

- b. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of **AGENCY's** contracts with third parties pursuant to Government Code section 8546.7, **AGENCY**, **AGENCY's** contractors, subcontractors, and sub-recipients and **DEPARTMENT** shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three years from the date of final payment to **AGENCY** under this FTA. **DEPARTMENT**, the California State Auditor, or any duly authorized representative of **DEPARTMENT** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and **AGENCY** shall furnish copies thereof if requested.
- c. **AGENCY**, its contractors, subcontractors, and sub-recipients will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **DEPARTMENT**, for the purpose of any investigation to ascertain compliance with this FTA.

15. Disputes

- a. Any dispute concerning a question of fact arising under this FTA that is not disposed of by agreement shall be decided by the **DEPARTMENT** Contract Officer, who may consider any written or verbal evidence submitted by **AGENCY**.
- b. Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse **AGENCY** from full and timely performance in accordance with the terms of the FTA.

16. Subcontractors

AGENCY shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without prior written authorization by **DEPARTMENT's** Contract Manager unless expressly included (subcontractor identified) in Attachment III as part of the identified Project work. Any subcontract in excess of \$25,000 entered into as a result of this FTA shall contain all the provisions stipulated in this FTA to be applicable to **AGENCY's** subcontractors.

17. Third Party Contracting

- a. **AGENCY** shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this FTA without the prior written approval of **DEPARTMENT**. Contracts awarded by **AGENCY**, if intended as local match credit, must meet the requirements set forth in this FTA regarding local match funds.
- b. Any subcontract entered into by **AGENCY** as a result of this FTA shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.
- c. If local match is a requirement of these funds, **AGENCY** must ensure that local match funds used for the Project meet the requirements outlined in this FTA in the same manner as is required of all other Project expenditures.
- d. In addition to the above, the preaward requirements of third party contractor/consultants with local agencies must be consistent with Local Program Procedures (LPP 00-05).

18. Disadvantaged Business Enterprise

AGENCY agrees to carry out the applicable requirements of Title 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs" in the award and administration of federally assisted Contracts for work performed under this FTA. **AGENCY**, in the administration of its contracts, shall adopt practices that are consistent with the **DEPARTMENT's** DBE Program Plan.

18. Disabled Veterans Business Enterprise

- a. Should Military and Veterans Code sections 999 *et seq.* be applicable to **AGENCY**, **AGENCY** shall meet the 3% Disabled Veterans Business Enterprises goals (or **AGENCY's** applicable higher goals) in the award of every contract for Project work to be performed under this FTA.
- b. **AGENCY** shall have the sole duty and authority under this FTA and each amendment to determine whether these referenced DVBE code sections are applicable to **AGENCY** and, if so, whether participation asserted by those contractors of **AGENCY** were sufficient as outlined in Military and Veterans Code sections 999 *et seq.*

19. Drug-Free Workplace Certification

By signing this FTA, **AGENCY** hereby certifies under penalty of perjury under the laws of California that **AGENCY** will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and will provide a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code section 8355(b) to inform employees about all of the following:
 1. the dangers of drug abuse in the workplace,
 2. the person's or organization's policy of maintaining a drug-free workplace,
 3. any available counseling, rehabilitation, and employee assistance programs, and
 4. penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code section 8355(c), that every employee who works on the proposed contract or grant:
 1. will receive a copy of the company's drug-free policy statement, and
 2. will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.

Failure to comply with these requirements may result in suspension of payments under this FTA or termination of this FTA or both, and **AGENCY** may be ineligible for the award of any future state contracts if **DEPARTMENT** determines that any of the following has occurred: (1) **AGENCY** has made a false certification or, (2) **AGENCY** violates the certification by failing to carry out the requirements as noted above.

20. Relationship of Parties

It is expressly understood that this FTA is an agreement executed by and between two independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

21. Equipment Purchase (By AGENCY)

- a. Prior authorization in writing by the **DEPARTMENT** Contract Manager shall be required before **AGENCY** enters into any non-budgeted purchase order or subagreement exceeding \$500 for supplies, equipment, or consultant services. **AGENCY** shall provide an evaluation of the necessity or desirability of incurring such costs.
- b. For the purchase of any item, service or consulting work not covered in the attached Project Description (Attachment III) and exceeding \$500, three competitive quotations must be submitted with the request or the absence of bidding must be

adequately justified, and prior authorization must be obtained from the **DEPARTMENT's** Contract Manager.

- c. Any equipment purchased as a result of this FTA is subject to the following: **AGENCY** shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this FTA. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (in accordance with established **DEPARTMENT** procedures for its purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one (1) year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to **DEPARTMENT** upon request by **DEPARTMENT**.
- d. At the conclusion of the FTA, or if the FTA is terminated, **AGENCY** may either keep the equipment and credit **DEPARTMENT** 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 **DEPARTMENT** procedures and credit **DEPARTMENT** in an amount equal to the sales price. If **AGENCY** elects to keep the equipment, fair market value shall be determined, at **AGENCY** expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to **DEPARTMENT** and **AGENCY**. If **AGENCY** is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by **DEPARTMENT**.
- e. CFR 49, Part 18.32 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.
- f. Any subagreement entered into as a result of this FTA shall contain all of the provisions of this Article.

22. Disabled Access Review

Disabled access review by the Department of General Services (Office of State Architect) is required for the construction of all publicly funded buildings, structures, sidewalks, curbs and related facilities. No construction contract will be awarded by **AGENCY** for a Project facility unless **AGENCY** plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Administrative Code and the Americans with Disabilities Act (42 USC 12101, et. seq.).

23. Fire Marshal Review

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any **DEPARTMENT** owned or **DEPARTMENT** occupied buildings per section 13108 of the Health and Safety Code. When applicable, **AGENCY** must assure that any relevant Project plans meet the standards of the State Fire Marshal to ensure consistency with California facility fire protection standards.

24. Environmental Clearance

Environmental clearance of Project by **AGENCY** and/or **DEPARTMENT** is required prior to requesting funds for right of way purchase or construction. No department or agency shall request funds nor shall any department/agency board or commission authorize expenditures of funds for any project, except feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied by an environmental impact report per California Public Resources Code section 21102. The California Environmental Quality Act (CEQA), in California Public Resources Code section 21080(b)(10), does provide an exemption for rail projects which institute or increase passenger or commuter services on rail or highway rights-of-way already in use.

25. Labor Code Compliance: Prevailing Wages

If the work performed on this Project is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" that constitutes construction, alteration, demolition, installation, repair or maintenance, **AGENCY** must conform to the provisions of Labor Code sections 1720 through 1815, all applicable regulations, and coverage determinations issued by the Director of Industrial Relations. **AGENCY** agrees to include prevailing wage requirements in its contracts for public work. Work performed by **AGENCY's** own forces is exempt from the Labor Code's prevailing wage requirements.

26. Prevailing Wage Requirements in Subcontracts

AGENCY shall require its contractors and subcontractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a "public work" as defined in Labor Code section 1720(a)(1). Subcontracts shall include all prevailing wage requirements set forth in **AGENCY's** contracts.

27. State-Owned Data

- a. **AGENCY** agrees to comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:
 1. Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect **DEPARTMENT** data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
 2. Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
 3. Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
 4. Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
 5. Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
 6. Notify the Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.

7. Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.
- b. To use the State-owned data only for State purposes under this FTA.
- c. To not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) section 5335.1)

28. Project Close Out

- a. The FTA Expiration Date refers to the last date for **AGENCY** to incur valid Project costs or credits and is the date the FTA expires. **AGENCY** has sixty (60) days after that Expiration Date to make final allowable payments to Project contractors or vendors, prepare the Project Closeout Report, and submit the final invoice to **DEPARTMENT** for reimbursement for allowable Project costs. Any unexpended Project funds not invoiced by that sixtieth (60th) day will be reverted and will no longer be accessible to reimburse late Project invoices.
- b. **DEPARTMENT** reserves the right to withhold final payment to **AGENCY** pending receipt of final deliverable(s) by the **DEPARTMENT's** Contract Manager.

29. Federal Lobbying Activities Certification

- a. **AGENCY** certifies, to the best of its knowledge and belief, that:

No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the **AGENCY**, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding of this FTA, State or Federal grant, the making of any related State or Federal loan, the entering into of any FTA supported contract or agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal FTA contract, grant, loan, or agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this FTA, **AGENCY** shall complete and submit Standard Form-LL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- c. This certification is a material representation of fact upon which reliance was placed when this FTA was entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- d. **AGENCY** also agrees, by signing this FTA, that the language of this certification shall be included in all lower tier subcontracts which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly within each subcontract.

30. Appendix A

During the performance of this FTA, **AGENCY**, for itself, its assignees and successors in interest (hereinafter referred to as **AGENCY**) agrees as follows:

- a. **Compliance with regulations:** **AGENCY** shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations Part 21 – Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- b. **Nondiscrimination:** **AGENCY**, with regard to the Project work performed by it during the term of the FTA, shall act in accordance with Title VI. Specifically, **AGENCY** shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, and sub-recipients including the procurement of materials and leases of equipment. **AGENCY** shall not participate either directly or indirectly in any form of discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices, when the FTA is intended to address a program whose goal is employment.
- c. **Solicitations for Subagreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by **AGENCY** for work to be performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by **AGENCY** of the **AGENCY's** obligations under this FTA and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. **Information and Reports:** **AGENCY** shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by **DEPARTMENT** or any duly authorized representative of the Federal Government to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, **AGENCY** shall so certify to **DEPARTMENT**, or any duly authorized Federal Agency as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of **AGENCY's** noncompliance with the nondiscrimination provisions of this FTA, **DEPARTMENT** shall impose such sanctions as it or any Federal funding agency may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to **AGENCY** under this FTA until the **AGENCY** complies, and/or
- (2) cancellation, termination, or suspension of this FTA, in whole or in part.

f. **Incorporation of Provisions:** **AGENCY** shall include the provisions of paragraphs (a) through (f) in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. **AGENCY** will take such action with respect to any subcontractor or procurement as **DEPARTMENT** or any Federal funding agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, **AGENCY** may request **DEPARTMENT** to enter into such litigation to protect the interest of the State, and, in addition, **AGENCY** may request the United States to enter into such litigation to protect the interest of the United States.

ATTACHMENTS:

The following attachments are incorporated into and are made a part of this FTA by this reference and attachment.

- I. Accounting & Audit Guidelines
- II. **AGENCY** Resolution
- III. Scope of Work, Schedule, and Costs

IN WITNESS WHEREOF, the parties hereto have executed this FTA on the day and year first herein above written:

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

AGENCY NAME

By: _____

By: _____

Title: Contract Officer

Title: _____

Date: _____

Date: _____

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____