

**MASTER FUNDING AGREEMENT**

**BETWEEN THE METROPOLITAN TRANSPORTATION COMMISSION**

**and**

**THE CITY AND COUNTY OF SAN FRANCISCO**

**FOR**

**FISCAL YEAR 2019-20 through FISCAL YEAR 2028-29**

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## **MASTER FUNDING AGREEMENT**

### **Between METROPOLITAN TRANSPORTATION COMMISSION And THE CITY AND COUNTY OF SAN FRANCISCO**

This Master Funding Agreement, effective as of July 1, 2019 (this “Master Funding Agreement” or “Agreement”), is entered into by and between the Metropolitan Transportation Commission (“MTC”), a regional transportation planning agency established pursuant to California Government Code § 66500 *et seq.*, and THE CITY AND COUNTY OF SAN FRANCISCO (“CITY”), acting through the CITY Department that executes and delivers a Supplement as defined below (each, a “Department”). Each reference to the “CITY” in this Agreement shall mean, for purposes of the funding and the work described in a Supplement, the Department that executes that Supplement. Each Department shall, before entering into a Supplement, obtain all necessary City approvals relating to that Supplement. MTC and the CITY are collectively referred to herein as “the Parties.”

#### **WITNESSETH**

WHEREAS, MTC has been designated as the Metropolitan Planning Organization (MPO - federal) and the Regional Transportation Planning Agency (“RTPA” - state) for the San Francisco Bay Region; and

WHEREAS, MTC from time to time expects to provide funds available to it as MPO, RTPA or otherwise to the CITY; and

WHEREAS, it is expected that these funds will be used for planning, programming, transportation, transit, land use or other projects relevant to MTC or its statutory purposes (the “Project” or “Projects”); and

WHEREAS, the Parties wish to set forth the terms and conditions under which MTC may from time to time provide funding to the CITY for the Term of this Agreement; and

WHEREAS, MTC and the City, acting through its Municipal Transportation Agency, entered into a separate master funding agreement dated as of July 1, 2018, and two supplements to that agreement were signed by the City’s Planning Department, but the Parties now intend to transfer those supplements to this Agreement and ratify and confirm those supplements under this Agreement; and

WHEREAS, in order for MTC to make funds available hereunder, MTC and the CITY will enter into at least one Supplement to this Master Funding Agreement, which must be in

substantially the form attached hereto as Exhibit A (each, a “Supplement”) to establish the terms and conditions applicable to the CITY when receiving funds for the Project;

NOW, THEREFORE, the Parties agree as follows:

## **1.0 GENERAL**

This Master Funding Agreement shall have no force and effect with respect to a Project or any portion thereof unless and until a Supplement has been fully executed by both MTC and the CITY (including approval as to form by the City Attorney) governing the relevant Project. Exhibit A, Form of Supplement, is attached hereto and incorporated herein. Each Supplement shall include the following information:

- a. A description of the applicable Project scope of work;
- b. A maximum payment amount for the applicable Project scope of work;
- c. Which clauses attached hereto as Exhibits B-1 through B-7 shall apply to the CITY’s implementation of the applicable Project scope of work;
- d. Any additional covenants, conditions, restrictions or reporting requirements that apply to the applicable Project scope of work or funding source MTC is providing to the CITY;
- e. Identification of the MTC and CITY project managers for the applicable Project scope of work, as well as the Department that is acting on behalf of the City for purposes of that Supplement;
- f. The estimated budget and payment milestones for the applicable Project scope of work; and
- g. Any MTC or CITY resolutions, authorizations or approvals, or any other key documents, relevant to the applicable Project scope of work or funding source MTC is providing to the CITY.

Upon execution by MTC and the CITY of such a Supplement, the CITY shall assume the responsibility for implementing the applicable Project scope of work, and MTC will administer funding to the CITY in accordance with this Agreement, the applicable Supplement, and any other documents incorporated by reference into such Supplement. In the event a provision of the Master Funding Agreement conflicts with a provision in a Supplement, the provision in the Supplement will take precedence.

## **2.0 INTERAGENCY AGREEMENT ADMINISTRATION**

The administration of this Agreement will be conducted by MTC staff. Day-to-day management of individual projects required under this Agreement is assigned to the appropriate Project Manager at the CITY and Project Manager at MTC, as set forth in the applicable Supplement.

### **3.0 FUNDING**

A. The total compensation to be paid to the CITY under this Agreement shall be the sum of the amounts of compensation payable to the CITY as set forth in each Supplement.

B. The CITY and MTC jointly agree to exert their best efforts to manage each component of the Project in such a way that prevents costs from exceeding the estimated budget set forth in the applicable Supplement.

C. Reimbursement of CITY travel expenses and per diem rates are not to exceed the rate specified by the federal General Services Administration except if otherwise required by the State of California Department of Personnel Administration for State-funded projects.

### **4.0 TERM**

This Agreement is in effect from July 1, 2019 to June 30, 2029. This Agreement term may be extended by mutual written agreement.

### **5.0 PAYMENT**

Contingent upon the CITY's satisfactory completion of work products or milestones, as applicable, required under the applicable Supplement, the CITY shall submit invoices to MTC for that portion of the funds available to the CITY that have been expended. This invoice will be in the format and provided no more frequently than prescribed by MTC in the applicable Supplement. In addition, all supporting documentation must accompany expenditures included on CITY invoices. Payment shall be made by MTC within 30 days of receipt of an acceptable invoice, which shall be subject to the review and approval of MTC's Project Manager or a designated representative. Approval of an invoice shall not be unreasonably withheld. The CITY should submit invoices electronically via email to MTC at [acctpay@bayareametro.gov](mailto:acctpay@bayareametro.gov) or deliver or mail invoices to MTC, as follows:

Attention: Accounting Section  
Metropolitan Transportation Commission  
Bay Area Metro Center  
375 Beale Street, Suite 800  
San Francisco, CA, 94105

### **6.0 DELAYS AND FAILURE TO PERFORM**

Whenever the CITY encounters any difficulty that will significantly delay timely performance of work, the CITY shall notify MTC in writing. The parties agree to cooperate to work out a mutually satisfactory course of action.

If MTC determines that (a) the CITY's failure to complete a project on a timely basis is due to causes solely within the CITY's control; and/or (b) the CITY has failed to reasonably mitigate such failure, MTC may impose such sanctions as it may determine appropriate. Sanctions may include withholding of commensurate payment due under this Agreement until compliance is achieved.

## **7.0 AMENDMENTS**

This Agreement or any Supplement hereto may be amended by mutual agreement of MTC and the CITY at any time during the term of the Agreement. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director of MTC and the Director of the applicable Department, or their designated representatives. The MTC Project Manager is not a designated representative for purposes of executing an amendment.

## **8.0 TERMINATION**

Either party may terminate this Agreement or a specific Supplement, in whole or in part, at any time upon 90 days' written notice. In this event, the CITY shall submit an invoice to MTC for an amount representing the actual cost of services performed up to the effective date of termination for which the CITY has not been previously reimbursed. In no event shall the maximum expenditure allowed under this Agreement, as it may be adjusted by a written amendment signed by both parties, be exceeded. Upon payment of the amount found due, MTC shall be under no further obligation to the CITY under this Agreement, monetarily or otherwise.

## **9.0 USE OF THIRD-PARTY CONTRACTS**

The CITY may subcontract or subvene funds to local agencies, consultants or contractors for performance of portions of the work required under this Agreement without the prior written consent of MTC, provided the CITY complies with other applicable requirements of this Agreement and the applicable Supplement hereto, and applicable federal and state requirements.

## **10.0 INDEMNIFICATION**

The CITY shall indemnify, defend, and hold harmless MTC, its Commissioners, representatives, agents and employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any negligent or intentional act or

failure to act of the CITY, its officers, employees or agents, or subconsultants or any of them in connection with this Agreement.

#### **11.0 LAWS AND REGULATIONS**

The CITY shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state and/or a local government, and of any agency thereof, including but not limited to, if applicable, the California Department of Transportation (Caltrans) Local Assistance Procedures Manual, as they exist at the time of execution of the Agreement and as they may be amended in the future, which relate to or in any manner affect the performance of this Agreement and any Supplements.

#### **12.0 RECORDS**

The CITY agrees to establish and maintain an accounting system conforming to generally accepted accounting principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. The CITY further agrees to keep all records pertaining to the Project(s) being funded for audit purposes for a minimum of: (a) three years following final payment to the CITY, (b) four years following the fiscal year of last expenditure under the Agreement; or (c) until completion of any litigation, claim or audit, whichever is longest.

#### **13.0 AUDITS**

The CITY shall permit MTC and MTC's authorized representatives to have access to the CITY's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 12. The CITY shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time. Such permission shall extend to books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement of the CITY's contractors and subcontractors, if any. If applicable, should MTC request access to the construction site and related field operations, MTC shall provide reasonable notice to the CITY, and the CITY shall provide access as it deems reasonable and safe, subject to the rights of the property owner if such owner is not the CITY.

The CITY further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subconsultant agrees that MTC or any of MTC's duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subconsultant for the term specified above.

"Subconsultant" is defined in Article 14.0 Subcontracts, below.



#### **14.0 SUBCONTRACTS**

A. For purposes of this Agreement, “subconsultant” shall mean any consultant or contractor under contract with the CITY to perform Project work. Any subconsultants must be engaged under written contract with the CITY with provisions allowing the CITY to comply with all requirements of this Agreement. Failure of a subconsultant to provide any insurance required under this Agreement shall be at the risk of the CITY. MTC’s Project Manager shall be notified in writing of any substitution or addition of subconsultants.

B. For any Project funded by FHWA or Caltrans, the CITY shall complete Form 10-C, as may be revised by Caltrans from time to time, the current version of which may be found by the link in Exhibit C, Form 10-C, within 30 days of executing an agreement with an A&E consultant and submit it to MTC’s Project Manager. For any Project funded by FTA, the CITY shall provide equivalent documentation that it has complied with FTA procurement requirements with respect to A&E consultants. MTC shall not process payment of any invoice under the applicable Supplement relating to work by a subconsultant unless the CITY shall have submitted to MTC a Form 10-C or equivalent with respect to its contract with such subconsultant.

C. Nothing contained in this Agreement or otherwise, shall create any contractual relation between MTC and any subconsultants, and no subcontract shall relieve the CITY of his/her responsibilities and obligations hereunder. The CITY agrees to be as fully responsible to MTC for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CITY. The CITY's obligation to pay its subconsultants is an independent obligation from MTC's obligation to make payments to the CITY.

D. Unless otherwise provided in this Agreement, applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into with funds provided under this Agreement.

#### **15.0 PROHIBITED INTERESTS**

No member, officer, employee or agent of MTC, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, et seq., direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, the CITY further covenants that it has made a complete disclosure to MTC of all facts of which the CITY is aware upon due inquiry bearing upon any possible interest, direct or indirect, that it believes any member, officer, agent or employee of MTC (or an immediate family member, domestic partner or employer or prospective employer of such member, officer,

agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by MTC.

#### **16.0 ORGANIZATIONAL CONFLICTS OF INTEREST**

The CITY shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed by subconsultants or subcontractors under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to MTC or the CITY; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

The CITY shall not engage the services of any subconsultant or subcontractor on any work related to this Agreement if the subconsultant or subcontractor, or any employee of the subconsultant or subcontractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement that cannot be mitigated in accordance with federal or state guidelines.

If at any time during the term of this Agreement the CITY becomes aware of an organizational conflict of interest in connection with the work performed by a subconsultant or subcontractor hereunder, the CITY shall immediately provide MTC with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The CITY's written notice will also describe alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, MTC becomes aware of an organizational conflict of interest in connection with performance of any work hereunder by a subconsultant or subcontractor, MTC shall similarly notify the CITY. In the event a conflict is presented, whether disclosed by the CITY or its subconsultant or subcontractor, or discovered by MTC, MTC will consider the conflict presented and any alternatives proposed and meet with the CITY to determine an appropriate course of action. MTC's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject the CITY or its subconsultant or subcontractor to damages incurred by MTC in addressing organizational conflicts that arise out of work performed by such subconsultant or subcontractor, or to termination of this Agreement for breach.

**17.0 CHOICE OF LAW**

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State.

**18.0 PARTIAL INVALIDITY**

If any term or condition of this Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

**19.0 NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the parties.

**20.0 ORDER OF PRECEDENCE**

In the event of a conflict in the provisions of this Agreement, any Supplement hereto, or the Exhibits hereto incorporated by reference into such Supplement, the following order of priority shall be used in resolving such conflict: the applicable Supplement shall have first priority, then the Exhibits incorporated into such Supplement, then this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

**METROPOLITAN TRANSPORTATION  
COMMISSION**



Therese W. McMillan, Executive Director

**CITY AND COUNTY OF SAN FRANCISCO**



~~Kate Hartley~~, Dan Adams  
MAYOR'S OFFICE OF HOUSING AND  
COMMUNITY DEVELOPMENT



John Rahaim, Director  
SAN FRANCISCO PLANNING DEPARTMENT

Approved as to Form

Dennis J. Herrera, City Attorney

By \_\_\_\_\_  
Charles Sullivan  
Deputy City Attorney

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

**METROPOLITAN TRANSPORTATION  
COMMISSION**

**CITY AND COUNTY OF SAN FRANCISCO**

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Therese W. McMillan, Executive Director

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Kate Hartley,  
MAYOR'S OFFICE OF HOUSING AND  
COMMUNITY DEVELOPMENT

---

John Rahaim, Director  
SAN FRANCISCO PLANNING DEPARTMENT

Approved as to Form

Dennis J. Herrera, City Attorney

By   
Charles Sullivan  
Deputy City Attorney

**EXHIBIT A**

FORM OF SUPPLEMENT

SUPPLEMENT [insert number] TO MASTER FUNDING AGREEMENT

This Supplement No. \_\_\_ to Master Funding Agreement (“Supplement or “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Metropolitan Transportation Commission (“MTC”) and [the CITY AND COUNTY OF SAN FRANCISCO, acting through the Mayor’s Office of Housing and Community Development] (“CITY”) and supplements the Master Funding Agreement, dated \_\_\_\_\_, 2018, by and between MTC and the CITY.

Pursuant to this Supplement, MTC agrees to provide an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) in [describe funding source] to the CITY to fund the [brief description of Project] (as more fully described in Annex I hereto, the “Supplement Project”). The estimated budget and payment milestones for the Supplement Project scope of work is attached as Annex II hereto.

MTC will reimburse the CITY for its actual eligible costs incurred for completed Supplement Project milestones or deliverables described in Annex II hereto.

Subject to completion of any required environmental review, the Supplement Project work will commence [date], and be completed no later than \_\_\_\_\_, 20\_\_.

The clauses selected below and attached as exhibits to the Master Funding Agreement shall apply to the CITY’s performance of the applicable Supplement Project scope of work hereunder:

- Exhibit B-1, Additional Terms and Conditions (General), Paragraph A
- Exhibit B-1, Additional Terms and Conditions (General), Paragraph B
- Exhibit B-2, Additional Terms and Conditions (Federally Required Clauses)
- Exhibit B-3, Additional Terms and Conditions (State Required Clauses)
- Exhibit B-4, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Non-Federally-Funded Agreements)
- Exhibit B-5, Additional Terms and Conditions (Prevailing Wage Rates, Apprenticeships, and Payroll Records, Federally-Funded Agreements)
- Exhibit B-6, Additional Terms and Conditions (Regional Toll Funds including RM1, RM2, and AB1171)
- Exhibit B-7, Additional Terms and Conditions (Regional Discretionary Federal Funds including STP and CMAQ)

[Insert any additional covenants, conditions, restrictions or reporting requirements that apply to the Supplement Project scope of work or funding source MTC is providing to the CITY.]

[Describe/attach any MTC or the CITY resolutions, authorizations or approvals, or any other key documents, relevant to the applicable Project scope of work or funding source MTC is providing to the CITY.]

The MTC Project Manager for the Supplement Project is [name, telephone, email]. The the CITY Project Manager for the Supplement Project is [name, telephone, email].

This Supplement is supplemental to the Master Funding Agreement; all terms and conditions of the Master Funding Agreement, as may be amended in this Supplement, remain unchanged.

Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Master Funding Agreement.

**METROPOLITAN TRANSPORTATION  
COMMISSION**

**CITY AND COUNTY OF SAN  
FRANCISCO**

\_\_\_\_\_  
Therese McMillan, Executive Director

\_\_\_\_\_  
[Name/Title]

Approved as to Form

Dennis J. Herrera, City Attorney

By \_\_\_\_\_

Deputy City Attorney

**EXHIBIT B-1**  
**ADDITIONAL TERMS AND CONDITIONS (GENERAL)**

**A. INSURANCE REQUIREMENTS**

The CITY shall, at its own expense, obtain and maintain (and/or cause its subconsultant(s) to obtain and maintain, as applicable) the types of insurance and financial security listed (if any) in the applicable attachment or exhibit to the relevant Supplement against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under such Supplement, and in effect at all times for the duration of such Supplement. All policies will be issued by insurers acceptable to MTC, generally with a Best's Rating of A- or better with a Financial Size Category of VIII or better, or as otherwise specified in the applicable Supplement. Notwithstanding anything to the contrary, the CITY may satisfy the insurance requirements herein utilizing self-insurance providing equivalent coverage.

**B. CLAIMS OR DISPUTES**

Unless otherwise directed in writing by MTC, the CITY shall continue performance under this Agreement while any matters in dispute are being resolved. Further, MTC shall pay the CITY for any undisputed work performed by the CITY prior to or during the resolution of the matters in dispute. In the event there is a dispute concerning the interpretation of this Agreement or any aspect of the Project that the project managers identified by MTC and the CITY are unable to resolve, the project manager for either MTC or the CITY may request that an ad hoc Dispute Resolution Committee ("DRC") be convened to resolve the dispute. The DRC shall consist of two members, one appointed by the MTC Executive Director and the other appointed by the Director of Transportation of the CITY. The responsibility of chairing each ad hoc DRC shall alternate between the agencies, beginning with MTC. Further, disputes between MTC and the CITY that cannot be resolved by the DRC may be submitted to alternative dispute resolution, as agreed to by the parties. Fees and expenses of the mediator will be borne equally.



**EXHIBIT B-2**  
**ADDITIONAL TERMS AND CONDITIONS**  
**FEDERALLY REQUIRED CLAUSES**

1. **EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and, for FTA-funded projects, 49 U.S.C. § 5332 and any implementing requirements that FTA may issue. The CITY agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

2. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY**

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC's procurement and professional services activities.

The CITY shall not discriminate on the basis of race, color, national origin or sex in the performance of the applicable Supplement. The CITY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CITY to carry out these requirements is a material breach of contract, which may result in the termination of the applicable Supplement or this Agreement, or such other remedy as MTC deems appropriate.

3. **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

The CITY agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21). For FTA-funded projects, the CITY further agrees to comply with the current FTA Circular 4702.1A, "Nondiscrimination Guidelines for FTA Recipients," the U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, and the U.S. DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons.

4. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The CITY agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

5. STATE ENERGY CONSERVATION PLAN

The CITY shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

6. ALLOWABILITY OF COSTS

The CITY shall comply with the cost principles (as applicable) in 2 Code of Federal Regulations Parts 200 and 1201, as applicable. In addition, all subcontracts must be in accordance with 2 Code of Federal Regulations Part 200, as applicable, MTC's funding agreement with DOT, and any regulations, guidelines and circulars of DOT, applicable as a result of such funding agreement. Further, all subconsultants shall agree to comply with 48 Code of Federal Regulations, Chapter 1, Part 31.

7. LICENSE FOR FEDERAL GOVERNMENT PURPOSES

FTA/FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under the applicable Supplement; and (b) any rights of copyright to which MTC or the CITY purchases ownership under the applicable Supplement.

8. IDENTIFICATION OF DOCUMENTS

NOT USED.

9. RECORDS

In addition to the requirements of Article 12 of the Master Funding Agreement, copies of the CITY audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC no later than 180 days after the close of the CITY's fiscal year following completion of the Project.

10. AUDITS

The CITY agrees to grant MTC, the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives access to the CITY's books, records, accounts, and any and all work products, materials, and other data relevant to the applicable Supplement, for the purpose of making an audit, examination, excerpt and transcription during the term of the applicable Supplement and for the period specified in Article 14. The CITY shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time. If, as a result of any audit, it is determined by the auditor that reimbursement of any costs including profit or fee under the applicable Supplement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CITY agrees to reimburse MTC for those costs within sixty (60) days of written notification by MTC.

The CITY further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subrecipient agrees that MTC the U.S. DOT, FTA or FHWA, as applicable, the Comptroller General of the United States, the State of California, and their authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subrecipient for the term specified above.

11. FLY AMERICA REQUIREMENTS.

The CITY agrees to comply with 49 U.S.C. 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301 - 10, which provide that recipients and subrecipients of Federal funds and their consultants are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property to the extent such service is available, unless travel by foreign air carrier is a matter of necessity as defined by the Fly America Act. The CITY shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements, if used. The CITY agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

12. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.

- A. The CITY acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the CITY certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Supplement or the FTA assisted project for which work is being performed under the applicable Supplement. In addition to other penalties that may be applicable, the CITY further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CITY to the extent the Federal Government deems appropriate.
- B. The CITY also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CITY, to the extent the Federal Government deems appropriate.
- C. The CITY agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

13. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

MTC and the CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the applicable Supplement or this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to MTC, the CITY or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

14. DEBARMENT

**This Article is only applicable if the applicable Supplement exceeds \$25,000.** The CITY certifies that neither it, nor any of its participants, principals or subrecipients is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 2 CFR Parts 180 and 1200, by any Federal agency or department.

15. CLEAN AIR AND WATER POLLUTION ACTS

**This Article is only applicable if the applicable Supplement exceeds \$100,000.** The CITY agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

16. LOBBYING

**This Article is only applicable if the applicable Supplement exceeds \$100,000.** The CITY agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

Attachments:

Attachment A – Federally Required Certifications (the CITY shall either provide these certifications to MTC on request or shall provide copies of such certifications that the CITY has independently made to the Federal Government.)

**EXHIBIT B-2**  
Attachment A  
Federally Required Certifications

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS**

**Lower Tier Covered Transactions (Third Party Contracts  $\geq$  \$25,000)**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

Therefore, by signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency (CITY). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Part 180, Subpart C, and Part 1200, Subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

**2 CFR PART 418, APPENDIX A--CERTIFICATION REGARDING LOBBYING**  
Certification for Contracts, Grants, Loans and Cooperative Agreements  
(To be submitted with each bid or offer exceeding \$100,000)

I, \_\_\_\_\_ certify on behalf of \_\_\_\_\_ that:  
(name and title of grantee official) (name of grantee)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or 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.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

By:

\_\_\_\_\_  
(signature of authorized official)

\_\_\_\_\_  
(title of authorized official)

**EXHIBIT B-3**  
ADDITIONAL TERMS AND CONDITIONS  
STATE-REQUIRED CLAUSES

- 1) Attachment A – Fair Employment Practices Addendum
- 2) Attachment B – Nondiscrimination Assurances
  - a. Appendix A – Clauses to be inserted in every agreement subject to the ACT, as defined in Attachment B of this Exhibit and REGULATIONS, also as defined in Attachment B.
  - b. Appendix B – To be included as covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein
  - c. Appendix C – To be included for subsequent transfer of real property acquired or improved under federal-aid Program
  - d. Appendix D – To be included for the construction or use of or access to space on, over, or under real property acquired or improved under the federal-aid Program
- 3) Attachment C – State Department of Transportation Requirements



**EXHIBIT B-3  
ATTACHMENT A**

**FAIR EMPLOYMENT PRACTICES ADDENDUM**

1. In the performance of the applicable Supplement, the CITY shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. The CITY shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CITY 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. The CITY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into the applicable Supplement by reference and made a part hereof as if set forth in full. Each of the CITY's contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements as appropriate.

3. The CITY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under the applicable Supplement.

4. The CITY shall permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of the applicable Supplement.

5. Remedies for Willful Violation:

(a) 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 the CITY 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 CITY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate the applicable Supplement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by the CITY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to the CITY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure the CITY's breach of the applicable Supplement.

**EXHIBIT B-3**

**ATTACHMENT B**

**NONDISCRIMINATION ASSURANCES**

THE CITY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the CITY receives federal financial assistance from the Federal Department of Transportation. AGENCY GIVES ASSURANCE THAT AGENCY shall promptly take any measures necessary to effectuate the applicable Supplement. This assurance is required by subsection 21.7(a)(1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, the CITY gives the following specific assurances with respect to its federal-aid Program:

1. That the CITY agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.
2. That the CITY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements: the CITY notifies all bidders that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.
3. That the CITY shall insert the clauses of Appendix A of these Nondiscrimination Assurances in every agreement subject to the ACT and the REGULATIONS.
4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where the CITY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the CITY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That the CITY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the CITY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates the CITY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates the CITY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which the CITY retains ownership or possession of the property.

9. That the CITY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that the CITY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That the CITY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. The CITY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any federally assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The CITY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of federally assisted contracts. The California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies is incorporated by reference in the applicable Supplement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the applicable Supplement. Upon notification to the recipient of its failure to carry out the Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to the CITY by STATE, acting for the U.S. Department of Transportation, and is binding on the CITY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

**APPENDIX A TO ATTACHMENT B** (Clauses to be inserted in every agreement subject to  
ACT and REGULATIONS)

During the performance of the applicable Supplement, the CITY, for itself, its assignees and successors in interest (collectively referred to as the CITY) agrees as follows:

(1) **Compliance with Regulations:** The CITY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (the REGULATIONS), which are herein incorporated by reference and made a part of the applicable Supplement.

(2) **Nondiscrimination:** The CITY, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. The CITY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) **Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by the CITY of the CITY's obligations under the applicable Supplement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **Information and Reports:** The CITY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to the CITY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of the CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts the CITY has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the CITY's noncompliance with the nondiscrimination provisions of the applicable Supplement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the CITY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** the CITY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto.

The CITY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event the CITY becomes involved in, or is threatened with,

litigation with a sub-applicant or supplier as a result of such direction, the CITY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, the CITY may request the United States to enter into such litigation to protect the interests of the United States.

**APPENDIX B TO ATTACHMENT B** (To be included as covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein)

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that the CITY shall accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the CITY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the CITY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the CITY, its successors and assigns.

The CITY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) \*

(2) that the CITY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the



absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.\*

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**APPENDIX C TO ATTACHMENT B**

(To be included for subsequent transfer of real property acquired or improved under federal-aid Program)

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by the CITY, pursuant to the provisions of Assurance 7(a) of Attachment I-2.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add 'as covenant running with the land') that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, the CITY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, the CITY shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the CITY and its assigns.

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**APPENDIX D TO ATTACHMENT B** Appendix D – (To be included for the construction or use of or access to space on, over, or under real property acquired or improved under the federal-aid Program)

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the CITY, pursuant to the provisions of Assurance 7 (b) of Attachment I-2 .

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add “as a covenant running with the land”) that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, the CITY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, the CITY shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the CITY, and its assigns.

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

**EXHIBIT B-3, ATTACHMENT C**  
**CALTRANS REQUIREMENTS FOR STATE FUNDING**

**Caltrans Nondiscrimination**

A. In the performance of work undertaken pursuant to the applicable Supplement, the CITY shall not, and shall affirmatively require that its contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave.

B. The CITY shall ensure, and shall require that its contractors and all subcontractors and/or subrecipients shall ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The CITY shall comply, and ensure that its contractors and subcontractors and/or 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 (af), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the applicable Supplement by reference and made a part hereof as if set forth in full.

C. Each of the CITY's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. the CITY shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under the applicable Supplement.

D. The CITY shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with these non-discrimination provisions.

**EXHIBIT B-4**  
**ADDITIONAL TERMS AND CONDITIONS**  
**PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS**  
**NON FEDERALLY FUNDED AGREEMENTS**

The CITY's contractor(s) and all subcontractors shall comply with applicable sections of the California Labor Code and regulations promulgated thereunder (including without limitation, Sections 1720 *et seq.* and Title 8 of the California Code of Regulations Sections 16000 *et seq.*) governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to work performed and/or funded under this Agreement. In particular, the CITY's attention is drawn to Labor Code Sections 1771 (payment of prevailing wage rate), 1775 (penalty for non-payment), 1776 (payroll records), and 1777.5 (use of apprentices). The CITY's contractor(s) and all subcontractors, to the extent the work of such contractor(s) and subcontractors under this Agreement are subject to California Labor Code Section 1720 *et seq.*, shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 and shall furnish electronic certified payroll records directly to the Labor Commissioner through the internet portal of the Division of Labor Standards Enforcement. Per Master Funding Agreement Article 12.0, Records and 13.0 Audits, MTC reserves the right to request copies of the certified payroll records.

**EXHIBIT B-5**  
**ADDITIONAL TERMS AND CONDITIONS**  
**PREVAILING WAGE RATES, APPRENTICESHIPS, AND PAYROLL RECORDS**  
**FEDERALLY FUNDED AGREEMENTS**

The Additional Federal Clauses Applicable to Public Works included in Attachment A, attached hereto and incorporated herein by this reference, and the Davis-Bacon prevailing wages apply to work performed and/or funded under the applicable Supplement. The CITY agrees that the CITY will require its contractor(s) and all subcontractors will pay the higher of (i) the applicable wage set forth in Federal Wage Determinations, and (ii) the applicable California prevailing rate. Certified payroll records in the form set forth in the Public Works Payroll Reporting Form, as found at <https://www.dol.gov/whd/forms/wh347.pdf>, shall be prepared or collected from its contractor(s) and all subconsultant(s) on a weekly basis by the CITY. Per Master Funding Agreement Article 12.0, Records and 13.0 Audits, MTC reserves the right to request copies of the certified payroll records. MTC may withhold payment if the certified payrolls to be submitted by the CITY pursuant to this Exhibit B-5, Prevailing Wage Rates, Apprenticeships, and Payroll Records, are not current.

**EXHIBIT B-5**  
ADDITIONAL FEDERAL CLAUSES APPLICABLE TO PUBLIC WORKS

1. Buy America
2. Davis-Bacon Act
3. Contract Work Hours and Safety Standards Act
4. Prompt Payment of Funds Withheld to Subcontractors

**1. Buy America Requirements**

- A. If steel, iron, or manufactured products (as defined in 49 CFR Sections 661.3 and 661.5) are being procured, the CITY shall require bidders to complete and submit the appropriate certificate as set forth in 49 CFR Section 661.6. If rolling stock is being procured, the CITY shall require bidders to complete and submit the appropriate certificate as set forth in 49 CFR Section 661.12.
- B. In contracts involving the purchase of steel, iron or manufactured products, including rolling stock, the CITY agrees to insert, in substance, the following language:

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11.

**2. DAVIS-BACON ACT AND COPELAND ANTI-KICKBACK ACTS**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (Construction)**

A. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not



apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

**B.** In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

**C.** The applicable federal agency shall upon its own action, or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

**D.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

#### **4. CONTRACT WORK HOURS AND SAFETY STANDARDS (Non-Construction involving employment of labors or mechanics)**

**A.** The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

**B.** The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

**C.** Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

**D.** The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

**5. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS**

The CITY shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The CITY's prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating the CITY's prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

**EXHIBIT B-6**

**ADDITIONAL TERMS AND CONDITIONS (REGIONAL TOLL FUNDS INCLUDING RM1,  
RM2, AND AB 1171)  
(Proposed Resolution for Governing Body)**

**RECITALS**

WHEREAS, Streets and Highways Code (SHC) Sections 30950 *et seq.* created the Bay Area Toll Authority (“BATA”), which is a public instrumentality governed by the same board as that governing MTC; and

WHEREAS, pursuant to SHC Section 31010(b), funds generated in excess of those needed to meet the toll commitments as specified by paragraph (4) of subdivision (b) of Section 188.5 of the SHC shall be available to BATA for funding projects consistent with SHC Sections 30913 and 30914; and

WHEREAS, MTC adopted Resolution No. 3434, Revised, which establishes commitments of bridge toll funds, including such AB 1171 funds, to specific projects and corridors; and

WHEREAS, on November 8, 1988, voters approved Regional Measure 1 (“RM1”), which authorized a standard auto toll of \$1 on the seven state-owned toll bridges in the San Francisco Bay Area to fund various transportation projects within the region; and

WHEREAS, on March 2, 2004, voters approved Regional Measure 2 (“RM2”), increasing the toll for all vehicles on the seven state-owned toll bridges in the San Francisco Bay Area by \$1.00 to fund various transportation projects within the region that have been determined to reduce congestion or to improve travel in the toll bridge corridors; and

WHEREAS, RM2 established the Regional Traffic Relief Plan and listed specific capital projects and programs and transit operating assistance as eligible to receive RM2 funding as identified in SHC Section 30914(c) and (d). The funding amounts assigned to certain of the programs and projects were subsequently revised by MTC Resolution No. 3801; and

WHEREAS, to the extent the Project is receiving RM2 funding hereunder, SHC Section 30914(c) lists the Project to which this Exhibit B-6 and the applicable Supplement apply as one such eligible transportation project and designates the CITY as project sponsor; and

WHEREAS, pursuant to MTC Resolution No. 3636, MTC established procedures whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 Bridge Toll funding. A copy of MTC Resolution No. 3636 is attached hereto and incorporated herein as Attachment D, MTC Resolution No. 3636; and

WHEREAS, the CITY submitted one or more allocation requests for RM2, AB 1171, and/or RM1 funding for the Project to which this Exhibit B-6 applies. A copy of the applicable allocation request(s) as well as the CITY’s resolution(s) approving the allocation request(s) are attached to the applicable Supplement and incorporated herein as Attachment A, Updated Initial Project Report, and Attachment B, the CITY Resolution(s), respectively; and

WHEREAS, by the resolution(s) attached to the applicable Supplement and incorporated herein as Attachment A as Attachment C, MTC Resolution(s) Approving Project Request, MTC approved the CITY's request(s) for the applicable funds for the applicable Project.

**I. THE CITY AGREES**

A. The CITY agrees to perform or cause to be performed the activities described in Attachment A, Updated Initial Project Report. The CITY will provide all necessary staffing and support resources to complete the Project as described in Attachment A, the CITY agrees to meet all conditions listed in Attachment C, MTC Resolution(s) Approving Project Request.

B. The CITY shall provide MTC with annual progress reports on or before each July 31 throughout the term of this Agreement in accordance with the monitoring and reporting requirements specified in MTC Resolution No. 3636.

C. The CITY shall submit invoices to MTC no less than annually, but may submit invoices as frequently as monthly. In either case, the CITY shall submit an invoice to MTC within thirty (30) days after the end of each period for which payment is sought covering costs for the Project activities accomplished through the end of such period, not covered by previously submitted invoices. Each invoice shall be supported by the following information: (i.) A brief narrative progress report of the activities accomplished during the invoice period, including the percentage of the contract complete and the percentage of funding expended; (ii.) the costs requested for reimbursement with RM1, RM2 and/or AB 1171 funds, as applicable; (iii.) the total costs expended for the invoice period broken down by type and source of funding; (iv.) the total RM1, RM2 and/or AB 1171 funds, as applicable received as reimbursement to date; (v.) the total costs expended for project name to date broken down by type and source of funding; and (vi.) any additional supporting data in a form and detail required by MTC.

D. The CITY agrees to spend RM1, RM2 and/or AB 1171 funds, as applicable, at a rate not exceeding the schedule attached to the applicable Supplement and incorporated herein as Attachment E, Reimbursement Schedule.

E. The CITY shall comply with and shall assure that any the CITY contractor performing Project work with RM1, RM2 and/or AB 1171 funds, as applicable, received under this Agreement complies with MTC Resolution No. 3636, Revised, as well as the provisions of MTC's RM2 Policy Guidance contained in Attachment D, MTC Resolution No. 3636, relative to constructing, operating, and maintaining the Project. MTC may update Resolution No. 3636 from time to time. The CITY agrees to comply with the most current Resolution that is approved at any given time.

F. The CITY is responsible for completing the Project within cost, scope and schedule as described in Attachment A, Updated Initial Project Report, as it may be updated from time to time. Any updates must be approved by the CITY and MTC in writing before being incorporated into this Agreement.

G. The CITY certifies that:

- The Project is consistent with the Regional Transportation Plan (“RTP”).
- All environmental permits or clearances necessary for the Project have been or will be obtained, and the year of Project funding for the construction phase of the Project has taken into consideration the time necessary to obtain permitting approval for the Project as an operable and useable segment.
- The Project or portion thereof to be funded under this Agreement will be fully funded upon the execution of the applicable Supplement.
- The CITY has reviewed the Project needs and has adequate internal staffing and support resources to deliver and complete the Project within the cost, scope, and schedule set forth in the Initial Project Report, as updated, attached to the applicable Supplement as Attachment A.
- If applicable to the Project, the CITY is an eligible sponsor of projects in MTC Resolution No. 3434, Revised. [may be included in Opinion of Counsel]
- If applicable, the CITY is authorized to submit an application for RM2 funds for the Project in accordance with SHC Section 30914(c).
- If applicable, the CITY is authorized to submit an application for AB 1171 funds for the Project in accordance with SHC Section 31010(b).
- Prior to implementation of the Project, the CITY will complete all required environmental review and will be in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*), with the State Environmental Impact Report Guidelines (14 California Code of Regulations Sections 15000 *et seq.*), and, if relevant, the National Environmental Policy Act (NEPA) (42 USC 4321 *et seq.*) and the applicable regulations thereunder.
- There is no legal impediment to the CITY making allocation requests for RM1, RM2 and/or AB 1171 funds, as applicable. [may be included in Opinion of Counsel]
- There is no pending or threatened litigation which might in any way adversely affect the Project or the ability of the CITY to deliver such Project. [may be included in Opinion of Counsel]

H. In addition to the CITY’s commitment under Article 10, INDEMNIFICATION, of the Master Funding Agreement, the CITY agrees at its own cost, expense, and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, its Commissioners, representatives, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM1, RM2 and/or AB 1171 funds, as applicable, as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

I. If any revenues or profits from any non-governmental use of the Project are collected by the CITY, those revenues or profits shall be used exclusively for the public transportation services for which the Project was initially approved, either for capital improvements or maintenance and operational costs, otherwise MTC is entitled to a proportionate share equal to MTC’s percentage participation in the Project. MTC’s percentage participation shall equal the amount of funds allocated to Project, divided by the total Project budget as shown in Attachment E, Reimbursement Schedule, as updated from time to time, as such amount may be adjusted to reflect total project costs.

J. Project assets purchased by the CITY with RM1, RM2 and/or AB 1171 funds, as applicable, including facilities and equipment, shall be used for the intended public transportation uses and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for their useful life, MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the fair market value of the facilities and equipment at the time the public transportation uses ceased, which sum shall be paid back to MTC in the same proportion that RM1, RM2 and/or AB 1171 funds, as applicable, were originally used.

K. The CITY shall post on both ends of the Project construction site(s), unless prohibited by the site owner if such owner is not the the CITY, at least two signs visible to the public stating that the Project is funded with RM1, RM2 and/or AB 1171 funds, as applicable.

L. The CITY's Director of Transportation, or designee, is delegated the authority to make non-substantive changes or minor amendments to the initial project report as he/she deems appropriate; otherwise, Article 7, AMENDMENTS, of this Agreement applies.

M. The CITY agrees to comply with the provisions of MTC Resolution No. 3636, Revised, and the MTC Resolutions set forth in Attachment C, MTC Resolution(s) Approving Project Request.

## **II. MTC AGREES**

A. MTC agrees to provide the CITY with RM1, RM2 and/or AB 1171 funds, as applicable, within the allocation amounts in Attachment C, MTC Resolution(s) Approving Project Request and as restated in the relevant Supplement for the purpose of funding the Project as described in Attachment A.

The entire funding amount is available for reimbursement based on the schedule included in Attachment E, Reimbursement Schedule, to the applicable Supplement. In addition, if applicable, MTC agrees to support the CITY's allocation request from the State according to the Allocation Request Schedule provided in Attachment F to the applicable Supplement.

In the event the CITY does not use all RM1, RM2 and/or AB 1171 funds, as applicable, made available in a given fiscal year, those unused amounts will be available for reimbursement in subsequent year(s) for the duration of this Agreement.

**III. IT IS MUTUALLY AGREED**

A. MTC may terminate the applicable Supplement, in its sole discretion, for any force majeure event, including but not limited to any earthquake, flood or other natural disaster, any epidemic, blockade, rebellion, war, act of sabotage or civil commotion, fire, explosion or strike, or prolonged economic conditions affecting the ability of the Bay Area Toll Authority to make payments to bond holders who shall in all circumstances have priority to payment of funds, if such event (i) irrecoverably disrupts or renders impossible the CITY's performance hereunder; or (ii) disrupts MTC's ability to make payments hereunder. If MTC so terminates the applicable Supplement, the CITY will be entitled to payment for non-recoverable Project costs incurred prior to the date of such termination, including but not limited to any amounts the CITY owes to the owner of the Project construction sites, if such owner is not the CITY, up to the maximum amount payable under this Agreement.

B. If the CITY fails to perform as specified in this Agreement and the applicable Supplement, MTC may terminate the applicable Supplement or this Agreement for cause. Termination shall be effected by serving a 60-day advance written notice of termination on the CITY, setting forth the manner in which the CITY is in default. If the CITY does not cure the breach or describe to MTC's satisfaction a plan for curing the breach within the 60-day period, MTC may terminate this Agreement or the applicable Supplement for cause. In the event of such termination for cause, the CITY will be entitled only to those costs incurred for already completed Project work, not to exceed the maximum amount payable under this Agreement for such Project work, however, in no event shall MTC be required to reimburse the CITY for any costs incurred for work causing or contributing to the default.

C. If the Project is cancelled, suspended indefinitely, or otherwise not completed for any reason, the CITY shall repay MTC any RM1, RM2 and/or AB 1171 funds, as applicable, expended that exceed MTC's proportionate share of eligible costs for the Project.

D. Upon completion of the Project, the CITY will properly account for all Project costs incurred.

E. The applicable Supplement shall terminate upon closeout of the PROJECT in accordance with Policies and Procedures in MTC Resolution No. 3636, Revised, or on the termination date, if any, set forth in the Supplement, whichever is sooner.

F. The terms and conditions of this Agreement include the following and each is incorporated by reference herein as if fully set forth herein.

Attachment A – Updated Initial Project Report (Allocation Request)

Attachment B – The CITY Resolution(s) (and opinion of counsel, if applicable)

Attachment C – MTC Resolution(s) Approving Project Request(s)

Attachment D – MTC Resolution No. 3636, Revised

Attachment E – Reimbursement Schedule

Attachment F – Allocation Request Schedule

**EXHIBIT B-7**  
**ADDITIONAL TERMS AND CONDITIONS (REGIONAL DISCRETIONARY FEDERAL FUNDS INCLUDING STP AND CMAQ)**

1. TERMINATION

Notwithstanding Article 8.0, TERMINATION in the Master Funding Agreement, MTC may terminate this Agreement without cause upon ten (10) days prior written notice. If MTC terminates this Agreement without cause, the CITY shall be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable. If the CITY fails to perform as specified in this Agreement, MTC may terminate this Agreement for cause by written notice and the CITY shall be entitled only to costs incurred for work product acceptable to MTC, not to exceed the maximum amount payable under this Agreement for such work product.

2. RETENTION OF RECORDS

The CITY agrees to establish and maintain an accounting system confirming to GAAP that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs.

The CITY further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of three years following final payment to the CITY or four years following the fiscal year of the last expenditure under this Agreement, whichever is longer, in accordance with generally accepted accounting principles. Copies of the CITY audits, if any, performed during the course of Project development and at Project completion shall be forwarded to MTC no later than 180 days after fiscal year end close.

3. AUDITS

Notwithstanding Article 13.0, AUDITS in the Master Funding Agreement, the CITY agrees to grant MTC, or any agency that provides MTC with funds for the Project, including but not limited to, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, and their authorized representatives access to the CITY's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of this Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway and for the retention period specified in Article 4.

The CITY further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that MTC, the U.S. Department of Transportation, FHWA, the Comptroller General of the United States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, during normal business hours, for the term specified above. The term "contract" as used in this clause excludes agreements not exceeding \$25,000.



4. LICENSE TO WORK PRODUCTS [subject to negotiation depending on nature of project]

The CITY grants to MTC an irrevocable, non-exclusive, royalty-free license to use without restriction and share with any person or entity all drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture, and any other documents, materials, data, and products (“Work Products”) developed, prepared, or assembled by the CITY or the CITY’s consultant(s) or its subconsultants pursuant to this Agreement. MTC may exercise their licenses to Work Products through sublicenses to a third party, with the approval of the CITY. FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which the CITY or the CITY’s consultant(s) or subconsultants purchase ownership under this Agreement.

5. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332 for FTA-funded projects, the CITY agrees that it shall not, on the grounds of race, religious creed, color, national origin, age, physical disability or sex, discriminate or permit discrimination against any employee or applicant for employment.

6. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

It is the policy of MTC and the U.S. Department of Transportation to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to MTC’s procurement and professional services activities.

The CITY shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The CITY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CITY to carry out these requirements is a material breach of contract, which may result in the termination of this agreement or such other remedy as MTC deems appropriate.

7. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The CITY agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (47 U.S.C. § 2000(d)) and the regulations of the Department of Transportation issued thereunder (49 CFR Part 21).

8. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

The CITY agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. § 5310(f); and their implementing regulations.

9. STATE ENERGY CONSERVATION PLAN

The CITY shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321).

10. DEBARMENT

The CITY certifies that neither it, nor any of its participants, principals or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department.

11. CLEAN AIR AND WATER POLLUTION ACTS

The CITY agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7501 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

12. LOBBYING

The CITY agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 United States Code §1352 and 49 C.F.R. Part 20.

13. INDEMNIFICATION

Notwithstanding Article 10.0, INDEMNIFICATION, in the Master Funding Agreement the CITY shall indemnify and hold harmless MTC, Caltrans, their Commissioners, Directors, officers, agents and employees from any and all claims, demands, suits, loss, damages, injury and/or liability (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the CITY, its officers, directors, employees, agents and contractors, or any of them, under or in connection with this Agreement; and the CITY agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, Caltrans, their Commissioners, Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

14. COMPLIANCE WITH LAWS

The CITY shall comply with any and all laws, statutes, ordinances, rules, regulations or requirements of the federal, state, or local government, and any agency thereof, including, but not limited to MTC, the U.S. DOT, FHWA, the State, and Caltrans, which relate to or in any manner affect the performance of this Agreement. Those laws, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on MTC as an the CITY of federal or state funds are hereby in turn imposed on the CITY (including, but not limited to, 2 CFR Part 200, *et seq.*, and are herein incorporated by this reference and made a part hereof.

The CITY contractors shall agree to comply with all 48 CFR, Chapter 1, Part 31, Contract Cost Principles and Procedures. In addition, the CITY certifies that the the CITY and its contractors shall comply with the requirements of the California Environmental Quality Act (CEQA), California Public Resources Code Section 21,000 *et seq.* and with the State Environmental Impact Report Guidelines (14 California Code of Regulators Section 15000 *et*

*seq.*) and the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321 *et seq.* and the applicable regulations thereunder.

15. IDENTIFICATION OF DOCUMENTS

The CITY shall ensure that all reports and other documents completed as part of this Agreement shall carry the following notation on the front cover or title page:

The preparation of this report has been financed in part by grants from the U.S. Department of Transportation. The contents of this report do not necessarily reflect the official views or policy of the U.S. Department of Transportation.

**EXHIBIT C**  
**FORM 10-C**

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10c.pdf>