

DEPARTMENT OF TRANSPORTATION

Division of Local Assistance
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File : 04-SF-SFPT

December 3, 2007

Ms. Monique Webster
Manager, Grants Procurement/Management
City & County of San Francisco, MTA / Dept of Parking & Traffic
1 S. Van Ness Ave., 7th Flr.
San Francisco, CA 94103

Dear Ms. Webster:

Enclosed is your fully executed copy of the Administering Agency-State Master Agreement No. 00043S.

Sincerely,

A handwritten signature in cursive script that reads "William J. Zhang".

RAY ZHANG, Chief
Office of Project Implementation
Division of Local Assistance

Enclosure

c: OLP AE Project Files
(04) DLAE - Sylvia Fung

MASTER AGREEMENT
ADMINISTERING AGENCY - STATE AGREEMENT
FOR
STATE-FUNDED PROJECTS

District Municipal Transportation Agency
District Administering Agency

Agreement No. 00043S

This AGREEMENT, is entered into effective this 4th day of December, 2007 ("Effective Date"), by and between the City and County of San Francisco, through its Municipal Transportation Agency, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE, and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. The Legislature of the State of California has enacted legislation by which certain State funds are made available for use on local transportation related projects of public entities qualified to act as recipients of these state funds; and
2. ADMINISTERING AGENCY has applied to the California Transportation Commission (CTC) and/or STATE for funding from either the State Transportation Improvement Program (STIP), or other State-funded programs (herein referred to as "STATE FUNDS"), as defined in the Local Assistance Program Guidelines (LAPG), for use on local authorized transportation related projects as a local administered project(s), hereinafter referred to as "PROJECT"; and
3. Said PROJECT will not receive any federal funds; and
4. Before STATE FUNDS will be made available for PROJECT, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving STATE FUNDS for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program PROJECT unless and until a project-specific Program Supplement to this AGREEMENT for state-funded projects, hereinafter referred to as "PROGRAM SUPPLEMENT", has been fully executed by both STATE and ADMINISTERING AGENCY.
2. The State-approved project-specific allocation letter designates the party responsible for implementing the PROJECT, the type of work, and the location of the PROJECT.
3. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive STATE FUNDS from/through STATE for the designated PROJECT. The PROGRAM SUPPLEMENT shall also show these STATE FUNDS that have been initially encumbered for the PROJECT, along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of the PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.
4. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future allocations, encumbrances and invoice payments for any on-going or future STATE FUNDED PROJECT performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.
5. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of STATE FUNDS encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.
6. STATE FUNDS will not participate in any portion of PROJECT work performed in advance of the effective date of the executed PROGRAM SUPPLEMENT for said PROJECT.
7. Projects allocated with STATE FUNDS from the STIP will be administered in accordance with the current CTC STIP Guidelines, as adopted or amended and in accordance with Chapter 23 of the Local Assistance Program Guidelines (LAPG) published by STATE.

8. Projects allocated with STATE FUNDS not programmed in the STIP will be administered in accordance with the applicable chapter of the LAPG and/or any other instructions published by STATE.
9. ADMINISTERING AGENCY's eligible costs for preliminary engineering work includes all preliminary work directly related to the PROJECT up to contract award for construction, including, but not limited to, environmental studies and permits (E&P), preliminary surveys and reports, laboratory work, soil investigations, the preparation of plans, specifications and estimates (PS&E), advertising for bids, awarding of a contract and project development contract administration.
10. ADMINISTERING AGENCY's eligible costs for construction engineering include actual inspection and supervision of PROJECT construction work; construction staking; laboratory and field testing; and the preparation and processing of field reports, records, estimates, final reports, and allowable expenses of employees/consultants engaged in such activities.
11. Unless the PARTIES agree otherwise in writing, ADMINISTERING AGENCY's employees or its engineering consultant(s) shall be responsible for all PROJECT engineering work.
12. ADMINISTERING AGENCY shall not proceed with final design of the PROJECT until final environmental approval of the PROJECT. Final design entails the design work necessary to complete the PS&E and other work necessary for a construction contract but not required earlier for environmental clearance of that PROJECT.
13. If the PROJECT is not on STATE-owned right of way, the PROJECT shall be constructed in accordance with Chapter 11 of the Local Assistance Procedures Manual (LAPM) that describes minimum statewide design standards for local agency streets and roads. The design standards for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LAPM.
14. If the PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and where appropriate, an executed cooperative agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its' contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.
15. When the PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING

AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

16. The Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

17. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT.

18. Unless otherwise provided in the PROGRAM SUPPLEMENT, ADMINISTERING AGENCY shall advertise, award, and administer the PROJECT construction contract or contracts.

19. The cost of maintenance, security, or protection performed by ADMINISTERING AGENCY or contractor forces during any temporary suspension of the PROJECT or at any other time may not be charged to the PROJECT.

20. ADMINISTERING AGENCY shall submit project-specific award information, using Exhibit 23-A of the LAPM, to STATE's District Local Assistance Engineer, within sixty (60) days after contract award. A copy of Exhibit 23-A shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY to: Department of Transportation, Division of Accounting Local Programs Accounting Branch, MS #33, PO Box 942874, Sacramento, California 94274-0001

21. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within 180 days of project completion may result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance Chapters 17 and 19 of the LAPM.

22. ADMINISTERING AGENCY shall comply with the Americans with Disabilities Act (ADA) of 1990 that prohibits discrimination on the basis of disability and all applicable regulations and guidelines issued pursuant to the ADA.

23. The Governor and the Legislature of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM, attached hereto as Exhibit A and further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of work connected with PROJECT shall incorporate Exhibit A (with third party's name replacing ADMINISTERING AGENCY) as parts of such agreement.

24. ADMINISTERING AGENCY shall include in all third party contracts awarded, when applicable, a clause that requires each contractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective at the date of contract award by the ADMINISTERING AGENCY.

ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a STATE-FUNDED PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of a PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.

2. The furnishing of rights of way by ADMINISTERING AGENCY as provided for herein includes, and is limited to, the following, unless the PROGRAM SUPPLEMENT provides otherwise:

- (a) Expenditures to purchase all real property required for PROJECT free and clear of liens, conflicting easements, obstructions and encumbrances, after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.
- (b) The cost of furnishing of right of way as provided for herein includes, in addition to real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of damages to owners of remainder real property not actually taken but injuriously affected by PROJECT.
- (c) The cost of relocation payments and services provided to owners and occupants pursuant to Government Code sections 7260-7277 when PROJECT displaces an individual, family, business, farm operation or nonprofit organization.
- (d) The cost of demolition and/or the sale of all improvements on the right of way after credit is recorded for sale proceeds used to offset PROJECT costs.
- (e) The cost of all unavoidable utility relocation, protection or removal.
- (f) The cost of all necessary hazardous material and hazardous waste treatment, encapsulation or removal and protective storage for which ADMINISTERING AGENCY accepts responsibility and where the actual generator cannot be identified and recovery made.

3. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored under the PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.

2. Upon ADMINISTERING AGENCY's acceptance of the completed construction contract or upon contractor being relieved of the responsibility for maintaining and protecting the PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for the PROJECT in a manner satisfactory to the authorized representatives of STATE and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of the PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future STATE FUNDED PROJECTS of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.

3. The PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as the PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

ARTICLE IV – FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission.
2. STATE'S financial commitment of STATE FUNDS will occur only upon the execution of this AGREEMENT, the execution of each project-specific PROGRAM SUPPLEMENT and/or STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed duplicate invoices in arrears for reimbursement of allowable PROJECT costs on a monthly or quarterly progress basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, at a minimum, to submit invoices at least once every six months commencing after the STATE FUNDS are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future allocations and invoice payments for any on-going or future STATE-FUNDED PROJECT performed by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six- (6-) month period
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with Chapter 5 of the LAPM.
6. Invoices must have at least one copy of supporting backup documentation for allowable costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. An indirect cost allocation plan and related documentation are to be provided to STATE (Caltrans Audits & Investigations) annually for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for reimbursement. The indirect cost allocation plan must be prepared in accordance with the requirements set forth in Office of Management and Budget Circular A-87 and Chapter Four of the LAPM.
9. STATE will withhold the greater of either two (2) percent of the total of all STATE FUNDS encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING

AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

10. The estimated total cost of a PROJECT, the amount of STATE FUNDS obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES with an allocation letter and finance letter. STATE FUNDING may be increased to cover PROJECT cost increases only if such additional funds are available and the CTC and/or STATE concurs with that increase in the form of an allocation and finance letter.

11. When such additional STATE FUNDS are not available, ADMINISTERING AGENCY agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

12. ADMINISTERING AGENCY shall use its own non STATE FUNDS to finance the local share of eligible costs and all PROJECT expenditures or contract items ruled ineligible for financing with STATE FUNDS. STATE shall make the final determination of ADMINISTERING AGENCY's cost eligibility for STATE-FUNDED financing with respect to claimed PROJECT costs.

13. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

14. STATE FUNDS allocated from the STIP are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

15. STATE FUNDS encumbered for a PROJECT are available for liquidation only for five (5) years from the beginning of the State fiscal year when those funds were appropriated in the State Budget. STATE FUNDS not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance in accordance with Government Code section 16304. The exact date of fund reversion will be reflected in the STATE signed PROJECT finance letter.

16. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid to rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY within thirty (30) days of such invoice.

17. ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

18. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. ADMINISTERING AGENCY agrees to comply with the provisions set forth in 23 CFR Parts 140, 645 and 646 when contracting with railroad and utility companies. Notwithstanding the above, STATE agrees that the ADMINISTERING AGENCY may implement Chapter 14B of the San Francisco Administrative Code (Local Business Enterprise and Non-discrimination in Contracting Ordinance), as it may be amended from time to time, with regard to third party contracts using PROJECT funds.

19. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under OMB Circular A-87, 48 CFR, Chapter 1, Part 31, 23 CFR Parts 140, 645 and 646 or 49 CFR, Part 18, are subject to repayment by ADMINISTERING AGENCY to STATE.

20. Upon written demand by STATE, any overpayment to ADMINISTERING AGENCY of amounts invoiced to STATE shall be returned to STATE.

21. Should ADMINISTERING AGENCY fail to refund any moneys due STATE as provided herein or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty (30) days of demand, or within such other period as may be agreed to in writing between the PARTIES hereto, STATE, acting through the State Controller, the State Treasurer, the CTC or any other public entity or agency, may intercept, withhold and demand the transfer of an amount equal to the amount paid by or owed to STATE for each PROJECT, from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may also withhold approval of future STATE FUNDED projects proposed by ADMINISTERING AGENCY.

22. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV – 21, from those constituent entities comprising a joint powers authority or by

bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

23. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover STATE FUNDS improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V

AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records when determined to be necessary or appropriate and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of Article V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance and costs of ADMINISTERING AGENCY's contracts with third parties, pursuant to Government Code Section 8546.7, ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above-referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to ADMINISTERING AGENCY under any PROGRAM SUPPLEMENT. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions and ADMINISTERING AGENCY shall furnish copies thereof if requested.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of OMB Circular A-133 if it receives a total of \$500,000 or more in STATE FUNDS in a single fiscal year. The STATE FUNDS received under PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205, Highway Planning and Research.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with OMB Circular A-133.

6. ADMINISTERING AGENCY shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. All contracts awarded by ADMINISTERING AGENCY, if intended to be used as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of Article IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING, RECORDS RETENTION AND REPORTS, and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with LOCAL ASSISTANCE PROCEDURES.

ARTICLE VI - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all PROJECT funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and other California laws.
2. ADMINISTERING AGENCY shall conform to all applicable State and Federal statutes and regulations, and the Local Assistance Program Guidelines and Local Assistance Procedures Manual as published by STATE and incorporated herein, including all subsequent approved revisions thereto applicable to PROJECT unless otherwise designated in the project-specific executed PROJECT SUPPLEMENT.
3. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
4. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE.
5. Each project-specific PROGRAM SUPPLEMENT shall separately establish the terms and funding limits for each described PROJECT funded under this AGREEMENT and that PROGRAM SUPPLEMENT. No STATE FUNDS are obligated against this AGREEMENT.
6. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT, and ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.
7. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the PROJECT work actually performed, or in STATE's discretion, to deduct from the price of PROGRAM SUPPLEMENT consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
8. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.

9. Through its execution of this Agreement, ADMINISTERING AGENCY acknowledges that it is required to comply with the provisions of Sections 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the COPI (as defined in paragraph 12 below) if it becomes aware of any such fact during the term of this Agreement..

10. ADMINISTERING AGENCY hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of any PROJECT initiated under this AGREEMENT.

11. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its sole discretion, to terminate this AGREEMENT without liability, to pay only for PROJECT work actually performed, or to deduct from a PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

12. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Chief of Office Project Implementation ("COPI"), who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the COPI, issued in writing, shall be administratively conclusive and binding on the PARTIES on all questions of fact considered and determined by the COPI.

13. Neither the pending of a dispute nor its consideration by the COPI will excuse the ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT and each PROGRAM SUPPLEMENT.

14. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under or in connection with any work, authority or jurisdiction of ADMINISTERING AGENCY arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims and suits or actions of every name, kind and description brought forth under, including but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including but not limited to,

tortuous, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

16. In the event of ADMINISTERING AGENCY (a) failing to timely proceed with effective PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT; (b) failing to maintain any applicable bonding requirements; and (c) otherwise materially violating the terms and conditions of this AGREEMENT and/or any PROGRAM SUPPLEMENT, STATE reserves the right to terminate funding for that PROJECT upon thirty (30) days' written notice to ADMINISTERING AGENCY.

17. No termination notice shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if the default is not reasonably susceptible of cure within said thirty (30) day period, the ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE.

18. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT and the applicable PROGRAM SUPPLEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE-approved finance letter prior to termination, provided, however, that ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of any PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

19. In the case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT and/or Cooperative Agreement, the terms stated in that PROGRAM SUPPLEMENT and/or Cooperative Agreement shall prevail over those in this AGREEMENT.

20. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

21. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

22. This AGREEMENT supersedes all other agreements and contracts previously executed between ADMINISTERING AGENCY and STATE for STATE FUNDS.

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

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY AND COUNTY OF SAN FRANCISCO
MTA/Dept. of Parking & Traffic

for By William J. Burke
Chief, Office of Project Implementation

By Nathaniel P. Ford, Sr.
Nathaniel P. Ford, Sr.
Executive Director/CEO

Division of Local Assistance

Date 12/4/07

Date 11.9.07

APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney

By Robin M. Reitzes
Robin M. Reitzes
Deputy City Attorney

Municipal Transportation Agency
Board of Directors
Resolution No. 06-053
Adopted: May 2, 2006
Attest:

R. Boomer
Secretary, MTA Board

Board of Supervisors
Resolution No. 563-07
Adopted: 10-16-07
Attest:

April Calvillo
Clerk, Board of Supervisors

EXHIBIT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, age, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will 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. ADMINISTERING AGENCY 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. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §1290-0 et seq.), and the applicable regulations promulgated thereunder (Cal. Code Regs. Tit. 2, §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 this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'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. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will 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 this Agreement.

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 ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY 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 this Agreement 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 ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. 06-053

WHEREAS, The City and County of San Francisco, through its Municipal Transportation Agency and Department of Parking and Traffic (MTA/DPT), is eligible to receive federal and/or state funding for certain transportation projects, through the California Department of Transportation ("Caltrans"); and

WHEREAS, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements need to be executed with the State of California before MTA/DPT can receive such funds from Caltrans; and

WHEREAS, The MTA Board of Directors wishes to delegate authorization to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto to the Executive Director/CEO (or his designee); now, therefore, be it

RESOLVED, That the MTA Board of Directors authorizes the Executive Director/CEO (or his designee) to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto, between the City and County of San Francisco, through the MTA, and the State of California, through Caltrans, for state and federally funded transportation projects for the Department of Parking and Traffic; and be it further

RESOLVED, That if any future Agreement with Caltrans has a term of over 10 years, the MTA Board authorizes the Executive Director to submit the Agreement to the Board of Supervisors for its approval under Charter Section 9.118.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of MAY 02 2006.



Secretary, Municipal Transportation Agency Board

1 [Master Agreement for State Aid Transportation Funds]

2
3 **Resolution approving the execution of a Master Agreement for State-Aid Projects**
4 **between the City and County of San Francisco, through its Municipal Transportation**
5 **Agency (for the Department of Parking and Traffic), and the California Department of**
6 **Transportation.**

7 WHEREAS, The Department of Parking and Traffic of the San Francisco Municipal
8 Transportation Agency (MTA) is eligible to receive State funding for certain transportation
9 projects through the California Department of Transportation (Caltrans); and,

10 WHEREAS, Master Agreements and all Program Supplemental Agreements need to
11 be executed with Caltrans before such funds may be claimed; and,

12 WHEREAS, Caltrans has revised its Master Agreement for State-Aid Projects to reflect
13 the enactment of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act – A
14 Legacy for Users (SAFETEA-LU); and,

15 WHEREAS, The revised Master Agreement has no termination date; and,

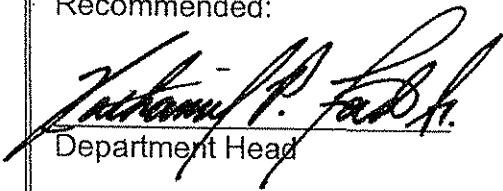
16 WHEREAS, The Board of Supervisors must approve execution of agreements which
17 exceed a ten-year period under Charter Section 9.118; and,

18 WHEREAS, On May 2, 2006, the MTA Board of Directors adopted Resolution No. 06-
19 056, which authorized its Executive Director/CEO to execute Master Agreements, Program
20 Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements, and
21 amendments thereto between the City and County of San Francisco and Caltrans for state
22 and federally funded transportation projects for the Department of Parking and Traffic; now,
23 therefore, be it

24 RESOLVED, That the San Francisco Board of Supervisors approves execution of the
25 Master Agreement for State Aid Projects between the City and County of San Francisco,

1 through its Municipal Transportation Agency (for the Department of Parking and Traffic), and
2 Caltrans.

3
4
5 Recommended:

6
7 
8 Department Head

Approved:



Mayor

Approved:



for Controller



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Resolution

File Number: 071344

Date Passed:

Resolution approving the execution of a Master Agreement for State-Aid Projects between the City and County of San Francisco, through its Municipal Transportation Agency (for the Department of Parking and Traffic), and the California Department of Transportation.

October 16, 2007 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Chu, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 071344

I hereby certify that the foregoing Resolution was ADOPTED on October 16, 2007 by the Board of Supervisors of the City and County of San Francisco.

10/22/2007

Date Approved

Angela Calvillo
Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom
Mayor Gavin Newsom