

VCTC CONTRACT #12042020-06302023

MEMORANDUM OF UNDERSTANDING BETWEEN THE

VENTURA COUNTY TRANSPORTATION COMMISSION

AND THE SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

**FOR THE DEVELOPMENT OF SIMI VALLEY DOUBLE TRACK AND STATION
IMPROVEMENT PROJECT**

This Memorandum of Understanding ("MOU") is executed and entered into this fourth day of Decemer, 2020 (Effective Date) by the Ventura County Transportation Commission (VCTC) and the Southern California Regional Rail Authority (SCRRA) which may be referred to individually as "PARTY" or collectively as "PARTIES".

The Term of this MOU will commence on the date first specified above and terminate six (6) months after completion of the Final Design, or June 30, 2023, whichever is earlier.

RECITALS

WHEREAS, VCTC is the transportation commission, transportation authority and transportation planning agency for the County of Ventura, California, with the power to contract for the SERVICES described in this Contract;

WHEREAS, SCRRA is a joint powers authority that provides rail services, including capital improvements, project management, railroad protective services (e.g., "flagging") and railroad facilities inspections in Los Angeles, Orange, Riverside, San Bernardino and Ventura Counties pursuant to a Joint Exercise of Powers Agreement among the Los Angeles County Metropolitan Transportation (as successor to the Los Angeles County Transportation Commission), the Orange County Transportation Authority, the Riverside County Transportation Commission, San Bernardino County Transportation Authority (as successor to the San Bernardino Associated Governments), and the Ventura County Transportation Commission;

WHEREAS, SCRRA and its Member Agencies, in partnership with BNSF, California High Speed Rail Authority (CHSRA) and the Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency (LOSSAN), submitted a request to California State Transportation Agency (CalSTA) for \$3.7 billion of 2018 Transit and Intercity Rail Capital Program (TIRCP) grant funding for a program of Projects known as the Southern California Optimized Rail

Expansion (SCORE) Program. The SCORE Program is a series of system wide improvement Projects that combined will allow increases to service across the Metrolink System;

WHEREAS, SCRRA was awarded an \$875,708,000 TIRCP grant by CalSTA in April 2018 for the SCORE Program. A key component of the SCORE Program is the “Simi Valley Double Track and Station Improvement Project” (“PROJECT”), which is eligible for funding under the TIRCP grant and for which SCRRA serves as the lead agency;

WHEREAS, the PROJECT consists of the addition of approximately 2.15 miles of railroad track between MP 436.20 and MP 438.35, construction of a second platform and new pedestrian underpass at Simi Valley Station, and upgrade of Tapo Canyon Road, Tapo Street, E. Los Angeles Avenue, and Hidden Ranch Drive grade crossings. VCTC is the owner of the right-of-way for certain areas in the PROJECT and certain other assets collectively defined as the VCTC-owned and SCRRA-maintained rights-of-way and associated railroad infrastructure in the City of Simi Valley, and VCTC is willing to provide certain support services to SCRRA for the PROJECT;

WHEREAS, SCRRA requested an allocation in TIRCP funds from the California Transportation Commission (CTC), for the purpose of funding all support services to be performed by VCTC to SCRRA for the PROJECT. These support services are set forth under Attachment A – VCTC Scope of Services (“SERVICES”), attached hereto and incorporated herein. VCTC will provide the SERVICES to SCRRA for the PROJECT, which include but are not limited to assistance with utility encasements of water, storm drain, and sewer, utility relocations, public notices and public outreach, Right-of-Way acquisition and temporary and permanent easements at grade crossings, and entering into agreements for any services with the consultants and/or contractors, as described more particularly in Attachment A.

WHEREAS, SCRRA, as lead agency primarily responsible for all environmental clearance, design and construction of the PROJECT, has funded and has contracted for capital improvements for the PROJECT;

WHEREAS, the CTC has approved SCRRA's funding request for TIRCP funds, subject to the terms of a CalSTA – SCRRA TIRCP Master Agreement, which is attached hereto and incorporated herein as Attachment B;

WHEREAS, the PARTIES desire to enter into this MOU for the purpose of documenting the

terms and conditions of cooperation between the PARTIES with regard to the PROJECT.

NOW, THEREFORE, it is mutually understood and agreed by VCTC and SCRRA as follows:

I. SCRRA'S RESPONSIBILITIES

- A. SCRRA will be the lead agency for the environmental clearance, design, and construction of the PROJECT and designate a Project Manager as its single point of contact to manage the PROJECT and coordinate with VCTC for all SERVICES under this MOU.
- B. SCRRA will design, construct, and implement the PROJECT in accordance with all applicable state, federal and local laws, regulations, policies, standards and procedures, and be responsible for 100% of all costs for the Project, including but not limited to costs incurred in the preparation of contract documents, advertising for bids, awarding design and construction contracts, all construction capital and support costs required for satisfactory completion of the PROJECT.
- C. SCRRA will undertake the coordination necessary to implement the PROJECT among all third parties, including public and private agencies, and will be solely responsible for obtaining all licenses, permits, rights-of-entry, and any statutorily required permission to facilitate implementation and construction of the PROJECT. SCRRA will have sole responsibility for issuance of all notifications, and for obtaining all necessary agreements and approvals for any and all grade crossing modifications through the California Public Utilities Commission ("CPUC") and any other interested parties or agencies.
- D. SCRRA will coordinate directly with Union Pacific Railroad ("UPRR") where UPRR operations and/or infrastructure may be effected, including obtaining any permits, agreements, and approvals to modify tracks and operations.
- E. To investigate potential hazardous material sites that could impact the PROJECT. If, as a result of activities related to the PROJECT, remediation or removal of hazardous materials is required, SCRRA will be responsible at its sole expense for any remediation or removal, including the development of the necessary mitigation and remediation plans and designs. All remediation and disposal must be performed in accordance with all applicable federal, state, and local laws and regulations.

- F. SCRRA will reimburse VCTC a total not-to-exceed amount one hundred twenty five thousand dollars (\$125,000) for all work performed for the SERVICES;
- G. SCRRA will comply and require its consultants/contractors, if applicable, to comply with all SCRRA standards, recommended practices, operating rules, and safety requirements, and to comply with all requirements of the SCRRA System configuration management program;
- H. SCRRA will review changes to the SERVICES and/or their costs within seven (7) business days from VCTC's submittal of such changes and provide VCTC with written approval, comments, and/or objections in writing.
- I. SCRRA will reimburse VCTC only for the costs of approved SERVICES incurred by VCTC up to the not-to-exceed amount in connection with the SERVICES, which shall include direct and indirect overhead costs associated herewith.
- J. SCRRA will review quarterly reimbursement invoices from VCTC and process payment within 90 days following approval of the invoice.
- K. SCRRA will comply with all funding and grant requirements for those funds that will be used to pay for the SERVICES.
- L. To fund any costs associated with obtaining right-of-way, encroachments, easements, and other entitlements necessary prior to the construction of the PROJECT.

II. VCTC'S RESPONSIBILITIES

- A. VCTC will assign a member of its management staff to provide ongoing support to SCRRA, as determined reasonably necessary by VCTC to facilitate SCRRA's requirements, and to allow representation of VCTC's interests throughout the PROJECT. This person will be responsible to ensure coordination with VCTC departments and services required to be involved in those appropriate portions of the PROJECT. The time spent by this designated management staff will be billable to and reimbursed by SCRRA in accordance with the terms of this Agreement.
- B. VCTC will cooperate with SCRRA with regards to design, construction, and implementation works for the PROJECT and not interfere with such works, unless specifically directed to do so pursuant to the terms of this MOU.

- C. VCTC will appoint various personnel in writing to SCRRA designating specific staff members for fulfilling duties under this MOU.
- D. VCTC will notify SCRRA in writing of any personnel changes modifying any staff members designated to fulfill duties under this MOU.

III. FUTURE ADDITIONAL AGREEMENTS REQUIRED

- A. Upon completion of the PROJECT, VCTC will be responsible for granting _____ easements, pursuant to a separate agreement or grant document, to the City of Simi Valley, if necessary, for VCTC-owned property located along the grade crossings.

IV. PAYMENT FOR VCTC WORK

- A. Except as provided below, SCRRA will reimburse VCTC on a time and materials basis, up to the total amount of \$125,000 ("VCTC Expense Cap") as shown in Attachment A, "Cost Estimate for VCTC Work," for various costs incurred by VCTC pursuant to this MOU.
- B. VCTC will send quarterly invoices to SCRRA. With each quarterly invoice, VCTC will include all back-up material, including but not limited to, detailed expenditures, time cards, invoices from third parties including consultants and contractors, and descriptions of activities performed. SCRRA will pay invoices within ninety (90) days of receipt of a complete invoice that contains all back-up material.
- C. SCRRA acknowledges that until VCTC receives formal approval of its overhead rates by Caltrans, VCTC's cognizant audit agency, an estimated allocated overhead rate will be provided for invoicing purposes.
- D. VCTC shall establish a separate, re-collectable account within VCTC's finance system to record only costs VCTC incurs fulfilling their obligations of this MOU.
- E. Upon agreement by SCRRA and VCTC that all SERVICES are complete, and after Caltrans has approved the VCTC overhead rate for each period covering the design of the PROJECT, VCTC will submit to SCRRA a detailed statement of final costs incurred under this MOU. Based on the final accounting, VCTC shall refund or invoice as necessary in order to satisfy the obligations of this MOU. SCRRA agrees to maintain adequate PROJECT reserves to reimburse VCTC for its final audited overhead costs associated with the PROJECT, up to the VCTC Expense Cap.

- F. VCTC shall submit the final invoice for SERVICES no later than December 31, 2023, unless this date is otherwise amended by both PARTIES in writing.

V. REPORTING AND AUDIT REQUIREMENTS

- A. VCTC shall be subject to and shall comply with all applicable requirements of SCRRA and CalSTA regarding reporting and audit requirements.
- B. VCTC shall submit together with its invoices, written progress reports to SCRRA as specified to determine if VCTC is performing to expectation, is on schedule, and is within funding cost limitations, to provide communication of interim findings and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed. Should VCTC fail to submit a complete invoice or project deliverables in accordance with the SERVICES schedule, SCRRA may elect not to pay VCTC until submittal is fully complete.
- C. Exhibit B is the CalSTA – SCRRA TIRCP Master Agreement. Progress reporting and expenditure documentation shall be in accordance with CalSTA – SCRRA TIRCP Master Agreement.
- D. SCRRA shall have the right to conduct audits of this MOU such as financial and compliance audits and performance audits. VCTC shall make available and shall ensure its contractors make available, any records, information, material data and documentation needed by the auditors. VCTC shall establish and maintain proper accounting procedures and cash management records and documents in accordance with Generally Accepted Accounting Principles (GAAP). VCTC shall reimburse SCRRA for any expenditure not in compliance with the SERVICES or other terms and conditions of this MOU, other applicable requirements of SCRRA. The allowability of costs for VCTC's own expenditures submitted to SCRRA shall be in compliance with the CalSTA – SCRRA TIRCP Master Agreement. The allowability of costs for VCTC's contractors and consultants expenditures submitted to SCRRA through VCTC's invoices shall be in compliance with the CalSTA – SCRRA TIRCP Master Agreement. SCRRA shall have the right to conduct a final SCRRA audit. The findings of the SCRRA audit will be final. This section shall survive termination of this MOU.
- E. VCTC shall certify each invoice by reviewing all costs and maintaining internal control to ensure that all expenditures are allocable, allowable and reasonable and

in accordance with the CalSTA – SCRRA TIRCP Master Agreement, and the terms and conditions of this MOU.

- F. VCTC shall also certify final costs of the SERVICES to ensure that all costs are in compliance with the CalSTA – SCRRA TIRCP Master Agreement, and the terms and conditions of this MOU.
- G. VCTC shall retain all original records and documents related to the SERVICES (“RECORDS”) for a period of three years after final payment. The RECORDS shall be open to inspection and subject to audit and reproduction by SCRRA auditors or authorized representatives to the extent deemed necessary by SCRRA to adequately permit evaluation of expended costs. The RECORDS subject to audit shall also include, without limitation, those records deemed necessary by SCRRA to evaluate and verify, direct and indirect costs (including overhead allocations) as they may apply to costs associated with the PROJECT.
- H. VCTC shall cause all contractors to comply with the requirements of Section V.F above. VCTC shall ensure all contractors to cooperate fully in furnishing or in making available to SCRRA all records deemed necessary by SCRRA auditors or authorized representatives related to the SERVICES.
- I. VCTC shall be responsible for ensuring its contractors/subcontractors for the PROJECT comply with the terms of the CalSTA – SCRRA TIRCP Master Agreement. VCTC shall cooperate with SCRRA Audit Department such that SCRRA can meet its obligations under the CalSTA – SCRRA TIRCP Master Agreement.

VI. MISCELLANEOUS

- A. Indemnity by VCTC. Neither SCRRA, the Operating Railroads, SCRRA's board members, member agencies (other than VCTC), nor their respective officers, agents, volunteers, contractors, and employees will be responsible for any damage or liability occurring by reason of any acts or omissions on the part of VCTC under or in connection with the PROJECT or this MOU. To the fullest extent allowed by law, VCTC will indemnify, defend, and hold harmless SCRRA, its board members, member agencies (other than VCTC), officers, agents, volunteers, contractors, and employees, and Operating Railroads ("SCRRA Indemnitees") from any and all liability, loss, expense (including reasonable attorneys' fees and other defense

costs), demands, suits, liens, damages, costs, claims, including but not limited to, claims for bodily injury, death, personal injury, or property damage, that are incurred by or asserted against the SCRRA Indemnitees arising out of or connected with any acts or omissions on the part of VCTC, its Board, officers, agents, contractors, or employees under or in connection with the PROJECT or this MOU. This indemnity shall survive expiration or termination of this MOU.

- B. Indemnity by SCRRA. Neither VCTC, nor its directors, officers, agents, contractors, or employees will be responsible for any damage or liability occurring by reason of any acts or omissions on the part of SCRRA under or in connection with the PROJECT or this MOU. SCRRA will indemnify, defend, and hold harmless VCTC, as well as its directors, officers, agents, contractors, and employees ("VCTC Indemnitees") from any and all liability, loss, expense (including reasonable attorneys' fees and other defense costs), demands, suits, liens, damages, costs, claims, including but not limited to, claims for bodily injury, death, personal injury, or property damage, that are incurred by or asserted against the VCTC Indemnitees arising out of or connected with any acts or omissions on the part of SCRRA, its board members, officers, agents, volunteers, contractors or employees under or in connection with the PROJECT or this MOU. This indemnity shall survive expiration or termination of this MOU.
- C. Governing Law. This MOU will be governed by and construed in accordance with the laws of the State of California. Any action or proceeding brought to enforce any provision of this MOU shall be filed in the Superior Court of California for Ventura County.
- D. Attorneys' Fees. If either PARTY commences an action against the other PARTY arising out of or in connection with this MOU, the prevailing party in such litigation will be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.
- E. Recitals. The Recitals stated above are integral parts of this MOU and are hereby incorporated into the terms of this MOU.
- F. Termination. Both VCTC and SCRRA shall have the right, at any time, to terminate this MOU by giving thirty (30) calendar days written notice to the other party, specifying the date of termination. Such termination shall be subject to the

continuing obligations of this MOU contained in Part VI A and B.

- G. Notification. Each PARTY will designate a person to be responsible for day-to-day communications regarding work under the PROJECT. For SCRRA, that person will be the SCORE Program Design Manager. For VCTC, that person shall be the Regional Transit Manager. All notices and communications regarding this MOU, interpretation of the terms of this MOU, or changes thereto will be provided as follows:

Metrolink/Southern California Regional Rail Authority 900 Wilshire Blvd., Suite 1500 Los Angeles, CA 90017 ATTN: General Counsel	Ventura County Transportation Commission 751 E. Daily Drive, Suite 420 Camarillo, CA 93010 ATTN: Executive Director CC: General Counsel
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- H. Amendment. In the event the PARTIES determine that the provisions of this MOU should be altered, the PARTIES may amend this MOU by writing signed by both PARTIES.
- I. Entire Agreement. This MOU constitutes the entire agreement between the PARTIES relating to its subject matter and supersedes any previous agreements or understandings.
- J. Execution in Counterpart. This MOU may be executed in counterparts and/or by facsimile or other electronic means, and when each PARTY to this MOU has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one agreement, which shall be binding upon and effective as to all parties to this MOU.
- K. Severability. If any portion of this MOU shall be held invalid or unenforceable, the remainder of the MOU shall not be affected and shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, the PARTIES have entered this AGREEMENT, which shall be effective on the Effective Date defined in the first paragraph hereof.

SOUTHERN CALIFORNIA REGIONAL	VENTURA COUNTY TRANSPORTATION
RAIL AUTHORITY:	COMMISSION:

By: _____	By: _____
Stephanie N. Wiggins	Darren Kettle
Chief Executive Officer	Executive Director

Approved as to form:	Approved as to form:
By: _____	By: _____
Don O. Del Rio	Steve Mattas
General Counsel	General Counsel

ATTACHMENT A

**SCOPE OF SERVICES
(Cost Estimate to be provided by VCTC)**

VCTC will provide all necessary support services for the PROJECT as noted below:

1. Assist SCRRA with utility encasements of water, storm drain, and sewer.
2. Assist SCRRA with utility relocations.
3. Assist SCRRA with public notices and public outreach.
4. Assist SCRRA with Right-of-Way acquisition and temporary and permanent easements at grade crossings, which would entail activities such as reviewing and approving the Just Compensation Memo and the Sale Agreement and seeking VCTC Legal Counsel services and obtaining VCTC Board approvals that are necessary for VCTC to provide such assistance to SCRRA as described here, if required.
5. Assist SCRRA with entering into agreements for any services with the consultants and/or contractors.
6. Submit to SCRRA quarterly progress reports, including up-to-date cost expenditures.

Item	Quantity	Total Cost
Public Outreach Support	150 Hours	\$25,000.00
Utility Encasement and Relocation Support	240 Hours	\$40,000.00
Right-of-Way/Easement Acquisition Support	240 Hours	\$40,000.00
Legal Support	55 Hours	\$20,000.00
Total Estimated Cost		\$125,000.00

ATTACHMENT B

The CalSTA – SCRRA TIRCP Master Agreement

California State Transportation Agency
Transit and Intercity Rail Capital Program

Grant Recipient:

Southern California Regional Rail Authority

CalSTA Transit and Intercity Rail Capital Program Administered by:

California Department of Transportation
Division of Rail and Mass Transportation
1120 N Street, Room 3300
P.O. Box 942874, MS-39
Sacramento, California 94274-0001

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**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Effective Date of this Agreement: August 1, 2015

Termination Date of this Agreement: August 1, 2021

Recipient: Southern California Regional Rail Authority

Application Funding: The Greenhouse Gas Reduction Fund and Senate Bill 1 Fund is the applicable funding source covered by this Agreement and will be identified in each specific Program Supplement, adopting the terms of this Agreement.

RECITALS

1. WHEREAS, The Global Warming Solutions Act of 2006 (the "ACT") (Assembly Bill [AB] 32, Nunez, Chapter 488) created a comprehensive program to reduce greenhouse gas emissions in California. AB 32 requires California to reduce greenhouse gases to 1990 levels by 2020, and to maintain and continue reductions beyond 2020. In March 2012, Governor Brown signed Executive Order B-16-2012 affirming a long-range climate goal for California to reduce greenhouse gases from the transportation sector to 80 percent below 1990 levels by 2050.
2. WHEREAS, the Cap-and-Trade Program is a key element in California's climate plan. It creates a limit on the emissions from sources responsible for 85 percent of California's greenhouse gas emissions, establishes the price signal needed to drive long-term investment in cleaner fuels and more efficient use of energy, and gives covered entities flexibility to implement the lowest-cost options to reduce greenhouse gas emissions.
3. WHEREAS, in 2012, the Legislature passed and Governor Brown signed into law three bills, AB 1532 (Pérez, Chapter 807, Statutes of 2012), Senate Bill (SB) 535 (De León, Chapter 830, Statutes of 2012), and SB 1018 (Budget and Fiscal Review Committee, Chapter 39, Statutes of 2012), that established the Greenhouse Gas Reduction Fund to receive proceeds from the distribution of allowances via auction and provided the framework for how those auction proceeds will be appropriated and expended. These statutes require that expenditures from the Greenhouse Gas Reduction Fund be used to facilitate the achievement of greenhouse gas emission reductions and further the purposes of AB 32.

4. WHEREAS, in 2017, the Legislature passed and Governor Brown signed into law the Road Repair and Accountability Act of 2017 Senate Bill [SB] 1, directed additional funding to the Transit and Intercity Rail Capital Program.

5. WHEREAS, the Transit and Intercity Rail Capital Program is one of several programs funded as part of the 2014-2015 State of California Budget (Senate Bill 852 and Senate Bill 862), and implemented pursuant to Public Resources Code section 75220 et seq and Health and Safety Code section 39719 et seq..

6. WHEREAS, as directed by the ACT, CalSTA established TIRCP Program Guidelines that describe the policy, standards, criteria, and procedures for the development, adoption and management of the TIRCP Program.

7. WHEREAS, Recipient has submitted an application, been evaluated and selected by CalSTA in accordance with the TIRCP Program Guidelines.

8. WHEREAS, on August 17, 2015, CalSTA delegated the administration of the TIRCP Program to the Department pursuant to the TIRCP Program Guidelines and the Department's policies and procedures for the administration of similar grant programs.

NOW THEREFORE, in consideration of the recitals and the rights, duties and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following:

This Agreement, entered into effective as of the date set forth above, is between the signatory public entity identified hereinabove, (hereinafter referred to as Recipient), and the STATE OF CALIFORNIA, acting by and through the California Department of Transportation (hereinafter referred to as DEPARTMENT), and subject to the approval of the California State Transportation Agency (CalSTA).

ARTICLE I - DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings specified herein.

1.1 "Act" refers to the Global Warming Solutions Act of 2006 (the "ACT") (Assembly Bill [AB] 32, Nunez, Chapter 488) created a comprehensive program to reduce greenhouse gas emissions in California.

1.2 "Agreement" shall mean this Agreement, inclusive of all appendices and Program Supplements, whereby the Department, on behalf of CalSTA, and pursuant to the Act and as set forth herein, administers the TIRCP Program.

1.3 "California Department of Transportation" or "Caltrans" or "Department" means the State of California, acting by and through its Department of Transportation of the State of the

State of California, and any entity succeeding to the powers, authorities and responsibilities of the Department invoked by or under this Agreement or the Program Supplements.

1.4 "California Transportation Commission" or "CTC" shall refer to the Commission established in 1978 by Assembly Bill 402 (Chapter 1106, Statutes of 1977).

1.5 "Effective Date" means the date set forth on page 4 of this Agreement.

1.6 "Greenhouse Gas Reduction Funds" or "GGRF" shall mean the funds subject to Chapter 26, Statutes of 2014, authorizing the State to fund capital improvements and investments for California's transit systems and intercity, commuter, and urban rail systems.

1.7 "Senate Bill 1" or "SB 1" shall mean the funds subject to Chapter 5, Statutes of 2017, authorizing the State to fund capital improvements and investments for California's transit systems and intercity, commuter, and urban rail systems.

1.8 "Overall Funding Plan" has the meaning set forth in Article II, Section 2(A)(5)(c).

1.9 "Program Guidelines" shall mean the policy, standards, criteria, and procedures for the development, adoption and management of the TIRCP Projects established by CalSTA and provided in Appendix A.

1.10 "Award Agreement" shall mean a project-specific subcontract to this agreement executed following Project award and may include Project specific information, expected outcomes, and deliverables.

1.11 "Program Supplement" shall mean a project-specific subcontract to this Agreement that is executed following a CTC approved action and includes all Project specific information needed to encumber funding.

1.12 "Program Supplement Termination Date" shall have the meaning set forth in Article III, Section 3(C) and refers to the last date for Recipient to incur valid Project costs or credits and is the date that the Program Supplement expires.

1.13 "Progress Payment Invoice" shall have the meaning set forth in Article II, Section 3A.

1.14 "Project Closeout Report" shall have the meaning set forth in Article II, Section 3(B).

1.15 "Project Financial Plan" shall have the meaning set forth in Article II, Section 2(A)(5)(d).

1.16 "Project Schedule" has the meaning set forth in Article II, Section 2(A)(5)(b).

1.17 "Project" shall mean the project identified in Recipient's application in Appendix C.

1.18 "Scope of Work" has the meaning set forth in Article II, Section 2(A)(5)(a).

1.19 “Secretary” shall mean the Secretary of the California State Transportation Agency (CalSTA). Unless the context otherwise requires, any reference to the Secretary includes CalSTA and its officers and employees.

1.20 “State” shall mean the State of California.

1.21 “TIRCP Projects” shall mean projects that are selected and funded pursuant to the Transit and Intercity Rail Capital Program.

1.22 “TIRCP” shall mean the “Transit and Intercity Rail Capital Program”.

ARTICLE II – TIRCP PROJECTS AND ADMINISTRATION

Section 1. TIRCP Projects and Project Management

1. TIRCP Projects, pursuant to the Act, are established by CalSTA in accordance with the TIRCP Program Guidelines. Under delegation from CalSTA, the Department will administer the TIRCP Program in accordance with the TIRCP Program Guidelines and best management practices identified in the administration of similar Department grant programs.

2. By this reference, those Guidelines are made an express part of this Agreement and shall apply to each TIRCP Program funded Project. Recipient will cause its specific TIRCP mandated Resolution to be attached as part of any TIRCP funded Program Supplement as a condition precedent to the acceptance of Greenhouse Gas Reduction Funds or SB 1 Funds (upon availability and allocation), for such project.

3. All inquiries during the term of this Agreement and any applicable Program Supplement will be directed to the project representatives identified below:

State’s Project Administrator:

Department of Transportation

Ezequiel Castro

Chief, State Transit Grants Branch

Phone: (916) 654-8012

Email: ezequiel.castro@dot.ca.gov

Recipient’s Project Administrator:

Southern California Regional Rail Authority

Anne Louise Rice

Assistant Director, Grants

(213) 452-0211

ricea@scrra.net

Section 2. Program Supplement

A. *General*

1. This Agreement shall have no force and effect with respect to the Project unless and until a separate Project specific program supplement hereinafter referred to as "Program Supplement," adopting all of the terms and conditions of this Agreement has been fully executed by both State and Recipient.
2. Recipient agrees to complete the defined scope of work for the Project, described in the Program Supplement adopting all of the terms and conditions of this Agreement.
3. A financial commitment of actual funds will only occur in each detailed and separate Program Supplement. No funds are obligated by the prior execution of this Agreement alone.
4. Recipient further agrees, as a condition to the release and payment of the funds encumbered for the scope of work described in each Program Supplement, to comply with the terms and conditions of this Agreement and all the agreed-upon special covenants and conditions attached to or made a part of the Program Supplement identifying and defining the nature of that specific scope of work.
5. The Program Supplement shall include a detailed scope of work, which shall include but not be limited to, a Project Description, a Project Schedule, an Overall Funding Plan, and a Project Financial Plan as required in the TIRCP Program Guidelines. The Program Supplement will be in a form similar to Appendix C.
 - a. The Scope of Work shall include a detailed description of the Project and will itemize the major tasks and their estimated costs.
 - b. The Project Schedule shall include major tasks and/or milestones and their associated beginning and ending dates and duration.
 - c. The Overall Funding Plan shall itemize the various Project Components, the committed funding program(s) or source(s), and the matching funds to be provided by Recipient and/or other funding sources, if any [these Components include Environmental and Permits; Plans, Specifications and Estimates (PS&E); Right-of-Way (ROW); and Construction (including transit vehicle acquisition)].
 - d. The Project Financial Plan shall identify estimated expenditures for the Project Component by funding source, provided that for the purposes of this Agreement the State is only monitoring compliance for expenditures for the TIRCP, including but not limited to Greenhouse Gas Reduction Funds and Senate Bill (SB) 1 Funds allocated for the Project Component.

6. Adoption and execution of the Program Supplement by Recipient and State, incorporating the terms and conditions of this Agreement into the Program Supplement as though fully set forth therein, shall be sufficient to bind Recipient to these terms and conditions when performing the Project. Unless otherwise expressly delegated to a third-party in a resolution by Recipient's governing body, which delegation must be expressly assented to and concurred in by State, the Program Supplement shall be managed by Recipient.

7. The estimated cost and scope of the Project will be as described in the applicable Program Supplement. The State, shall not participate in any funding for the Project beyond those amounts actually encumbered by the STATE as evidenced in the applicable Program Supplement unless the appropriate steps are followed and approval is granted by the CTC as described below.

8. Upon the stated expiration date of this Agreement, any Program Supplement executed under this Agreement for the Project with work yet to be completed pursuant to the approved Project Schedule shall be deemed to extend the term of this Agreement only to conform to the specific Project termination or completion date contemplated by the applicable Program Supplement to allow that uncompleted Project to be administered under the extended terms and conditions of this Agreement.

B. *Project Overrun*

1. If Recipient or the State determine, at any time during the performance of the Project, that the Project budget may be exceeded, Recipient shall take the following steps:

a. Notify the designated State representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential cost savings or other measures which Recipient will institute to bring the Project Budget into balance; and

b. Identify the source of additional Recipient or other third party funds that can be made available to complete Project. Recipient agrees that the allocation of the GGRF and SB 1 Funds is subject to the allocation made proposed by the CalSTA, submitted by the State, and approved by the CTC.

C. *Cost Savings*

1. Recipient is encouraged to evaluate design and construction alternatives that would mitigate the costs of delivering the commitments for the Project. Recipient shall take all steps necessary on a commercially reasonable basis that would generally be taken in accordance with best management practices. In determining cost savings, the Parties shall take into account all avoided costs, including avoided design, material, equipment, labor, construction, testing, acceptance and overhead costs and avoided costs due to time savings, and all the savings in financing costs associated with such avoided costs.

2. Recipient shall bear the burden of providing such cost savings to the Department. If there is an identification and implementation of any alternative resulting in reduction of the Project costs, the parties agree that such net savings will be reimbursed to the Department no later than 30 days after the submission of the final invoice for any remaining Project costs.

D. *Scope of Work*

1. Recipient shall be responsible for complete performance of the work described in the approved Program Supplement for the Project related to the commitment of encumbered funds. All work shall be accomplished in accordance with the applicable provisions of the Act, Public Utilities Code, the Streets and Highways Code, the Government Code, and other applicable statutes and regulations.
2. Recipient acknowledges and agrees that Recipient is the sole control and manager of the Project and its subsequent employment, operation, repair and maintenance for the benefit of the public. Recipient shall be solely responsible for complying with the funding and use restrictions established by (a) the statutes from which the GGRF and SB 1 Funds are derived, (b) the CTC, (c) the State Treasurer, (d) the Internal Revenue Service, (e) the applicable Program Supplement, and (f) this Agreement.
3. Recipient acknowledges and agrees that the Recipient is responsible for complying with all reporting requirements established by the TIRCP Guidelines and California Air Resource Board Funding Guidelines.

E. *Program Supplement Amendments*

Program Supplement amendments will be required whenever there are CalSTA or CTC approved actions, including but not limited to, Financial Allocations, Financial Allocation Amendments, Time Extensions and Technical Corrections,. These changes shall be mutually binding upon the Parties only following the execution of a Program Supplement amendment.

Section 3. Allowable Costs and Payments

A. *Allowable Costs and Progress Payment Invoice*

1. Not more frequently than once a month, Recipient will prepare and submit to State signed Progress Payment Invoice for actual Project costs incurred and paid for by Recipient consistent with the Scope of Work document in the Program Supplement and State shall pay those uncontested allowable costs once the invoice is reviewed and approved by the Department, subject to CalSTA's approval. If no costs were incurred during any given quarter, Recipient is exempt from submitting a signed Progress Payment Invoice.
2. State shall not be required to reimburse more funds, cumulatively, per quarter of any fiscal year greater than the sums identified and included in the Project Financial Plan.

3. The State shall hold the right to determine reimbursement availability based on an approved expenditure plan and TIRCP anticipated or actual funding capacity.

4. Each such invoice will report the total of Project expenditures from GGRF and SB 1 Funds (including those of Recipient and third parties) and will specify the percent of State reimbursement requested and the GGRF fund and SB 1 Funds source.

B. *Final Invoice*

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

ARTICLE III – GENERAL PROVISIONS

Section 1. Funding

1. Recipient agrees to contribute at least the statutorily or other required local contribution of matching funds (other than State or federal funds), if any is specified within the Program Supplement or any appendices thereto, toward the actual cost of the Project or the amount, if any, specified in any executed SB 2800 (Streets and Highways Code Section 164.53) Agreement for local match fund credit, whichever is greater. Recipient shall contribute not less than its required match amount toward the Project cost in accordance with a schedule of payments as shown in the Project Financial Plan prepared by Recipient and approved by State as part of a Program Supplement.

Section 2. Audits and Reports

A. *Cost Principles*

1. Recipient agrees to comply with Title 2 Code of Federal Regulations 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

2. Recipient agrees, and will assure that its contractors and subcontractors will be obligated to agree to follow 2 CFR 200 and it shall be used to determine the allowability of individual Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with 2 CFR 200.

3. Any Project costs for which Recipient has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by Recipient to State. Should Recipient fail to reimburse moneys due State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, State is authorized to intercept and withhold future payments due Recipient from State or any third-party source whose funding passes through the State, including but not limited to, the State Treasurer, the State Controller and the CTC.

4. The State may terminate the grant for any reason at any time if it is determined by the State, based on an audit under this section, that there has been a violation of any State or federal law or policy by the Recipient during performance under this or any other grant agreement or contract entered into with the State. If the grant is terminated under this section, the Recipient may be required to fully or partially repay funds.

B. *Record Retention*

1. Recipient agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of Recipient, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Recipient, its contractors and subcontractors connected with Project performance under this Agreement and each Program Supplement shall be maintained for a minimum of three (3) years from the date of final payment to Recipient under a Program Supplement and shall be held open to inspection, copying, and audit by representatives of State, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by Recipient, its contractors, and subcontractors upon receipt of any request made by State or its agents. In conducting an audit of the costs and match credits claimed under this Agreement, State will rely to the maximum extent possible on any prior audit of Recipient pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by Recipient's external and internal auditors may be relied upon and used by State when planning and conducting additional audits.

2. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of Recipient's contracts with third parties pursuant to Government Code section 8546.7, Recipient, Recipient's contractors and subcontractors and State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such Agreement and Program Supplement materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to Recipient under any Program Supplement. State, the California State Auditor, or any duly authorized

representative of State or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and Recipient shall furnish copies thereof if requested.

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

C. *Reporting Requirements*

1. Subject to the discretion of State, Recipient agrees to provide on a quarterly basis, Project Progress Reports that include the following information:

- a. Activities and progress made towards implementation of the project;
- b. Identification of whether the Project is proceeding on schedule and within budget;
- c. Identification of changes to the Project funding plan;
- d. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties for either the Project or other State funded projects impacted by the Projects scope of work;
- e. Identify metrics and benefits achieved for disadvantaged communities, low income communities, and/or low income households;
- f. Reporting requirements per California Air Resource Board Cap and Trade Auction Proceeds Funding Guidelines for Agencies that Administer California Climate Investments which may include, continued reporting following project implementation to identify benefits achieved.

2. Reporting requirements of Recipient will include whether reported implementation activities are within the scope of the Project Program Supplement and in compliance with State laws, regulations, and administrative requirements.

3. Within one year of the Project or reportable Project components becoming operable, the implementing agency must provide a final delivery report including at a minimum:

- a. Scope of completed Project as compared to Programmed Project;
- b. Performance outcomes derived from the project as compared to outcomes described in the Project application and shall include but not be limited to before and after measurements and estimates for ridership, service levels, greenhouse gas reductions, updated estimated greenhouse gas reductions over the life of the project, benefits to disadvantaged communities, low income communities, and/or low income

households, and project co-benefits as well as an explanation of the methodology used to quantify the benefits.

C.

Section 3. Special Requirements

A. *California Transportation Commission Resolutions*

1. Recipient shall adhere to applicable CTC policies on "Timely Use of Funds" as stated in Resolution G-06-04, adopted April 26, 2006, addressing the expenditure and reimbursement of GGRF Funds and SB 1 Funds. These resolutions, and/or successor resolutions in place at the time a Program Supplement is executed, shall be applicable to GGRF funds and SB 1 funds, respectively.

2. Recipient shall be bound to the terms and conditions of this Agreement, the Project application contained in the Program Supplement (as applicable); and CTC Resolutions G-06-04, G-09-11 and/or their respective successors in place at the time the Program Supplement is signed (as applicable) and all restrictions, rights, duties and obligations established therein on behalf of State and CTC shall accrue to the benefit of the CTC and shall thereafter be subject to any necessary enforcement action by CTC or State. All terms and conditions stated in the aforesaid CTC Resolutions and CTC-approved Guidelines in place at the time the Program Supplement is signed (if applicable) shall also be considered to be binding provisions of this Agreement.

3. Recipient shall conform to any and all permit and mitigation duties associated with Project as well as all environmental obligations established in CTC Resolution G-91-2 and/or its successors in place at the time a Program Supplement is signed, as applicable, at the expense of Recipient and/or the responsible party and without any further financial contributions or obligations on the part of State unless a separate Program Supplement expressly provides funding for the specific purpose of hazardous materials remediation.

B. *Recipient Resolution*

1. Recipient has executed this Agreement pursuant to the authorizing Recipient resolution, attached as Appendix C to this Agreement, which empowers Recipient to enter into this Agreement and which may also empower Recipient to enter into all subsequent Program Supplements adopting the provisions of this Agreement.

2. If Recipient or State determines that a separate Resolution is needed for each Program Supplement, Recipient will provide information as to who the authorized designee is to act on behalf of the Recipient to bind Recipient with regard to the terms and conditions of any said Program Supplement or amendment and will provide a copy of that additional Resolution to State with the Program Supplement or any amendment to that document.

C. *Termination*

1. State reserves the right to terminate funding for any Program Supplement, subject to CalSTA approval, upon written notice to Recipient in the event that Recipient fails to proceed with Project work in accordance with the Program Supplement, or otherwise violates the conditions of this Agreement and/or the Program Supplement or the funding allocation such that substantial performance is significantly endangered.
2. No such termination shall become effective if, within thirty (30) days after receipt of a notice of termination, Recipient either cures the default involved or, if not reasonably susceptible of cure within said thirty (30)-day period, Recipient proceeds thereafter to complete the cure in a manner and time line acceptable to State. Any such termination shall be accomplished by delivery to Recipient of a notice of termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this Agreement is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, Recipient and State shall meet to attempt to resolve any dispute.
3. Following a fund encumbrance made pursuant to a Program Supplement, if Recipient fails to expend GGRF or SB 1 monies within the time allowed specified in the Program Supplement, those funds may revert and be deemed withdrawn and will no longer be available to reimburse Project work unless those funds are specifically made available beyond the end of that Fiscal Year through re-appropriation or other equivalent action of the Legislature and written notice of that action is provided to Recipient by State.
4. In the event State terminates a Program Supplement for convenience and not for a default on the part of Recipient as is contemplated in this section, Recipient shall be reimbursed its authorized costs up to State's proportionate and maximum share of allowable Project costs incurred to the date of Recipient's receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by Recipient to effect such termination following receipt of that termination notice.

D. *Third Party Contracting*

1. Recipient shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of State. Contracts awarded by Recipient, if intended as local match credit, must meet the requirements set forth in this Agreement regarding local match funds.
2. Any subcontract entered into by Recipient as a result of this Agreement shall contain the provisions of ARTICLE III – GENERAL PROVISIONS, Section 2. Audits and Reports and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to

subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

3. In addition to the above, the preaward requirements of third party contractor/consultants with local transit agencies should be consistent with Local Program Procedures (LPP-00-05).

E. Change in Funds and Terms/Amendments

This Agreement and the resultant Program Supplements may be modified, altered, or revised only with the joint written consent of Recipient and State.

F. Project Ownership

1. Unless expressly provided to the contrary in a Program Supplement, subject to the terms and provisions of this Agreement, Recipient, or a designated subrecipient acceptable to State, as applicable, shall be the sole owner of all improvements and property included in the Project constructed, installed or acquired by Recipient or subrecipient with funding provided to Recipient under this Agreement. Recipient, or subrecipient, as applicable, is obligated to continue operation and maintenance of the physical aspects of the Project dedicated to the public transportation purposes for which Project was initially approved unless Recipient, or subrecipient, as applicable, ceases ownership of such Project property; ceases to utilize the Project property for the intended public transportation purposes; or sells or transfers title to or control over Project and State is refunded the Credits due State as provided in paragraph (2) herein below.

2. Project right-of-way, Project facilities constructed or reconstructed on the Project site and/or Project property (including vehicles and vessels) purchased by Recipient (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this Agreement) shall remain permanently dedicated to the described public transit use in the same proportion and scope, and to the same extent as mandated in the Program Supplement, unless State agrees otherwise in writing. Vehicles acquired as part of Project, including, but not limited to, buses, vans, rail passenger equipment, shall be dedicated to that public transportation use for their full economic life cycle, which, for the purpose of this Agreement, will be determined in accordance with standard national transit practices and applicable rules and guidelines, including any extensions of that life cycle achievable by reconstruction, rehabilitation or enhancements. The exceptions to this section are outlined below:

a. Except as otherwise set forth in this Section 4, State, or any other State-assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit (collectively the Credit), at State's sole option, equivalent to the proportionate Project funding participation received by Recipient from State if Recipient, or a sub-recipient, as applicable, (i) ceases to utilize Project for the original intended public transportation purposes or (ii) sells or transfers title to or control over Project. If federal funds (meaning only those federal funds received directly by

Recipient and not federal funds derived through or from the State) have contributed to the Project, Recipient shall notify both State and the original federal source of those funds of the disposition of the Project assets or the intended use of those sale or transfer receipts.

b. State shall also be entitled to an acquisition credit for any future purchase or condemnation of all or portions of Project by State or a designated representative or agent of State.

c. The Credit due State will be determined by the ratio of State's funding when measured against the Recipient's funding participation (the Ratio). For purposes of this Section 4, the State's funding participation includes federal funds derived through or from State. That Ratio is to be applied to the then present fair market value of Project property acquired or constructed as provided in (d) and (e) below.

d. For Mass Transit vehicles, this Credit [to be deducted from the then remaining equipment value] shall be equivalent to the percentage of the full extendable vehicle economic life cycle remaining, multiplied by the Ratio of funds provided for that equipment acquisition. For real property, this same funding Ratio shall be applied to the then present fair market value, as determined by State, of the Project property acquired or improved under this Agreement.

e. Such Credit due State as a refund shall not be required if Recipient dedicates the proceeds of such sale or transfer exclusively to a new or replacement State approved public transit purpose, which replacement facility or vehicles will then also be subject to the identical use restrictions for that new public purpose and the Credit ratio due State should that replacement project or those replacement vehicles cease to be used for that intended described pre-approved public transit purpose.

i. In determining the present fair market value of property for purposes of calculating State's Credit under this Agreement, any real property portions of the Project site contributed by Recipient shall not be included. In determining State's proportionate funding participation, State's contributions to third parties (other than Recipient) shall be included if those contributions are incorporated into the Project.

ii. Once State has received the Credit as provided for above because Recipient, or a sub-recipient, as applicable, has (a) ceased to utilize the Project for the described intended public transportation purpose(s) for which State funding was provided and State has not consented to that cessation of services or (b) sold or transferred title to or control over Project to another party (absent State approval for the continued transit operation of the Project by that successor party under an assignment of Recipient's duties and obligations), neither Recipient, subrecipient, nor any party to whom Recipient or subrecipient, as applicable, has transferred said title or control shall have any further obligation under this Agreement to continue operation of Project and/or Project facilities for those described public transportation purposes, but may then use Project and/or any of its facilities for any lawful purpose.

iii. To the extent that Recipient operates and maintains Intermodal Transfer Stations as any integral part of Project, Recipient shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code section 99317.8). Upon request of State, Recipient shall also authorize State-funded bus services to use those stations and appurtenances without any charge to State or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the State-funded bus service (for the purpose of this paragraph, "State-funded bus service" means any bus service funded pursuant to Public Utilities Code section 99316).

G. *Disputes*

Parties shall develop a mutually agreed upon issue resolution process, as described below, and issues between the Parties are to be resolved in a timely manner. The Parties agree to the following:

1. If the Parties are unable to reach agreement on any particular issue relating to either Parties' obligations pursuant to this Agreement, the Parties agree to promptly follow the issue resolution process as outlined below:

a. The Department's project manager and the Recipient's equivalent may initiate the process of informal dispute resolution by providing the other Party with written notice of a dispute. The written notice shall provide a clear statement of the dispute, and shall refer to the specific provisions of this Agreement or Program Supplement that pertain to the dispute. The Department's project manager and the Recipient's equivalent shall meet and attempt to resolve the dispute within five days from the written notice. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

b. If the dispute is not resolved by the fifth day from the written notice, the Department's senior project manager and the Recipient's equivalent shall meet and review the dispute within five days. The Department's senior project manager and the Recipient's equivalent manager shall attempt to resolve the dispute within ten days of their initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

c. If the dispute is not resolved by the tenth day, the Department's Director or his designee and the Recipient's equivalent manager shall meet and review the dispute within five days. The Department's Director or his designee and the Recipient's equivalent manager shall attempt to resolve the dispute within ten days of the initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties. If the dispute is not resolved by the tenth day by the Department's Director or his designee and the Recipient's equivalent manager, the Parties shall submit the matter to the Secretary of CalSTA for a final administrative determination.

H. *Hold Harmless and Indemnification*

1. Neither State nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Recipient, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to Recipient under this Agreement or any Program Supplement or as respects environmental clean-up obligations or duties of Recipient relative to Project. It is also understood and agreed that, Recipient shall fully defend, indemnify and hold the CTC and State and their officers and employees harmless from any liability imposed for injury and damages or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by Recipient under or in connection with any work, authority, or jurisdiction delegated to Recipient under this Agreement and all Program Supplements.
2. Recipient shall indemnify, defend and hold harmless State, the CTC and the State Treasurer relative to any misuse by Recipient of State funds, Project property, Project generated income or other fiscal acts or omissions of Recipient.

I. *Labor Code Compliance*

Recipient shall include in all subcontracts awarded using Project funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of Contract award by the Recipient.

J. *Non-Discrimination Clause*

1. In the performance of work under this Agreement, Recipient, its contractor(s) and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, family and medical care leave, pregnancy leave, and disability leave. Recipient, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Recipient, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of Recipient's contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

2. Each of the Recipient'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 Recipient shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

3. Should federal funds be constituted as part of Project funding or compensation received by Recipient under a separate Contract during the performance of this Agreement, Recipient shall comply with this Agreement and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.

4. Recipient shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

5. The Recipient shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR 21 (Nondiscrimination in Federally-Assisted Programs of The Department Of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964) and 23 CFR Part 200 (Title VI Program and Related Statutes—Implementation and Review Procedures) are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean the Recipient.

6. The Recipient 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 Department to investigate compliance with this Section J.

K. *State Fire Marshal Building Standards Code*

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, Recipient shall request that the State Fire Marshal review Project PS&E to ensure Project consistency with State fire protection standards.

L. *Americans with Disabilities Act*

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

M. *Access for Persons with Disabilities*

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

N. *Disabled Veterans Program Requirements*

1. Should Military and Veterans Code sections 999 et seq. be applicable to Recipient, Recipient will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or Recipient's applicable higher goals) in the award of every contract for Project work to be performed under these this Agreement.

2. Recipient shall have the sole duty and authority under this Agreement and each Program Supplement to determine whether these referenced code sections are applicable to Recipient and, if so, whether good faith efforts asserted by those contractors of Recipient were sufficient as outlined in Military and Veterans Code sections 999 et seq.

O. *Environmental Process*

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

P. *Force Majeure*

Each party will be excused from performance of its obligations where such non-performance is caused by any event beyond its reasonable control, such as any non-appealable order, rule or regulation of any federal or state governmental body, Acts of God (of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, provided

that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

Should a *force majeure* event occur which renders it impossible for a period of forty-five (45) or more consecutive days for either party to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the existing Business Plan or Business Plan Update to deal with such event and to seek additional sources of funding to continue the operation of the Service.

ARTICLE IV – MISCELLANEOUS PROVISIONS

Section 1. Miscellaneous Provisions

A. *Successor Acts*

All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

B. *Successor and Assigns to the Parties*

Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party; provided, that unless otherwise expressly required herein, a party shall not be obligated to obtain the written consent of the other party with respect to any contract related to the Service for the provision of goods and/or services to the contracting party in the ordinary course of business.

C. *Notice*

Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to the Department:

State of California

Department of Transportation

Division of Rail and Mass Transportation

P.O. Box 942874

Sacramento, CA 95832-0001

Attention: Mass Manager, MS 39

with a copy to:

California State Transportation Agency
915 Capitol Mall Suite 350 B
Sacramento, CA 95814

If given to the Recipient:

Southern California Regional Rail Authority
900 Wilshire Blvd., Suite 150
Los Angeles, CA 90017
Attention: Anne Louise Rice

D. *Amendment*

This Agreement may not be changed, modified, or amended except in writing, signed by the parties hereto, and approved in advance in writing by the Secretary, and any attempt at oral modification of this Agreement shall be void and of no effect.

E. *Representation and Warranties of the Parties*

a. Recipient hereby represents and warrants to the Department that:

i. Recipient is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to this Agreement.

ii. Recipient has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by the governing board of such entity and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The Agreements have been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to the creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

iii. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will

(i) conflict with or result in a breach of any provision of any agreement to which Recipient is a party; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

b. The Department does hereby represent and warrant with respect to each of this Agreement to the Recipient that:

i. It validly exists with all requisite power and authority to carry on the activities proposed to be conducted pursuant to this Agreement.

ii. It has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations thereunder. The execution and delivery of this Agreement, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The agreements have been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

iii. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any other agreement; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

F. *Construction, Number, Gender and Captions*

The Agreements have been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used therein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

G. *Complete Agreement*

This Agreement, including Appendices, constitutes the full and complete agreement of the parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement. All attached Appendices A through E are hereby incorporated and made an integral part of this Agreement by this reference.

H. *Partial Invalidity*

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

I. *Conflicts*

To the extent that any provision of or requirement of this Agreement may conflict with a provision or requirement of any other agreement between the parties hereto, or between a party hereto and any other party, which is attached to this Agreement as an appendix, the priority of agreements shall be employed to resolve such conflict. IN the event of a conflict, the Master Agreement controls the Program Supplement and any further Amendments.

J. *Counterparts*

This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

K. *Governing Law*

The Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

[SIGNATURES TO FOLLOW]

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

**SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY**

BY:

DARA WHEELER
Chief, Division of Rail and Mass
Transportation

BY:

Ronnie Campbell
Interim Co-Chief Executive Officer

APPROVED AS TO FORM AND PROCEDURE

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

BY:

JON OLDENBURG
Deputy Attorney

APPENDIX A

TIRCP PROGRAM GUIDELINES AND DEPARTMENT DELEGATION

2018 TRANSIT AND INTERCITY RAIL CAPITAL PROGRAM GUIDELINES

October 13, 2017



TRANSIT AND INTERCITY RAIL CAPITAL PROGRAM

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1 Authority and Purpose

The Transit and Intercity Rail Capital Program was created by Senate Bill 862 (Chapter 36, Statutes of 2014) and modified by Senate Bill 9 (Chapter 710, Statutes of 2015) to provide grants from the Greenhouse Gas Reduction Fund to fund transformative capital improvements that will modernize California's intercity, commuter, and urban rail systems, and bus and ferry transit systems, to significantly reduce emissions of greenhouse gases, vehicle miles traveled, and congestion.

Senate Bill 9 requires this grant cycle to approve a five-year program of projects starting with the 2018-19 fiscal year and ending with the 2022-23 fiscal year. Funding for this five-year cycle may significantly increase due to legislation passed in 2017. First, Senate Bill 1 (Chapter 5) provides a historic funding increase for transportation with an estimated \$1.4 billion directed to the Transit and Intercity Rail Capital Program from the Public Transportation Account for new programming in this cycle. Second, Assembly Bill 398 (Chapter 135) extended the Cap and Trade Program from 2020 through 2030, potentially providing an estimated \$1 billion in Greenhouse Gas Reduction Funds to this program during the programming period of 2018-19 through the 2022-2023 fiscal year. While these amounts are reasonable estimates as of the date of the guidelines, funding from both sources are subject to impacts from market forces. Auction proceeds, in particular, may vary significantly from one auction to the next.

These guidelines describe the policy, standards, criteria, and procedures for the development, adoption and management of the Transit and Intercity Rail Capital Program. The guidelines were developed in consultation with the California Air Resources Board, the California Transportation Commission (Commission), the Department of Transportation (Caltrans), and the Strategic Growth Council, and were informed by input received both in writing and through in-person workshops in the summer and fall of 2017.

2 Background

The Global Warming Solutions Act of 2006 (Assembly Bill [AB] 32, Nunez, Chapter 488) created a comprehensive program to reduce greenhouse gas emissions in California. AB 32 requires California to reduce greenhouse gas emissions to 1990 levels by 2020, and to maintain and continue reductions beyond 2020. In 2016, Governor Brown signed Senate Bill 32 (Chapter 249) that sets a climate goal for California to reduce greenhouse gases to 40 percent below 1990 levels by 2030. Senate Bill 398 extends the Cap and Trade Program to help achieve the 2030 climate goal.

The Cap-and-Trade Program, a key element in California's Scoping Plan, implements measure to achieve greenhouse gas reduction goals. It creates a limit on the emissions from sources responsible for 85 percent of California's greenhouse gas emissions, establishes the price signal needed to drive long-term investment in cleaner fuels and more efficient use of energy, and gives covered entities flexibility to implement the lowest-cost options to reduce greenhouse gas emissions.

In 2012, the Legislature passed and Governor Brown signed into law three bills, AB 1532 (Pérez, Chapter 807, Statutes of 2012), Senate Bill (SB) 535 (De León, Chapter 830, Statutes of 2012), and SB 1018 (Budget and Fiscal Review Committee, Chapter 39, Statutes of 2012), that established the Greenhouse Gas Reduction Fund to receive the State's portions of proceeds from the distribution of allowances via auction and provided the framework for how those auction proceeds will be appropriated and expended. Subsequent legislation, AB 1550 (Chapter 369, Statutes of 2016), modified requirements for expenditures from the Greenhouse Gas Reduction Fund relative disadvantaged communities and low-income

communities and households. State law requires that expenditures from the Greenhouse Gas Reduction Fund be used to facilitate the achievement of greenhouse gas emission reductions. In addition, Transit and Intercity Rail Capital Program expenditures must comply with the requirements contained in SB 862 and SB 9, which provide statutory direction the program.

Senate Bill 1 (Chapter 5, Statutes of 2017) provides a historic funding increase for transportation with an estimated ten-year funding level of \$54 billion to fix highways and local roads and bridges, address congestion for commuters and freight movement, and invest in transit and active transportation. SB 1 funds are estimated to provide about \$1.4 billion for the Transit and Intercity Rail Capital Program in 2017-18 through 2022-23.

3 Objectives

The goals of the Transit and Intercity Rail Capital Program are to provide monies to fund transformative capital improvements that modernize California's intercity rail, bus (including feeder buses to intercity rail services, as well as vanpool services that are eligible to report as public transit to the Federal Transit Administration), ferry, and rail transit systems (collectively referred to as transit services or systems inclusive of all aforementioned modes unless otherwise specified) to achieve all of the following objectives:

1. Reduce emissions of greenhouse gases
2. Expand and improve transit service to increase ridership
3. Integrate the rail service of the state's various rail operations, including integration with the high-speed rail system
4. Improve transit safety

Additionally, SB 862 establishes a programmatic goal to provide at least 25 percent of available funding to projects that provide a direct, meaningful, and assured benefit to disadvantaged communities, consistent with the objectives of SB 535 and AB 1550, and address a community need.

4 Funding

The Transit and Intercity Rail Capital Program will receive both a specified portion of annual Senate Bill 1 revenues and 10 percent of the Cap-and-Trade auction proceeds deposited in the Greenhouse Gas Reduction Fund.

Pursuant to Senate Bill 9 of 2015, the California State Transportation Agency (CalSTA) will adopt a multi-year program of projects covering 2018-19 through 2022-23. An estimate for the funding available for the Transit and Intercity Rail Capital Program will be available with the call for projects.

While the Fund Estimate will be based on anticipated revenue through 2022-23, Senate Bill 9 authorizes CalSTA to enter into a multi-year funding agreement with an eligible applicant for an amount of program money and for any duration. Such a multi-year funding agreement would be implemented in cooperation with the Commission. CalSTA may use this authority to allow an allocation of funds for a project that would depend on revenue received subsequent to the allocation, and could include funds received subsequent to the 2022-23 fiscal year.

Pursuant to SB 9, no later than July 1, 2018, CalSTA will approve an initial five-year program of projects with the first year being 2018-19, with additional five-year programs approved by April 1 of each even-numbered year thereafter. Each program of projects shall be a statement of intent by the Transportation Agency for the allocation and expenditure of moneys during those five fiscal years.

As provided in statute, the Transportation Agency may revise its approved program of projects as necessary, including to better align allocation authority with available funding. The Transportation Agency may also adopt an allocation plan for multi-year projects, tying allocation of funding to an awarded project to funds available in specified fiscal years. The goal of such a plan is to allow a project with construction over multiple years to have a commitment of funds programmed over multiple years in order to enter into necessary contracts for construction.

5 Schedule

Distribute discussion draft guidelines	Aug. 4, 2017
Present discussion draft guidelines to California Transportation Commission	Aug 17, 2017
Informal workshop, Southern California	Aug. 18, 2017
Informal workshop, Northern California	Aug. 21, 2017
Post and send final draft guidelines to Legislature	Aug. 29, 2017
Workshop, Southern California	Sep. 29, 2017
Workshop, Northern California	Oct. 2, 2017
Final comments on guidelines due to CalSTA	Oct 5, 2017
CalSTA publishes final program guidelines	Oct. 13, 2017
Call for projects	Oct. 13, 2017
Optional meetings to discuss project concepts and quantification with CalSTA and Caltrans staff	Nov 6-14, 2017
Project applications due to Caltrans	Jan. 12, 2018
CalSTA publishes summary of applications	Feb. 12, 2018
CalSTA anticipates publishing list of approved projects	Apr. 30, 2018
Anticipated presentation of project list to CTC (at regular meeting)	May 2018

6 Eligible Applicants

Eligible applicants must be public agencies, including joint powers agencies, that operate or have planning responsibility for existing or planned regularly scheduled intercity or commuter passenger rail service (and associated feeder bus service to intercity rail services), urban rail transit service, or bus or ferry transit service (including commuter bus services and vanpool services). Public agencies include construction authorities, transportation authorities, and other similar public entities created by statute.

An applicant assumes responsibility and accountability for the use and expenditure of program funds. Applicants must comply with all relevant federal and state laws, regulations, policies, and procedures.

7 Eligible Projects

Eligible applicants may submit project applications individually or as part of a joint application. In order to be eligible for funding under this program, **a project must demonstrate that it will achieve a reduction in greenhouse gas emissions using the CARB quantification methodology.**

Projects eligible for funding under the program include, but are not limited to, the following:

1. Rail capital projects, including the acquisition of rail cars and locomotives, and the facilities to support them, that expand, enhance, or improve existing rail systems and connectivity to existing and future transit systems, including the high-speed rail system.
2. Intercity, commuter, and urban rail projects that increase service levels, improve reliability, or

decrease travel times. These projects may include infrastructure access payments to host railroads in lieu of capital investments, efforts to improve existing rail service effectiveness with a focus on improved operating agreements, schedules, and minor capital investments that are expected to generate increased ridership, as well as larger scale projects designed to achieve significantly larger benefits.

3. Rail, bus, and ferry integration implementation, including: integrated ticketing and scheduling systems and related capital investments (including integration with bus or ferry operators); projects enabling or enhancing shared-use corridors without increasing net air pollution (both multi-operator passenger only corridors as well as passenger-freight corridors); related planning efforts focused on, but not limited to, delivery of integrated service not requiring major capital investment; and other service integration initiatives.
4. Bus rapid transit and other bus and ferry transit investments (including vanpool services operated as public transit) to increase ridership and reduce greenhouse gas emissions, including capital investments, as a component implementing transit effectiveness studies, that will contribute to restructured and enhanced service.

CalSTA intends to fund a small number of transformative projects that will significantly reduce vehicle miles traveled, congestion, and greenhouse gas emissions by creating a new transit system, increasing the capacity of an existing transit system, or otherwise significantly increasing the ridership of a transit system. Significant change will be measured both in percentage terms and in total quantity terms. These may include, for example, both lower-cost projects focused on integration, reliability and enhancement of service, and higher-cost capital expansion projects. In addition, CalSTA seeks projects that link key destinations and improve accessibility to economic opportunities.

CalSTA may also make some funding available for demonstration projects that are smaller-scale efforts with great potential to be expanded. Projects may include novel approaches to attracting new riders such as smart phone mobile ticketing or other software and hardware solutions to reduce ticketing transaction costs, or a test of a concept related to integrated ticketing, as well as intercity rail or transit effectiveness or operational planning as a component of the capital investments in improved, expanded and/or restructured service designed to cost-effectively increase ridership.

Pursuant to statute, the Transit and Intercity Rail Capital Program is required to fund transformative capital improvements, including the facilities that support them, that significantly reduce vehicle miles traveled, congestion, and greenhouse gas emissions, along with achieving geographic equity. An applicant submitting multiple project applications must clearly prioritize its projects, and is encouraged to identify phases or priorities within each project application, if applicable, if available resources do not permit the full project to be funded. Applicants submitting a high-dollar, single application with no scalability or separable project elements may increase the risk of having an uncompetitive project application. At the same time, applicants are advised to submit projects that are scalable where practical. In the event that available program resources expand or contract prior to the completion of the programming cycle, the Transportation Agency may revise the funding available for the programming cycle.

While there is no minimum match requirement for this funding source, funding leverage is desirable and will be considered in the evaluation of expected project benefits. In particular, emphasis will be placed on projects that leverage funding from other greenhouse gas reduction programs such as Caltrans' Low Carbon Transit Operations Program, the Strategic Growth Council's Affordable Housing and Sustainable Communities Program or the California Air Resources Board's Low Carbon Transportation funding program, leveraging of funding from SB1 sources (including formula program sources), or the leveraging of funding from other federal, state, local or regional sources (including potential local transportation funding measures, as further detailed in Section 11), with consideration of those sources that are discretionary compared to those that are non-discretionary. A recipient of money under the program may combine funding from the program with other state funding (if allowed), including, but not limited

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to, the State Transportation Improvement Program, the Low Carbon Transit Operations Program, the State California Air Resources Board clean vehicle program, and state transportation bond funds.

If a project is awarded funds, all funds identified as committed to the project may be required as a funding match at the time of project selection, and based on the matching percentage identified at the time of selection, a pro-rata reimbursement agreement (or other suitable agreement) may be established to ensure project savings are equitably distributed and that committed non-TIRCP funds are not supplanted. If capital assets are removed from service before the end of their useful life, pro-rata repayment of grant funds may be required.

Redeployment of capital assets to achieve similar, or greater, benefits more effectively (i.e., redeploying bus service to achieve greater greenhouse gas reductions or better serve a disadvantaged community based on current needs) may be permitted, but must be documented (with documentation including a detailed justification of the requested redeployment) by the grantee and approved in advance by CalSTA.

CalSTA will give priority to projects which fund construction or implementation; however, projects that will be completed with other funds are eligible for funding. If an implementing agency receives funding for a project that is to be completed with other funds (for example, a project which receives funds for plans, specifications, and estimates from the Transit and Intercity Rail Capital Program but which will receive local measure funding for construction), that agency is required to complete the project as proposed. If the project is not completed as proposed, the agency may be required to fully or partially repay funds from the Transit and Intercity Rail Capital Program commensurate with the failure to complete the project and deliver anticipated reductions in greenhouse gas emissions.

Prior to the project application due date, CalSTA intends to invite interested eligible applicants to optional meetings to discuss proposed project concepts and greenhouse gas reduction quantification in order to clarify program requirements.

8 Project applications

Applications must be submitted to Caltrans by January 12, 2018. Applications will be treated in accordance with Public Records Act requirements and certain information, subject to those requirements, may be publicly disclosed.

Each project application must include:

A signed cover letter, with signature authorizing and approving the application.

An explanation of the project and its proposed benefits, including the following:

1. Project title, which should be a brief non-technical description of the project type, scope, and location.
2. Project priority (if agency is submitting multiple applications). Explain the prioritization, including any state, regional or local planning efforts that support the ranking.
3. Project purpose and need.
4. Project scope.
5. Project Location
 - Provide a map for each of the following
 - A. Project location denoting the project site. Provide a KML file for the project with the transit route/project location represented by lines and stops represented by points as applicable.
 - B. Project location denoting disadvantaged communities, low-income communities, and/or low-income households that will benefit from the project, as applicable, according to the

California Air Resources Board's 2017 Draft Funding Guidelines for Agencies that Administer California Climate Investments released on August 4, 2017 (Funding Guidelines). The Funding Guidelines document is available here:

<https://www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm>

- C. Greenhouse gas reducing features such as the transportation corridors experiencing improved air quality, surrounding land use density, housing and employment centers, transit oriented development/sustainable communities strategy projects, active transportation infrastructure and other features, to the extent available.
- 6. Project costs
 - Documentation of the basis for the costs, benefits and schedules must be cited in the project application and made available upon request. The application should identify:
 - A. Cost estimates should be escalated to the year of proposed delivery.
 - B. Only cost estimates approved by the Chief Executive Officer or other authorized officer of the implementing agency should be used.
 - C. The amount and source of funds committed to the project (including funding for initial operating costs). A funding commitment is defined in section 11 below.
 - D. The amount of Transit and Intercity Rail Capital Program funds requested. Transit and Intercity Rail Capital Program funds cannot be used to supplant other committed funds.
- 7. Project schedule, including the project's current status and major delivery milestones.
- 8. Project benefits:
 - A. A clear demonstration of the expected benefits and the proposed metrics for tracking and reporting on those benefits consistent with the California Air Resources Board's Funding Guidelines (www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm).
 - B. The description of project benefits must address all of the Primary and Secondary Evaluation Criteria listed below under Project Selection Process (Section 9), indicating that a category is not applicable or no benefits are expected when that is the case.
 - C. An estimate of the useful life of the project for the dominant project asset type (can be separated by project category or phase if elements of the project have independent utility and could be separately funded or placed in service).
 - D. When investment of TIRCP is proposed to improve private infrastructure, an assessment of public and private benefits to show that the share of public benefit is commensurate with the share of public funding.
 - E. If a project will be competing for funding from other greenhouse gas reduction programs (such as Caltrans' Low Carbon Transit Operations Program, the Strategic Growth Council's Affordable Housing and Sustainable Communities Program or the California Air Resources Board's Low Carbon Transportation funding program) or from the Commission's Active Transportation or State Transportation Improvement Programs, the applicant must indicate if there are separable elements that will be funded from those other sources. The applicant must clearly explain any change to the benefits of the project if the funding from that source is not awarded to the project.
 - F. Identify studies or planning documents relevant to expected project benefits and include a copy of the referenced documents as an attachment.
- 9. A discussion of the proposed project's impact, both favorable and unfavorable, on other transit services and projects planned or underway within the corridor, including intercity rail, transit or high speed rail services in a parallel or connecting corridor. Impacted plans should be clearly identified and corresponding planning documents should be included as an attachment. If ridership of the other services are expected to be impacted by the proposed project, evidence of how the other services are to be impacted should be included in the application, including evidence of coordination with the other service providers and an estimate of multi-operator impacts where available. Project

impacts that increase ridership on other services through increased transfers of passengers may be reflected in the quantification of GHG benefits only if the project also documents the ability of the connected corridor to provide capacity sufficient to accommodate the riders. If additional service must be operated by the adjoining operator, the operation of such service must be included in the calculation of emissions related to the project. If an agency recognizes value in additional efforts to integrate services with other transportation providers or enhance station access (including by active transportation) during the post-award period (and prior to the beginning of service resulting from the project), a specific task and budget for the proposed activities should be included in the project application. The general scope of the proposed effort should be submitted in draft form, but is considered subject to revision and development of additional detail prior to allocation of TIRCP funding for these activities. During application review, if additional efforts are seen as necessary in order to successfully integrate the project with other services or to address station access, CalSTA may propose an additional task and potentially assign additional funding to pursue such integration and access planning above and beyond what is requested in the project application, with the scope agreed to during development of the agreements necessary to implement the selected project.

10. If appropriate, an explanation of how some or all of the project provides direct, meaningful, and assured benefits to a disadvantaged community, low income communities or low income households. Identify a need of that community, including how the need was established identify the portion of the project, if any, that is located within a disadvantaged community or low income community and that addresses the need (see Section 9.3 and Attachment 1). If an agency plans to engage in additional efforts to consult with disadvantaged or low income stakeholders during the post-award period (and prior to the beginning of service resulting from the project), a specific task and budget for the proposed activities should be included in the project application. Such efforts may include plans for service implementation of the specific project, addressing station access issues specific to the stakeholders, as well as developing proposals for service changes and capital investments that may be funded through future capital or operating funds or through project cost savings. Activities that address community engagement may include, but are not limited to, public workshops/meetings, door-to-door canvassing, house meetings, established website and/or social media efforts, surveys, focus groups, subcontracts with community-based organizations to conduct outreach, allocation of staff or contractor positions focused on community engagement, and advisory bodies or other shared decision-making bodies. The general scope of the proposed effort should be submitted in draft form, but is considered subject to revision and development of additional detail prior to allocation of TIRCP funding for these activities. During application review, if additional efforts are seen as necessary in order to successfully address the needs of disadvantaged or low income stakeholders, CalSTA may propose an additional task and potentially assign additional funding to pursue such consultations above and beyond what is requested in the project application, with the scope agreed to during development of the agreements necessary to implement the selected project.
11. Description of funding sources and approach to ensuring ongoing operating and maintenance costs of the project are funded through the useful life of the project (as applicable).
12. Each application must include a Project Programming Request (PPR) Form. A template of this form in Excel may be found at www.dot.ca.gov/drmt/sptircp.html. Each Project Programming Request must list Federal, State, and local funding categories by fiscal year. All applicants must demonstrate the ability to absorb any cost overruns and deliver the proposed project with no additional funding from this program beyond that provided in initial grant or cooperative agreement, and to fund initial operating costs. If the project is a scope addition to a project with a prior PPR Form, the prior PPR should be included, and the revised PPR must not reflect supplantation of previously committed funds.

An eligible applicant may submit an application to fund a project over multiple fiscal years. The cost of each project component must be listed in the State fiscal year in which the particular

project component can be delivered. For environmental studies and permits, costs should be listed in the fiscal year during which environmental studies will begin. Costs for the preparation of plans, specifications, and estimates should be listed in the fiscal year during which this work will begin. Right-of-way costs should be listed in the fiscal year(s) during which each right-of-way acquisition (including utility relocation) contract will first be executed. Construction costs should be programmed in the fiscal year during which each construction contract will be advertised, or if an agency can receive TIRCP construction funding over multiple fiscal years to fund a given proposed contract, a reflection of the years in which construction funding is required to meet expected contract requirements. If a project is expected to require multiple contracts for any stage of project development, each contract should be listed separately. Applicants are encouraged to submit a narrative explanation or supplement to the PPR to reflect the proposed contracting approach, and describing the ability of the project to receive funds on varying allocation schedules. If a project has special cash flow considerations that would benefit from TIRCP funds being available at a particular time, please describe this in the application. Finally, please note if a project is only requesting funds for a particular phase of the proposed project, such as a construction contract expected to be awarded in year three of the project. Under these circumstances, TIRCP funding allocation may be conditioned on achieving bid-ready status.

12. Letters of support for project implementation, including letters from:
 - A. Project partners essential to project implementation, such as host railroads or facility owners. If TIRCP funds are to be used at a later stage of project implementation (such as construction), and an agency is able to commit to delivering the project goals with no additional TIRCP funding (supplementing if necessary from non-TIRCP sources), letters of support may indicate overall support for the project as described in the application and willingness to engage in best efforts to achieve a formal agreement for the construction elements of the project requiring future stakeholder agreement. Allocation of awarded TIRCP funding will be conditioned on such agreements being finalized and the project being implemented in a manner consistent with original application.
 - B. A Metropolitan Planning Organization (MPO), indication that the project is or is not consistent with an adopted Sustainable Communities Strategy, or in non-MPO regions, a regional plan to reduce greenhouse gas emissions. (It is not necessary for establishment of project eligibility for an MPO to indicate its specific support for the project.)
 - C. Regional agency or agencies.
 - D. Members of the community, including representatives of impacted disadvantaged or low income communities. Letters from community organizations stating their recognition of benefits from the project are encouraged.
 - E. Additional stakeholders relevant to the proposed project
13. Description of project elements that are separable or scalable based on available funding, if applicable, while still maintaining independent utility. For example, if an application is for improving service on three routes, each route should be separately described and prioritized so that the highest-priority portion of the application could be funded if resources are not sufficient for full project funding. If some or all of the project is already programmed using state or federal funds, the application must clearly explain if and how the scope of the project has changed since the most recent state or federal programming action. If the project is not scalable, the applicant should provide background detailing why it is not practical for it to be phased or scaled.

Documentation of the basis for the costs, benefits, and schedules must be included in the project application and additional detail made available upon request.

CalSTA will post basic project application information from all applications on its website prior to awarding funding. After projects are selected, CalSTA will post the status of all project applications to its website.

Each project will be required to track and report on project status and benefits. CalSTA encourages project applicants to carefully consider how to track the status and benefits of the proposed project, including having project budgets that allow for an appropriate level of before and after data collection and analysis (e.g., greenhouse gas reductions, diesel particulate matter reductions, increased transit service for disadvantaged community residents, etc.). This tracking could take the form of customer surveys made before and after the proposed project, specific data analysis before and after the project, or other efforts. Since this is an ongoing funding program of the state, developing lessons learned and good supporting data are critical to future program effectiveness.

9 Project Evaluation

Applications will receive an initial screening for completeness and eligibility. Incomplete or ineligible applications may not be evaluated.

9.1 Primary Evaluation Criteria

Projects will be selected through a competitive process. The primary evaluation will be based on how well a project meets the objectives of the program:

1. Reduce greenhouse gas (GHG) emissions. The California Air Resources Board (CARB) has developed a quantification methodology for estimating greenhouse gas reductions that may occur as a result of project implementation (see Appendix 2). The inputs and assumptions behind these calculations must be thoroughly documented as part of the application. Applicants should present project elements that are scalable or separable in a manner that allows the greenhouse gas emission reductions of each element to be understood. Total cost per ton of carbon dioxide equivalents (CO₂e) reduction and Transit and Intercity Capital Program funding per ton of CO₂e reduction will be primary elements of the evaluation for project selection. Applicants must quantify greenhouse gas reductions (see Appendix 2) and submit reporting information in accordance with the California Air Resources Board's Funding Guidelines (www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm), including reporting on benefits to disadvantaged communities, low-income communities, and/or low-income households. Highly rated projects will exhibit a low cost per ton of CO₂e reduction, and will have strong documentation of the ridership and passenger mile impacts of the project.
2. Increase ridership through expanded and improved rail and transit service (including connectivity to rail services through expanded and improved transit and/or feeder bus services). Documentation of the assumptions and approach to estimating ridership changes is a critical component of evaluating greenhouse gas emission reductions. Highly rated projects will have significant ridership impacts relative to the project cost and well documented methodologies for establishing ridership forecasts. If multiple operators benefit from or are impacted by a project, highly rated projects will document specific ridership results specific to each operator, including any reductions impacting other operators.
3. Integrate the services of the state's various rail and transit operations, including integration with the high-speed rail system, as described in the most recent, currently approved High Speed Rail Business Plan, or subsequent documents referenced at the time of project solicitation. Highly rated projects will demonstrate specific agreements and project features that ensure integration, will often include multiple agencies cooperating to deliver a project, and will generally have a significant portion of ridership benefitting from integration.
4. Improve safety. Projects that include specific measures to address safety for users or non-users of the transit or rail service should specifically note such project elements and the

funding related to them. Such improvements may include grade separations, improved crossing protection at railroad crossings, or elements in transit stations that reduce the likelihood of pedestrian fatalities and injuries, among other safety elements. Such safety elements may also include elements that increase the safety of disadvantaged and/or vulnerable populations, including safer circulation for the elderly, mobility impaired, very young, and the vision impaired. Highly rated projects will have significant project element related to safety and will not leave major safety considerations unaddressed.

9.2 Secondary Evaluation Criteria

Projects will also be evaluated based on the following criteria:

1. The co-benefits of projects that support the implementation of sustainable communities strategies through one or more of the following:
 - A. Reducing vehicles miles traveled from automobiles and the number of automobile trips through growth in transit ridership.
 - B. Promoting housing development in the vicinity of rail stations and major transit centers, including existing or planned high-density housing development within one-half mile walk of an applicant's rail stations or major transit stops. Consideration will be given to station communities with HCD-certified housing elements, high-density zoning, affordable housing, and strategies for avoiding the displacement of local residents as related to the project elements.
 - C. Increasing the attractiveness of a transit-served area for the location of additional jobs and housing, and the resulting low-carbon impact of such location efficiency on statewide GHG emissions relative to the status quo.
 - D. Expanding existing rail and public transit systems.
 - E. The contribution of the project to the acceleration of later phases of the project or to other rail and transit projects in the region or service area.
 - F. Enhancing the connectivity, integration, and coordination of the state's various transit systems, including, but not limited to, regional and local transit systems and the high-speed rail system.
 - G. Implementing clean vehicle technology, especially zero emission technology.
 - H. Promoting active transportation, by increasing the proportion of trips accomplished by biking and walking or increasing the safety and mobility of bicyclists and pedestrians.
 - I. Improving public health, with particular emphasis on elements benefiting the most impacted and disadvantaged communities, low-income communities, and/or low-income households.
 - J. Air quality impacts of the project not included in the reduction of greenhouse gas emissions, including health benefits from improved regional air quality resulting from the project.
2. Benefit to disadvantaged communities, low-income communities, and/or low-income households. The applicant must evaluate the criteria detailed in Attachment 1 to determine whether the project meets criteria for providing direct, meaningful, and assured benefits to a disadvantaged community, low-income community, and/or low-income households and address a community need pursuant the California Air Resources Board's Funding Guidelines (www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm), and specifically document the manner in which all or part of the project does so. Projects that will be used by residents of disadvantaged communities, low-income communities, and/or low-income households should document the nature of such use and its degree of relevance to disadvantaged community, low-income community, and/or low-income household

residents in the service areas of the operators benefiting from the project. Project applicants should be explicit on the deliberate steps they take to achieve a meaningful level of participation from disadvantaged communities, low-income communities, and/or low-income households in the planning and design of projects that are intended to address community identified priorities and needs.

3. The project priorities developed through the collaboration of two or more rail operators and any memoranda of understanding between state agencies (including intercity rail joint powers authorities) and local or regional rail operators.
4. Geographic equity, with particular attention by applicants in identifying efforts to address underserved communities within an applicant's region or service area. The Transportation Agency will separately apply geographic equity considerations at a statewide level.
5. Consistency with a plan or strategy contained in an adopted Sustainable Communities Strategy, as confirmed by the Metropolitan Planning Organization (MPO), or, in non-MPO regions, a regional plan that includes policies and programs to reduce greenhouse gas emissions. Projects that are part of a regional network and are considered regionally significant should be noted as such. All referenced documents should be included as an attachment.
6. Benefits to freight movement.
7. The extent to which a project has supplemental funding committed to it from non-state sources, with an emphasis on projects that leverage funding from private, federal, local or regional sources that are discretionary.
8. Integration across other modes of transportation, such as connections at airports, bus and ferry terminals, and subway stations.
9. For expansions of service, the presence and quality of a financial plan that analyzes the financial viability of the proposed service, including the availability of any required operating financial support.

Highly rated projects will address and score highly on multiple secondary evaluation criteria, with clear documentation of claimed benefits. Clear documentation will include data related to evaluating the claimed benefits to the extent available. Agencies are encouraged to document in the secondary evaluation criteria categories of verifiable greenhouse gas reducing activities associated with a project that are not specifically captured in the primary evaluation categories and in the quantification tool provided by the California Air Resources Board.

9.3 Benefit to Disadvantaged Communities and Low Income Communities and Households

It is a goal of this program to maximize benefits to disadvantaged communities and low income communities and households. Pursuant to the requirements of Senate Bill 535 of 2012, as amended by Assembly Bill 1550 of 2016, the overall California Climate Investments Program funded with Cap-and-Trade auction proceeds must result in: (1) a minimum of 25% of the available moneys in the Greenhouse Gas Reduction Fund to projects located within, and benefiting individuals living in, disadvantaged communities, (2) an additional minimum of 5% to projects that benefit low-income households or to projects located within, and benefiting individuals living in, low-income communities located anywhere in the state, and (3) an additional minimum of 5% either to projects that benefit low-income households that are outside of, but within a 1/2 mile of, disadvantaged communities, or to projects located within the boundaries of, and benefiting individuals living in, low-income communities that are outside of, but within a 1/2 mile of, disadvantaged communities.

(CalEPA) has identified disadvantaged communities and low income communities through the map available at this website:

<https://calepa.ca.gov/envjustice/ghginvest/>

To identify low-income households, a “look-up” tool and a list of HCD’s “low-income” thresholds by county and household size are available at: www.arb.ca.gov/cci-communityinvestments.

In addition to contributing benefits towards meeting or exceeding the AB 1550 investment minimums, the TIRCP has a statutory investment target for benefits to disadvantaged communities required by SB 862 (a 25% minimum). This applies across the entire program regardless of funding source. Agencies are responsible for documenting compliance with these requirements. Investments that are eligible to be counted toward AB 1550 as projects within and benefiting disadvantaged communities will also count toward meeting the SB 862 requirements. Refer to criteria in Funding Guidelines (further referenced below) for how to demonstrate benefit.

SB 862 requires the California Air Resources Board, in consultation with CalEPA, to develop funding guidelines for all agencies that are appropriated monies from the Greenhouse Gas Reduction Fund. These guidelines must include a component for how administering agencies should maximize benefits for disadvantaged communities.. The California Air Resources Board released the 2017 Draft Funding Guidelines for Agencies that Administer California Climate Investments on August 4, 2017. Stakeholders can find the Funding Guidelines at this CARB website: <https://www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm>

In reviewing efforts to maximize benefits to disadvantaged communities, low-income communities, and/or low-income households, CalSTA may request review of applications by an advisory panel representing such stakeholders during the evaluation of applications. The primary goal of this panel will be to review proposed efforts (both pre-application and those proposed for the post-award period) and to either confirm that the applicant efforts will help align the proposed project with stakeholder and community needs, or to recommend efforts that would allow such needs to be addressed (see items 9 and 10 in section 8 describing how such efforts may be requested and funded as part of project selection).

10 Project Selection Process

CalSTA will evaluate applications for compliance with the objectives of the program and rate them based on the aforementioned primary and secondary criteria, assigning ratings such as “High,” “Medium- High,” “Medium,” “Medium-Low”, and “Low” to the specific alignment of the project to each of the selection criteria, and also considering the cost per ton of CO₂e reduction and the risks of successful project delivery. Because of the wide variety in the type and size of projects that can be funded from this program, CalSTA may group projects for the purpose of comparing the ratings of like applications or for purposes of comparing projects within a region. In addition, projects with clear phases or scalability may be evaluated for the portion of the project that would receive the highest rating if partial funding for the project is under consideration. The highest rated applications that meet the program objectives will be selected for programming, except that CalSTA may make adjustments to meet the disadvantaged community goals of this program and to provide geographic equity.

In addition to being evaluated on the aforementioned criteria and benefit to disadvantaged communities, low-income communities, and/or low-income households, including addressing community needs, each application will also be assessed to determine the risk associated with the

project's capacity to generate, as planned, transportation and greenhouse gas emission reduction benefits (including potential sensitivity to different project benefit outcomes), and to be delivered within budget, on time, and as designed.

Additional factors to be considered include:

1. The overall need and benefit of the project in the context of its contribution to advancing later phases of the project, other aspects of a region's long range plans or towards improving the state's interregional transportation network.
2. Project readiness and reasonableness of the schedule for project implementation, including the following:
 - A. Progress towards achieving environmental protection requirements.
 - B. The comprehensiveness and sufficiency of agreements with key partners (particularly infrastructure owning railroads) that will be involved in implementing the project.
 - C. For projects that are not fully funded through construction, the timing and amount of the project's future non-committed investments. *Please note: CalSTA will give priority to projects which fund construction or implementation.*
3. The leveraging and coordination of funding from other greenhouse gas reduction programs such as Caltrans' Low Carbon Transit Operations Program, the Strategic Growth Council's Affordable Housing and Sustainable Communities Program or the California Air Resources Board's Low Carbon Transportation funding program.
4. The leveraging and coordination of funding from other private, federal, state (including SB1 funding programs), local or regional sources, with consideration of those sources that are discretionary compared to those that are non-discretionary.

Highly rated projects will clearly communicate a compelling need for the project in terms of specific benefits for the public, and will demonstrate a high degree of project readiness with few risks related to proceeding into construction and operating services that achieve the proposed benefits once the project is completed. Most highly rated projects will have an approved environmental document. Those projects that are requesting TIRCP funds to complete the project's funding package (when combined with already committed other funds) will clearly communicate the acceleration in project delivery possible due to receipt of TIRCP funding even if the project may ultimately have been advanced with future local and state resources at a later date. Highly rated projects will quantify the benefits of such acceleration as part of the project application.

CalSTA will collaborate with other state entities when evaluating project proposals, including but not limited to: the California Air Resources Board, CalEPA, the California High-Speed Rail Authority, Caltrans, the Commission, the Department of Housing and Community Development, and the Strategic Growth Council.

CalSTA, or Caltrans acting on CalSTA's behalf, may request additional documentation to support statements or data provided in the applications. However, applicants should endeavor to be as clear as possible in their applications and not assume that opportunity will be provided to clarify or better support a submitted application. Supporting documentation should include spreadsheets, reports and methodology descriptions (with sources noted) when available.

Applications will proceed through a multi-step review process:

1. Basic screening for completeness and eligibility
2. Review of application for potential subdivision into project phases or components, review and analysis of ridership and GHG quantification, and summarization of project to assist technical panel review
3. Initial rating of projects on each primary and secondary evaluation criterion (see section 9) and other additional factors (above in this section) described in the guidelines by multi-

agency technical panels

4. Consideration of technical panel ratings, geographic equity and degree of disadvantaged and/or low-income community benefits by a senior executive panel, with potential to request additional information from subject matter experts that may result in a revised rating on one or more evaluation criteria or factors
5. Project selection by CalSTA, taking into consideration cross-cutting and comparative selection criteria that consider overall program objectives, geographic equity and exceeding program goals for benefits to disadvantaged communities, low-income communities, and/or low-income households.

11 Programming

CalSTA intends to publish a 5-year program of approved projects by April 30, 2018, and to present the program to the Commission at its May 2018 meeting (subject to potential revision). When CalSTA releases the program, it will include a narrative for each approved project that describes that project's rating for primary and secondary criteria as well as special considerations to achieve disadvantaged and/or low-income community benefit and geographic equity. Subsequent programs are expected to be approved by CalSTA biennially. CalSTA may call for additional programming, or adjust existing programming between cycles, as warranted based on the level of auction proceeds.

CalSTA will develop a multi-year allocation plan to guide the allocation of projects at the Commission. The program of projects for each fiscal year will include, for each project, the amount to be funded from the Transit and Intercity Rail Capital Program, and the estimated total cost of the project. Total project costs will include all project support costs and all project listings will specify costs for each of the following components: (1) completion of all permits and environmental studies; (2) preparation of plans, specifications, and estimates; (3) right-of-way capital outlay; (4) support for right-of-way acquisition; (5) construction capital outlay; and (6) construction management and engineering, including surveys and inspection. The cost of each project component will be listed in the Transit and Intercity Rail Capital Program no earlier than in the fiscal year in which the particular project component can be implemented.

When proposing to fund only preconstruction components for a project, the applicant must demonstrate the means by which it intends to fund the construction of a useable segment, consistent with a regional transportation plan or the Caltrans interregional transportation strategic plan. *Please note: CalSTA will give priority to projects which fund construction or implementation.*

When project design, right-of-way, or construction are programmed before the implementing agency completes the environmental process, the applicant must submit to CalSTA updated cost estimates, updated analysis of the project's cost effectiveness, and updated analysis of the project's ability to further the goals of the program following the completion of the environmental process. If this updated information indicates that a project is expected to accomplish fewer benefits or is less cost effective as compared with the initial project application, future funding for the project may be deleted from the program.

Consistent with Commission policies, CalSTA will program and the Commission will allocate funding to projects in whole thousands of dollars and will include a project or project component only if it is fully funded from a combination of Transit and Intercity Rail Capital Program and other committed funding. Funds will be considered as committed when they are programmed by the CalSTA or when the agency or other funding partner with discretionary authority over the funds has made its commitment to the project by ordinance, resolution or appropriate contract vehicle, or in the case of the Federal Transit Administration, recommendation of the project for funding in the *Annual Report on Funding Recommendations* for the Capital Investment Program.

For federal formula funds, including Surface Transportation Program, Congestion Mitigation and Air Quality Improvement Program, and federal formula transit funds, the funding commitment may be by Federal approval of the Federal Statewide Transportation Improvement Program. For projects seeking federal discretionary funds such as New Starts, Core Capacity, or Small Starts, the commitment may take the form of federal acceptance into Accelerated Project Delivery and Development (in the case of Small Starts) with the expectation of federal approval of an Expedited Grant Agreement, or federal approval of a project to enter Engineering (in the case of New Starts or Core Capacity) with the expectation of federal approval of a Full Funding Grant Agreement, as long as all funding, excluding Transit and Intercity Rail Capital Program funding, is committed to the project. A project that is programmed prior to receiving federal approval for construction must receive the federal approval for construction prior to the start of the next Transit and Intercity Rail Capital Program call for projects or the project may be subject to deletion from the program unless other committed funding sources are identified that replace federal funding not obtained. For planning purposes, applicants considering a request for a contingent commitment should anticipate the next call for projects to be on or prior to October 1, 2019 (date subject to revision by CalSTA).

For local funding, the funding commitment may be demonstrated by inclusion of the project in a funding package, such as a sales tax measure, to be submitted to voters during this program cycle and with sufficient funding specified for the project to achieve full funding. The applicant shall provide evidence with the application that the project is included in a future funding package with funds sufficient to meet the local funding commitment when combined with other already available funds. A project that is programmed prior to receiving voter approval for project funding must succeed in receiving the voter approval, or the project may be subject to deletion from the program.

For projects with other funding partners that have entered into a contract vehicle committing their funding, access to the funding must occur before TIRCP funding will be approved for allocation to the project.

If projects do not receive their anticipated federal, local or other funding partner funding commitments, CalSTA may delete the project from the program and consider selection of projects or components of projects that were highly rated but not selected due to lack of sufficient funds in the 2018 round of applications. An applicant may resubmit a deleted project for consideration in future funding round.

CalSTA may make an exception to its policy to only program a project if it is fully funded, if the project may be funded from a combination of Transit and Intercity Rail Capital Program and other committed funding to allow a project to compete for funding from other greenhouse gas reduction programs (such as Caltrans' Low Carbon Transit Operations Program, the Strategic Growth Council's Affordable Housing and Sustainable Communities Program or the California Air Resources Board's Low Carbon Transportation funding program) or from the Commission's Active Transportation or State Transportation Improvement Programs. A project intending to compete for funding in one of the aforementioned programs should indicate, if appropriate, the separable elements to be funded from that source. A project that is programmed prior to receiving a commitment of funding from one of the aforementioned programs must receive the funding commitment in the fiscal year prior to the year in which the project is requesting funding from the Transit and Intercity Rail Capital Program. If the project does not receive funding from that program and the project does not have separable elements, the project may be subject to deletion from the program.

12 Allocations and Project Delivery

When an agency is ready to implement a project or project component, the agency will submit an allocation request to Caltrans. The typical time required, after receipt of the application, to complete

2018 Transit and Intercity Rail Capital Program Guidelines

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Caltrans review, and recommendation and Commission allocation is 60 days. The specific details and instructions for the allocation, transfer and liquidation of funds allocated to implementing agencies are included in the Procedures for Administering Local Grant Projects in the State Transportation Improvement Program (see www.dot.ca.gov/hq/LocalPrograms/lam/prog_g/g23stip-2013-10-31.pdf).

Caltrans and CalSTA will review the request and determine whether or not to recommend the request to the Commission for action. The Commission will consider the allocation of funds for a project when it receives an allocation with a recommendation from Caltrans and CalSTA. The recommendation will include a determination of project readiness, the availability of appropriated funding, and the availability of all identified and committed funding. When Caltrans develops its construction allocation recommendation, the Commission expects Caltrans to certify that a project's plans specifications and estimate are complete, environmental and right-of-way clearances are achieved, and all necessary permits and agreements (including railroad construction and maintenance) are executed.

In compliance with Section 21150 of the Public Resources Code, the Commission will not allocate funds for design, right-of-way, or construction prior to documentation of environmental clearance under the California Environmental Quality Act. As a matter of policy, the Commission will not allocate funds for design, right-of-way, or construction of a federally funded project prior to documentation of environmental clearance under the National Environmental Policy Act (NEPA). Exceptions to this policy may be made in instances where federal law allows for the acquisition of right-of-way prior to completion of NEPA review. If requested by the Commission, Caltrans will assist Commission staff in the preparation of agenda items presenting environmental documents to the Commission.

The Commission will approve the allocation if the funds are available, as determined by CalSTA and Caltrans, and the allocation is necessary to implement the project as included in the adopted Transit and Intercity Rail Capital Program. If there are insufficient program funds to approve an allocation, CalSTA may delay the recommendation to allocate funds to a project until the next fiscal year without requiring a Commission action. Agencies should not request Commission allocations unless prepared to award contracts related to the allocation within six months. Funds available following the deletion of a project may be allocated to a programmed project advanced from a future fiscal year or to a project amended into the program.

The Transit and Intercity Rail Capital Program is a reimbursement program for costs incurred. Costs incurred prior to Commission allocation and, for federally funded projects, federal project approval (i.e. Authorization to Proceed) are not eligible for reimbursement. Moreover, contracts may not be awarded prior to fund allocation without specific pre-approval by CalSTA and approval of a Letter of No Prejudice by the Commission. For the procurement of rolling stock and buses, the Commission may consider the exercising

of an option or the certification of funds for contract elements as meeting the milestone for contract award provided that the agency is under no contractual obligation to pay any funds or penalty if the option is not exercised or the funds not certified.

Once the allocation is approved by the Commission, Caltrans and CalSTA will prepare appropriate agreements with the agency. These agreements may include project specific conditions required by CalSTA and Caltrans based on the overall scope of work and expected outcome of the project.

Prior to the completion of project design, an agency may propose to CalSTA modifications to the proposed project in order to achieve the same or greater level of benefits or reduced costs.

Funds allocated for project development or right-of-way costs must be expended by the end of the fiscal year of allocation plus two additional fiscal years, unless a longer time-frame is specifically authorized by CalSTA tied to contracting requirements. Funds allocated for construction phase contracts, including rolling stock procurement, will have an expenditure timeline determined by the

project schedule. Following liquidation of all project funding and contract acceptance, the implementing agency has six months to make the final payment to the contractor or vendor, prepare the Final Report of Expenditures and submit the final invoice to Caltrans for reimbursement.

12.1 Letter of No Prejudice

An agency may apply to the Commission for a letter of no prejudice for a project or for any component of a project included in the approved program of projects. Statutory authority is provided in Section 75225 of the Public Resources Code as added by Senate Bill 9 of 2015. If approved by the Commission, the letter of no prejudice will allow the agency to expend its local funds for the project or any component of the project and to be eligible for future reimbursement. The amount will be reimbursed if all of the following conditions are met:

1. The project or project component for which the letter of no prejudice was requested has commenced and the expenditures have been incurred.
2. The expenditures are eligible for reimbursement in accordance with applicable laws and procedures. If expenditures made by the lead applicant agency are determined to be ineligible, the state has no obligation to reimburse those expenditures.
3. The agency complies with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).
4. There are moneys in the Greenhouse Gas Reduction Fund or from SB 1 revenues designated for the program that are sufficient to make the reimbursement payment.

The agency and the Commission shall enter into an agreement governing reimbursement as described in this section.

The Commission, in consultation with intercity, commuter, urban rail, and other public transit entities, may develop guidelines to implement this section.

12.2 Multiyear Funding Agreement

An agency may apply to CalSTA for a multiyear funding agreement. Statutory authority is provided in Section 75224 (d) of the Public Resources Code as added by Senate Bill 9 of 2015. Any such agreements shall be implemented in cooperation with the Commission. If approved by CalSTA, the multi-year funding agreement would operate similar to a federal Full Funding Grant Agreement, wherein an agency may receive an allocation and implement a project at risk, with receipt of future state revenue dependent on legislative appropriation and/or receipt of program SB 1 revenue or Cap-and-Trade auction proceeds. The state would not be responsible for any borrowing costs an agency may incur, or other costs, allocated with the timeline of state revenue availability. Pursuant to Section 75224, the multiyear funding agreement would be for any amount of program money and for any duration, as determined jointly by the CalSTA and the applicant. CalSTA may agree to a duration that exceeds the five-year programming cycle, if deemed helpful in completing large transformative capital projects. Other requirements for the program will be included in the multiyear funding agreement as determined by CalSTA in cooperation with the applicant and the Commission.

12.3 Project Delivery Deadline Extensions

CalSTA, as explained below, may grant a deadline extension if it finds that an unforeseen and

extraordinary circumstance has occurred that justifies the extension. The extension will not exceed the period of delay directly attributable to the extraordinary circumstance.

There are separate deadlines, for award of a contract, for expenditures for project development or right-of-way, and for project completion, and each project component has its own deadlines. CalSTA may grant the extension of a deadline for award of a contract, for expenditures for project development or right-of-way, for project completion, and for project reimbursement.

All requests for project delivery deadline extensions should be submitted by the agency responsible for project delivery to Caltrans at least 60 days prior to the specific deadline for which the particular extension is requested (e.g., 60 days prior to June 30 to request the extension of allocation deadlines). The extension request should describe the specific circumstance that justifies the extension and identify the delay directly attributable to that circumstance. Caltrans will review extension requests and forward them to the CalSTA for approval.

13 Project Reporting

As a condition of the project selection and allocation, the implementing agency must submit to Caltrans quarterly reports on the activities and progress made toward implementation of the project and a final delivery report. The purpose of the reports is to ensure that the project achieves the goals of the program, is executed in a timely fashion, and is within the scope and budget identified when the decision was made to fund the project.

Recordkeeping and reporting requirements will apply through the life of the project. All recordkeeping and reports must be consistent with the reporting requirement, quantification methodologies and records retention periods developed by the California Air Resources Board (www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm). At a minimum, agencies must report on all projects selected for funding, yearly progress on each funded project, and the benefits (GHG and co-benefits) achieved for each project once it is completed. Implementing agencies should note that additional reporting may be required for some projects, referred to as Phase 2 reporting, or be modified based on the evolving needs of the program. For projects benefiting disadvantaged communities, low-income communities, and/or low-income households, reports must identify and include metrics to demonstrate the benefits being achieved and how community needs are being met, consistent with the California Air Resources Board's Funding Guidelines. Some reported project information will be publicly available on the California Air Resources Board website, including the amount of funding that is being spent on projects that benefit disadvantaged communities, low-income communities, and/or low-income households.

Within one year of the project becoming operable, the implementing agency must provide a final delivery report to Caltrans which includes:

1. The scope of the completed project as compared to the programmed project.
2. Performance outcomes derived from the project as compared to those described in the project application. This should include before and after measurements and estimates (ridership/service levels, greenhouse gas reductions included updated estimates the greenhouse gas reductions over the life of the project, benefit to disadvantaged communities, low-income communities, and/or low-income households, project co-benefits, etc.), and an explanation of the methodology used to quantify the benefits.
3. Before and after photos documenting the project.
4. The final costs as compared to the approved project budget by component and fund type, and an estimate of the Transit and Intercity Rail Capital Program funds spent to benefit disadvantaged

communities, low-income communities, and/or low-income households.

5. Its duration as compared to the project schedule in the project application.

Upon request from the implementing agency, Caltrans may consider requests to delay reporting on before and after or other performance outcome data until two years after project operation if similar data is requested by the Federal Transit Administration or if the agency deems such delay would improve the reliability of the report.

For the purpose of this section, a project becomes operable when the construction contract is accepted or acquired equipment is received.

In addition to quarterly reports and final delivery report, the California Air Resources Board (CARB) released its Funding Guidelines for Agencies that Administer California Climate Investments on August 4, 2017 that includes reporting requirements for all State agencies that receive appropriations from the Greenhouse Gas Reduction Fund. Caltrans and project sponsors will need to submit reporting information in accordance with CARB's Funding Guidelines, including reporting on greenhouse gas reductions and benefits to disadvantaged communities, low-income communities, and/or low-income households. For more information, see www.arb.ca.gov/cc/capandtrade/auctionproceeds/fundingguidelines.htm

The State of California has the right to review project documents and conduct audits during project implementation and over the life of the project. Caltrans or another State agency may audit a sample of Transit and Intercity Rail Capital Program projects to evaluate the performance of the project, determine whether project costs incurred and reimbursed are in compliance with the executed project agreement or approved amendments thereof; state and federal laws and regulations; contract provisions; and program guidelines, and whether project deliverables (outputs) and outcomes are consistent with the project scope, schedule, and benefits described in the executed project agreement or approved amendments thereof. A report on the projects audited must be submitted by the auditing agency to CalSTA.

14 Project Administration

Caltrans will administer the Transit and Intercity Rail Capital Program consistent with these guidelines and existing Commission and Caltrans policies and procedures.

Agencies must encumber and expend monies consistent with State law, and ensure that Greenhouse Gas Reduction Fund monies are utilized consistent with the expenditure record submitted by Caltrans and required by SB 1018. A determination that use of Greenhouse Gas Reduction Fund monies is not consistent with the expenditure record and does not further the purposes of AB 32 may occur during legal proceedings or during an audit or program review conducted by the Bureau of State Audits, Department of Finance, a third-party auditor, or the California Air Resources Board. Depending on the outcome of those proceedings or review, agencies may be required to return monies to the state if expenditures are not consistent with the statutory requirements (such as not furthering the purposes of AB 32.)

The state may terminate the grant for any reason at any time if it learns of or otherwise discovers that there are allegations supported by reasonable evidence that a violation of any state or federal law or policy by the grantee which affects performance of this or any other grant agreement or contract entered into with the State. If a grant is terminated, the agency may be required to fully or partially repay funds from the Transit and Intercity Rail Capital Program.

Attachment 1: Investments to Benefit Disadvantaged Communities and Low Income Communities and Households

The California Air Resources Board released its Funding Guidelines for Agencies that Administer California Climate Investments on August 4, 2017. Stakeholders can find the Funding Guidelines at this CARB website:

<https://www.arb.ca.gov/cc/capandtrade/auctionproceeds/auctionproceeds.htm>

Attachment 2: Quantification Methodology

The California Air Resources Board is updating the quantification methodology. See the following website for the final methodology.

<https://www.arb.ca.gov/cc/capandtrade/auctionproceeds/quantification.htm>



CALIFORNIA STATE TRANSPORTATION AGENCY

Edmund G. Brown Jr.
Governor

Brian P. Kelly
Secretary

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August 17, 2015

**Malcolm Dougherty, Director
California Department of Transportation
1120 N Street
Sacramento, California 95814**

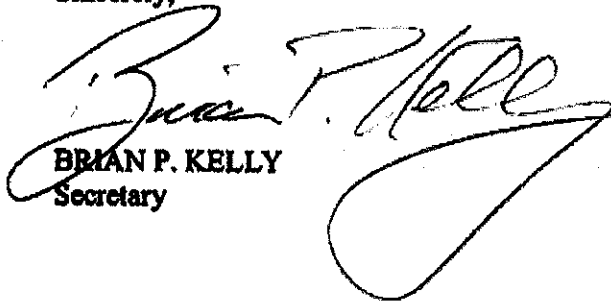
Re: Transit and Intercity Rail Capital Program: Delegation of Authority

Dear Mr. Dougherty:

Statutory authority found in Public Resources Code section 75220 et seq., and Health and Safety Code section 39719 et seq., has created the Transit and Intercity Rail Capital Program (TIRC Program) and made the California State Transportation Agency (Transportation Agency) responsible for the administration of the TIRC Program. Pursuant to my authority as Secretary of the Transportation Agency, I delegate the Transportation Agency's authority for the administration of the TIRC Program to the California Department of Transportation (Caltrans). Caltrans shall administer the TIRC Program pursuant to the TIRC Program Guidelines and Caltrans' policies and procedures for the administration of similar grant programs.

This delegation shall remain in effect until rescinded in writing.

Sincerely,


BRIAN P. KELLY
Secretary

APPENDIX B

RECIPIENT'S RESOLUTION

(INSERT AGENCY BOARD RESOLUTION)

APPENDIX C
PROGRAM SUPPLEMENT