

California State Transportation Agency  
Transit and Intercity Rail Capital Program

Grant Recipient:

City of Sunnyvale

CalSTA Transit and Intercity Rail Capital Program Administered by:

California Department of Transportation  
Division of Local Assistance  
1120 N Street, Room 3400  
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: Upon Signature by All PARTIES

Termination Date of this Agreement: June 30, 2035

Recipient: City of Sunnyvale

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

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**RECITALS**

1. WHEREAS, The Global Warming Solutions Act of 2006, codified at Cal. Health & Safety Code section 38500 et seq. (the "Act") (Assembly Bill [AB] 32, Nunez, Chapter 488) created a comprehensive program to reduce greenhouse gas emissions in California. The Act required 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 (GGRF) to receive proceeds from the distribution of allowances via auction and provided the framework for how those auction proceeds shall be appropriated and expended. These statutes require that expenditures from the GGRF be used to facilitate the achievement of greenhouse gas emission reductions and further the purposes of the Act.

4. WHEREAS, in 2017, the Legislature passed, and Governor Brown signed into law the Road Repair and Accountability Act of 2017 SB 1, which directed additional funding to the Transit and Intercity Rail Capital Program (TIRCP).

5. WHEREAS, TIRCP is funded pursuant to Public Resources Code section 75220 et seq. and Health and Safety Code section 39719 et seq.

6. WHEREAS, as directed by Cal. Public Resources Code sections 75223 and 75224, California STATE Transportation Agency (CalSTA) has established and updated TIRCP Program Guidelines that describe the policy, standards, criteria, and procedures for the development, adoption and management of the TIRCP Program.

7. WHEREAS, City of Sunnyvale 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 California Department of Transportation pursuant to the TIRCP Program Guidelines and the California Department of Transportation's policies and procedures for the administration of similar grant programs.

9. 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:

10. This Agreement, effective upon Signature by all Parties, is between the City of Sunnyvale (hereinafter referred to as "CITY") and the State of California, acting by and through the California Department of Transportation (hereinafter referred to as ("STATE")) (collectively referred to as the "PARTIES"), and subject to the approval of 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) codified at Cal. Health & Safety Code section 38500 et seq.

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

1.3 "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.

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

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

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

1.7 "Greenhouse Gas Reduction Funds" or "GGRF" shall mean the funds subject to "Senate Bill 862" or "SB 862" (Chapter 36, Statutes of 2014), authorizing the STATE to fund capital improvements and operational investments for California's transit systems and intercity, commuter, and urban rail systems.

1.8 "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.

1.9 "General Fund" shall mean the funds subject to Chapters 21, 69, and 240, Statutes of 2021, authorizing the State to fund capital improvements and investments for California's transit systems and intercity, commuter, and urban rail systems.

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

1.11 "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.

1.12 "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 and shall include expected outcomes and deliverables. Also referred to as Project Supplement Agreement.

1.13 "Program Supplement Last Expenditure Date" and refers to the last date for CITY to incur valid Project costs or credits.

1.14 "Program Supplement Termination" shall occur when CITY's obligations have been fully performed as set forth in Article II, Section 2D and Article III, Section 3(C)(2) or when terminated by convenience as set forth in Article III, Section 3(C)(1).

1.15 "Project" shall mean the project identified in CITY's application.

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

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

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

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

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

1.21 "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.

1.22 "STATE" shall mean the State of California.

1.23 "TIRCP Projects" shall mean projects that are selected and funded pursuant to the Transit and Intercity Rail Capital Program.

## **ARTICLE II – TIRCP PROJECTS AND ADMINISTRATION**

### **Section 1. TIRCP Projects and Project Management**

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

B. By this reference, TIRCP Program Guidelines are made an express part of this Agreement and shall apply to each TIRCP Program funded Project as may be amended or updated. CITY shall 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 GGFRF, SB 1 and/or General Funds (upon availability and allocation), for such project.

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

STATE's Project Administrator:

California Department of  
Transportation

Betty Miller  
Contract Manager  
Office of Rail and Transit Capital  
Programs

Phone: (916) 907-2208

Email: Betty.l.miller@dot.ca.gov

CITY's Project Administrator:

CITY of Sunnyvale

Angela Obeso  
Transportation and Traffic  
Manager

Phone: (408) 730-7557

Email: aobeso@sunnyvale.ca.gov

## **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 the terms and conditions of this Agreement has been fully executed by both STATE and CITY.

2. CITY agrees to complete the defined scope of work for the Project, described in the Program Supplement adopting all the terms and conditions of this Agreement.

3. A financial commitment of funds shall only occur in each detailed and separate Program Supplement. No funds are obligated by the prior execution of this Agreement alone.

4. CITY 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.



a. The Scope of Work shall include a detailed description of the Project and shall 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 CITY 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 GGRF or SB 1 and/or General Funds allocated for the Project Component.

6. Adoption and execution of the Program Supplement by CITY 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 CITY to these terms and conditions when performing the Project. Unless otherwise expressly delegated to a third-party in a resolution by CITY's governing body, which delegation must be expressly assented to and concurred in by STATE, the Program Supplement shall be managed by CITY.

7. The estimated cost and scope of the Project shall be as described in the applicable Program Supplement. The STATE shall not participate in any funding for the Project beyond those amounts 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 obligations yet to be completed pursuant to the approved Project Schedule, deliverables, and reporting requirements shall be deemed to extend the term of this Agreement only to conform to the specific Project termination or completion date, including completion of deliverables and reporting requirements, contemplated by the applicable Program Supplement to allow that uncompleted Project to be administered under the extended terms and conditions of this Agreement.

9. Total project cost includes the cost of a project for all phases (Plans, Specifications, and Estimates [PS&E], Project Approval and Environmental

Document [PA&ED] Right-of-Way [ROW], and Construction [CON] including rolling stock) of a Project from start to finish.

B. *Project Overrun*

1. If CITY or the STATE determine, at any time during the performance of the Project, that the Project budget may be exceeded, CITY 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 CITY shall institute to bring the Project budget into balance; and

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

C. *Cost Savings and Project Completion*

1. CITY is encouraged to evaluate design and construction alternatives that would mitigate the costs of delivering the commitments for the Project. CITY 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 consider 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. If there is an identification and implementation of any CalSTA approved alternative resulting in reduction of the Project costs, the PARTIES agree that the CITY shall provide a prorated share of Project or TIRCP funded Project component cost savings based on the overall project match to the STATE no later than 30 days after the submission of the final invoice. Subject to CalSTA's approval, savings may be used towards another project component or towards increasing project benefits that are consistent with the original project award while maintaining the overall project match referenced in the project award and program supplements.

3. Program supplements shall indicate the Project or Component proration of funding match.

4. The CITY agrees to complete the Project and accepts sole responsibility for the payment of any cost increases. If either the Project or the funded components

are not completed, the CITY shall bear the burden of full TIRCP funds reimbursement to the STATE.

*D. Scope of Work*

1. CITY 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. CITY acknowledges and agrees that CITY is the sole control and manager of the Project and its subsequent employment, operation, repair and maintenance for the benefit of the public. CITY shall be solely responsible for complying with the funding and use restrictions established by (a) the statutes from which the GGRF, SB1 and/or General 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. CITY acknowledges and agrees that the CITY is responsible for complying with all reporting requirements established by the TIRCP Guidelines and California Air Resource Board (CARB) Funding Guidelines.

*E. Program Supplement Amendments*

Program Supplement amendments shall 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, CITY shall prepare and submit to STATE a signed Progress Payment Invoice for Project costs incurred and paid for by CITY consistent with the allocation and Scope of Work document in the Program Supplement and STATE shall pay those uncontested allowable costs upon approval by STATE. If no costs were incurred during any given quarter, CITY 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. The STATE shall hold the right to determine reimbursement

availability based upon an approved expenditure plan and TIRCP anticipated or actual funding capacity. Each CITY invoice shall include the total of Project expenditures from GGRF, SB 1, and General Funds (including those of CITY and third parties) and shall specify the percent of STATE reimbursement requested and the GGRF, SB 1 and/or General Funds source.

B. *Final Invoice*

The Program Supplement Last Expenditure Date(s) refer to the last date for CITY to incur valid Project costs or credits. CITY has one hundred and eighty (180) days after that Last Expenditure 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. CITY 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 CITY for payment after that one hundred and eightieth (180<sup>th</sup>) day following the Project Last Expenditure Date.

### **ARTICLE III – GENERAL PROVISIONS**

#### **Section 1. Funding**

CITY 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. CITY 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 CITY and approved by STATE as part of a Program Supplement.

#### **Section 2. Audits and Reports**

A. *Cost Principles*

1. CITY agrees to comply with Title 2 Code of Federal Regulations part 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles for State and Local Government, and Audit Requirements for Federal Awards.
2. CITY agrees and shall ensure that its contractors and subcontractors shall be obligated to follow 2 CFR 200, which shall be used to determine the allowability

of individual Project cost items. Every sub-city receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with 2 CFR 200.

3. Any Project costs for which CITY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200 are subject to repayment by CITY to STATE. Should CITY 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 to CITY from STATE or any third-party source whose funding passes through STATE, including but not limited to, the State Treasurer, the State Controller and the CTC.

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

*B. Record Retention*

1. CITY agrees and shall ensure 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 CITY, 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 CITY, 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 CITY 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 shall be furnished by CITY, 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 shall rely to the maximum extent possible on any prior audit of CITY pursuant to the provisions of Federal and State law. In the absence of such an audit, any acceptable audit work performed by CITY'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 CITY's contracts with third parties pursuant to Government Code section 8546.7, the CITY, CITY'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 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 CITY 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 CITY shall furnish copies thereof if requested.

3. CITY, its contractors and subcontractors shall 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. Reporting requirements of CITY shall include whether reported implementation activities are within the scope of the Project Program Supplement and in compliance with State laws, regulations, and administrative requirements.

2. TIRCP Progress Reporting shall be no more frequently than monthly and no less frequently than quarterly at the discretion of STATE and shall generally include the following information;

a. Activities and progress made towards implementation of the Project during the reporting period and activities anticipated to take place in the next reporting period;

b. Identification of whether the Project is proceeding on schedule and within budget;

c. Identification of whether the Project deliverables are proceeding on schedule;

d. Identification of changes to the Project funding plan, milestone schedule, or deliverables completion date; and

e. Any actual or anticipated problems that could lead to delays in schedule, increased costs, or other difficulties for either the Project or other State funded projects impacted by the Project's scope of work and the efforts or activities being undertaken to minimize impacts to schedule, cost, or deliverables.

3. CARB Reporting shall be no more frequently than monthly and no less frequently than semiannually at the discretion of CARB and shall include the following information (subject to modification by CARB);

a. Identify metrics and benefits achieved for disadvantaged communities, low-income communities, and/or low-income households;

b. Continued reporting following project implementation to identify benefits achieved; and

c. All other requirements instituted by CARB.

4. Within one year of the Project or reportable Project components becoming operable, the implementing agency shall 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. Before and after photos documenting the project;

d. The final costs as compared to the approved project budget by component and fund type, and an estimate of the TIRCP funds spent to benefit disadvantaged communities, low-income communities, and/or low-income households; and

e. The project duration as compared to the project schedule in the project application.

### **Section 3. Special Requirements**

#### **A. California Transportation Commission Resolutions**

1. CITY 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 GGFR, SB 1 and/or General Funds. These resolutions, and/or successor resolutions in place at the time a Program Supplement is executed, shall be applicable to GGFR, SB 1 and/or General Funds, respectively.

2. CITY shall be bound to the terms and conditions of this Agreement; the Project application contained in the Program Supplement (as applicable); 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). 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 binding provisions of this Agreement.

3. CITY 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 CITY 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. CITY Resolution**

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

2. If CITY or STATE determines that a separate Resolution is needed for each Program Supplement, CITY shall confirm, in writing, the name of the authorized designee who shall act on behalf of the CITY to bind CITY with regard to the terms and conditions of any said Program Supplement or amendment and shall provide a copy of that additional Resolution to STATE with the Program Supplement or any amendment to that document.



C. *Termination*

1. Termination Convenience by STATE

a. STATE reserves the right to terminate funding for any Program Supplement, subject to CalSTA approval, upon written notice to CITY if CITY 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.

b. No such termination shall become effective if, within thirty (30) days after receipt of a notice of termination, CITY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30)-day period, CITY proceeds thereafter to complete the cure in a manner and time acceptable to STATE. Any such termination shall be accomplished by delivery, in writing, to CITY 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, CITY and STATE shall meet to attempt to resolve any dispute.

c. Following a fund encumbrance made pursuant to a Program Supplement, if CITY fails to expend GGRF, SB 1 and/or General Funds monies within the time allowed specified in the Program Supplement, those funds may revert, and be deemed withdrawn and shall 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 CITY by STATE.

d. In the event STATE terminates a Program Supplement for convenience and not for a default on the part of CITY as is contemplated in this section, CITY shall be reimbursed its authorized costs up to STATE's proportionate and maximum share of allowable Project costs incurred to the date of CITY's receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by CITY to effect such termination following receipt of that termination notice.

2. Termination After CITY's Obligations Fully Performed

Following Project completion, and all obligations as defined in the TIRCP Guidelines, CARB Guidelines, and Program Supplement are fully performed, including Project completion of all deliverables and reporting, the Program

Supplement shall be terminated. If the Project obligations are not fully performed, as defined under this section, CITY may be required to repay funds fully or partially.

D. *Third Party Contracting*

1. CITY 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)] based on a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of STATE. Contracts awarded by CITY, if intended as local match credit, must meet the requirements set forth in this Agreement regarding local match funds.

2. Any subcontract entered by CITY because 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 shall be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

3. In addition to the above, the pre-award 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 CITY 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, CITY, 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 CITY or subrecipient with funding provided to CITY under this Agreement. CITY, 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 CITY, 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

CITY (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, shall 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, 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 CITY from STATE if CITY, or a subrecipient, 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 CITY and not federal funds derived through or from the STATE) have contributed to the Project, CITY 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 shall be determined by the ratio of STATE's funding when measured against CITY's funding participation (the Ratio). For purposes of this Section, 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 CITY dedicates the proceeds of such sale or transfer exclusively to a new or replacement STATE approved public transit purpose, which replacement facility or vehicles shall 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 CITY shall not be included. In determining STATE's proportionate funding participation, STATE's contributions to third parties (other than CITY) shall be included if those contributions are incorporated into the Project.

ii. Once STATE has received the Credit as provided for above because CITY, or a subrecipient, 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 CITY's duties and obligations), neither CITY, subrecipient, nor any party to whom CITY 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 CITY operates and maintains Intermodal Transfer Stations as any integral part of Project, CITY 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, CITY 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 shall 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 issue relating to either Party's obligations pursuant to this Agreement, the PARTIES agree to promptly follow the issue resolution process as outlined below:

a. The STATE's project manager and CITY'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 STATE's project manager and CITY's equivalent shall meet and attempt to resolve the dispute within five (5) 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 (5<sup>th</sup>) day from the written notice, the STATE's senior project manager and CITY's equivalent shall meet and review the dispute within five (5) days. The STATE's senior project manager and CITY's equivalent manager shall attempt to resolve the dispute within ten (10) 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 (10<sup>th</sup>) day, the STATE's Director or their designee and CITY's equivalent manager shall meet and review the dispute within five (5) days. The STATE's Director or their designee and CITY'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 (10<sup>th</sup>) day by the STATE's Director or their designee and CITY'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 CITY, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement or any Program Supplement or as respects environmental clean-up obligations or duties of CITY relative to Project. It is also understood and agreed that, CITY 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 CITY under or in connection with any work, authority, or jurisdiction delegated to CITY under this Agreement and all Program Supplements.

2. CITY shall indemnify, defend and hold harmless STATE, the CTC and the State Treasurer relative to any misuse by CITY of STATE funds, Project property, Project generated income or other fiscal acts or omissions of CITY.

I. *Labor Code Compliance*

CITY 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 CITY.

J. *Non-Discrimination Clause*

1. In the performance of work under this Agreement, CITY, 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. CITY, 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. CITY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 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.

2. Each of CITY's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. CITY 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 CITY under a separate Contract during the performance of this Agreement, CITY shall comply with this Agreement and with

all Federal mandated contract provisions as set forth in that applicable federal funding agreement.

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

5. CITY 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 CITY.

6. CITY shall permit, and shall require that its contractors, subcontractors, and subrecipients shall permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by STATE to investigate compliance with 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, CITY 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, CITY ensures STATE that CITY shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination based on 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. CITY shall award no construction contract unless CITY'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 section 999 et seq. be applicable to CITY, CITY shall meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or CITY's applicable higher goals) in the award of every contract for Project work to be performed under these this Agreement.

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

O. *Environmental Process*

Completion of the Project environmental process ("clearance") by CITY (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 shall be excused from performance of its obligations where such non-performance is caused by any extraordinary event beyond its reasonable control, such as any non-appealable order, rule or regulation of any Federal or State governmental body, fire, flood, earthquake, storm, hurricane or other natural disaster, epidemic, pandemic, 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 that 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 Master Agreement or Supplemental Agreement to address such an 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 that may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal delivery, courier 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 STATE:

California Department of Transportation  
Division of Local Assistance  
P.O. Box 942874  
Sacramento, CA 94274-0001  
Attention: TIRCP Contract Manager, Mail Stop 39

with a copy to:

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

If given to CITY:

City of Sunnyvale  
Department of Public Works  
456 West Olive Avenue  
Sunnyvale, CA 94086  
Attention: Angela Obeso, Transportation and Traffic Manager

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*

1. CITY hereby represents and warrants to STATE that:

a. CITY 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.

b. CITY 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 CITY, 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 CITY and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The Agreement has 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.

c. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby shall (i) conflict with or result in a breach of any provision of any agreement to which CITY is a party; (ii) violate any writ, order, judgment, injunction, decrees, statute, rule or regulation of any court or governmental authority applicable to CITY or its property or assets.

2. STATE does hereby represent and warrant with respect to each provision of this Agreement to CITY that:

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

b. 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 Agreement has 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.

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

F. *Construction, Number, Gender and Captions*

This Agreement has been executed in the State of California and shall be construed according to the law of the State of California. 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. Attached Appendices A and B 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.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**City of Sunnyvale**

**BY:** \_\_\_\_\_  
Marlon Flournoy  
Deputy Director, Planning and  
Modal Programs

**BY:** \_\_\_\_\_  
Name  
Title

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

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

APPROVED AS TO FORM AND PROCEDURE

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**BY:** \_\_\_\_\_  
Deputy Attorney

**BY:** \_\_\_\_\_  
Assistant City Attorney

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

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

**APPENDIX A**  
**TIRCP PROGRAM GUIDELINES AND DEPARTMENT DELEGATION**

**APPENDIX B  
CITY'S RESOLUTION  
(INSERT AGENCY BOARD RESOLUTION)**