

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION PLANNING
MASTER FUND TRANSFER AGREEMENT

Recipient: «AGENCY» a Metropolitan Planning Organization (MPO)

Effective Date of this Agreement: January 1, 2025

Termination Date of this Agreement: December 31, 2034

FUND SOURCES COVERED BY THIS AGREEMENT MAY INCLUDE ALL OR SOME OF THE FOLLOWING FUND SOURCES AS IDENTIFIED IN EACH ANNUAL OVERALL WORK PROGRAM AGREEMENT

- ◆ Federal Highway Administration (FHWA)--Metropolitan Planning (PL)
 - ◆ FHWA State Planning and Research (SPR)--Partnership Planning
 - ◆ Federal Transit Administration (FTA)--Metropolitan Planning Section 5303
 - ◆ FTA State Planning and Research--Section 5304
 - ◆ State Highway Account (SHA)
 - ◆ State Rural Planning Assistance (RPA)
 - ◆ Road Maintenance and Rehabilitation Account (RMRA)
 - ◆ Any other Federal or State funds administered by and through the California Department of Transportation, Office of Regional and Community Planning
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This Master Fund Transfer Agreement (MFTA), effective as of the date set forth above, is by and between the signatory public entity identified above, hereinafter referred to as MPO [as authorized in section 134 of Title 23 of the United States Code (23 USC Section 134), section 450.104 of the Code of Federal Regulations (23 CFR section 450.104), and Part 200 of Title 2 of the Code of Federal Regulations (2 CFR Part 200)], and the State of California, acting by and through its Department of Transportation, hereinafter referred to as STATE. This MFTA supersedes all previous Master Fund Transfer Agreements issued to MPO by STATE for all these types of funds.

RECITALS

- A. These funds may include, without limitation, federal Consolidated Planning Grants, and any other Federal or State funds administered by and through the Department of

Transportation, Office of Regional and Community Planning.

Consolidated Planning Grants consist of four federal funding types and sources: (i) FHWA Metropolitan Planning (PL); (ii) FTA Metropolitan Planning (Section 5303), both of which are annually allocated to MPOs; (iii) FHWA State Planning and Research-Partnership Planning (SPR); and (iv) FTA State Planning and Research (Section 5304), the last two of which are discretionary grants awarded through a grant application solicitation process.

The State funds administered by the Office of Regional and Community Planning include but are not limited to: (i) State Rural Planning Assistance, (ii) State Highway Account (SHA); and (iii) Road Maintenance and Rehabilitation Account (RMRA) funds.

- B. Upon appropriation of funds and pursuant to Public Utilities Code (PUC) sections 99311 and 99311.1, STATE is required to pass-through Federal and State funds made available for transportation planning purposes to entities qualified to act as recipients of these funds in accordance with the intent of law and policy.
- C. STATE is also required to encumber Federal and State funds made available for planning purposes to entities qualified to act as recipients of these Federal and State funds in accordance with the intent of law and policy.
- D. STATE agrees to notify MPO annually in writing of the anticipated level of State and Federal Planning funds that may be available to MPO for each subsequent year's approved Overall Work Program, hereinafter referred to as OWP.
- E. STATE has prepared this MFTA, which hereby, together with the annual OWP and annual Overall Work Program Agreement, hereinafter referred to as the annual OWPA, found in APPENDIX A, set forth the entire terms and conditions under which these funds are to be expended by MPO for the fiscal year period of that annual OWP and annual OWPA.
- F. The provisions set forth in this MFTA shall only apply to funds administered in whole or in part through this agreement. No provisions of this MFTA shall extend to or govern the use of funds that are not allocated or transferred under this agreement.

ARTICLE 1-PROGRAM ADMINISTRATION

Section 1. Overall Work Program and Overall Work Program Agreement

- A. MPO agrees to develop and submit an annual draft OWP, in compliance with 23 CFR 420, 23 CFR 450, and FTA Circular 8100.1D, for approval by STATE, FTA and FHWA, as applicable. This submittal, due no later than each March 1, shall describe MPO's next fiscal year transportation planning program (fiscal year refers to the State fiscal year of July 1 to June 30).

- B. Each annual OWP and OWPA will expressly adopt and incorporate the terms and conditions of this MFTA by reference.
- C. MPO shall be responsible for the complete performance of the work contained in each OWP. All work shall be accomplished in accordance with applicable provisions of State and Federal law.
- D. MPO will annually include a signed "FHWA and FTA Metropolitan Transportation Planning Process Self-Certification" form, a signed FTA "Certifications and Assurances for FTA Assistance" form (refer to Article IV, Section 1), a signed "California Department of Transportation Debarment and Suspension" form, and a signed "Disclosure of Lobbying Activities" form in each annual OWP (APPENDIX E).
- E. The annual OWPA is the approved OWP encumbrance document. Disbursement of funds by STATE will occur only after the execution of this MFTA; approval of the annual OWP by STATE, the FTA and FHWA; and execution of the annual OWPA. Funds will not be encumbered or reimbursed by STATE to MPO until the annual OWPA has been executed and the State Budget for that fiscal year has been passed.
- F. No funds of any nature are allocated or encumbered in this MFTA unless included in an adopted and approved OWP by means of an approved and fully executed annual OWPA or OWPA amendment. Costs incurred by MPO prior to OWP approval or conditional approval are incurred at MPO's risk and will not be reimbursed until State and Federal approval.
- G. MPO shall request and obtain from the STATE the final annual allocation amount for FHWA PL and FTA 5303. MPO is encouraged to program the full annual allocation amount by means of an approved and fully executed OWP/A amendment, no later than May 1 of each fiscal year. Funds not programmed by MPO for that fiscal year will lose Obligation Authority (OA) and be subject to Federal rescission. MPO will not be able to use the unprogrammed OA prior to submitting a justification to STATE and obtaining approval from both STATE and the Department of Transportation, Office of Federal Resources.
- H. MPO agrees to satisfactorily complete all work element tasks, projects, and products as described in each approved annual OWP financed with State or Federal funds and encumbered by STATE via the annual OWPA.
- I. MPO will identify in sufficient detail to indicate who (e.g., State, MPO, public transit operator, local government, or consultant) will complete the activities and products in the OWP work elements, including all work that is to be completed through a third-party contract and funded, in whole or in part, under the terms and conditions of this Agreement.

- J. STATE agrees to pass-through available funds and to reimburse allowable costs incurred in executing the tasks, projects, and products specified in the annually approved OWP funded from State and Federal sources and will be encumbered by STATE.
- K. Only work performed during the term of, and consistent with, the work elements in the OWP may be reimbursed. Reimbursements are based upon the fiscal year, July 1 to June 30. All work performed after the end of each fiscal year (June 30) is subject to the approved OWP and annual OWPA for that corresponding fiscal year and reimbursed from the corresponding fiscal year budgeted funds.
- L. MPO may incur costs against its approved annual OWP and may submit Requests for Reimbursement with the understanding that STATE is unable to approve any payments for reimbursement until such time as funds are included in that fiscal year's annual State Budget which is passed by the Legislature and signed by the Governor.
- M. MPO shall use non-federal funds to finance the local share of eligible costs to ensure compliance with all applicable matching requirements for federal funds described in this MFTA and encumbered against the annual OWPA. Credit for local match will be allowed only for work performed during the approved term of each annual OWPA. Third-party "in-kind" contributions are allowed as local match, in accordance with the provisions of 23 CFR 420.119 and 2 CFR 200.306.
- N. MPO further agrees to ensure that amendments to a previously approved OWP and annual OWPA are adopted by the MPO Board of Directors and subsequently approved by STATE, FTA, and FHWA, as applicable, prior to initiating any work identified in those amendments; however, MPO is not required to pause work that was previously authorized. Changes requiring amendments generally include adding, deleting, or revising a work element; adding funds to or deleting funds from a work element; incorporating carryover funds; or altering the scope of work. Administrative amendments are not required to be adopted by the MPO Board of Directors. If a work element or project cannot be completed as originally approved, MPO will report this in its Quarterly Progress and Expenditure Report and must amend the OWP/annual OWPA accordingly. Amendments to the OWP and annual OWPA must be submitted to STATE and be fully executed no later than May 1 each year. Through administrative amendment, MPO will notify STATE via mail or electronic mail of administrative OWP changes that do not affect overall funding, scope of work, or project schedule.
- O. MPO acknowledges and agrees that MPO is the sole control and manager of the work proposed in the OWP and is solely responsible for complying with the funding and use restrictions established by State and Federal law and this MFTA.
- P. MPO shall be free to copyright the material developed under work items identified in

the OWP provided that STATE and FHWA/FTA, as applicable, reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, that work for government purposes.

Section 2. Quarterly Progress and Expenditure Reports

- A. MPO agrees to submit to STATE, no later than thirty (30) calendar days after the close of each of the first three quarters, Quarterly Progress and Expenditure Reports that include all work elements for transportation planning tasks, projects, and products funded wholly or in part by any of the fund sources listed in the "Recitals" section of this MFTA. MPO agrees to submit to STATE the Quarterly Progress and Expenditure Report for each fourth quarter no later than sixty (60) calendar days after the close of the quarter. STATE may withhold payment of the final Request for Reimbursement submitted pending the submission of the fourth quarter Quarterly Progress and Expenditure Report.

In accordance with the latest adopted Regional Planning Handbook, Quarterly Progress and Expenditure Reports submitted to STATE will identify all projects by work element number and title and shall contain, at a minimum the following:

- A brief narrative describing work progress, progress in adhering to schedules, and schedule changes;
 - A list of tasks and products completed during the quarter;
 - Percent comparison of actual performance with work element-level goals and deliverables;
 - Status of expenditures by work element, funding source, and type, in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;
 - Other pertinent supporting information, such as major products, challenges, etc.
- B. STATE reserves the right to deem incomplete any Quarterly Progress and Expenditure Report that does not sufficiently document the above-required information and may withhold payment of Requests for Reimbursement submitted pending the submission of required documentation.

ARTICLE II - ALLOWABLE COSTS AND REIMBURSEMENT

Section 1. Requests for Reimbursement

- A. Requests for Reimbursement must conform to either subpart 1 or subpart 2 hereinbelow for the entire State fiscal year:
1. MPO shall prepare and electronically submit to STATE, not more frequently than

once a month, but at least quarterly, one signed Request for Reimbursement of actual allowable costs incurred and paid (expended) by MPO consistent with work elements described in the OWP (conforming to the format provided in APPENDIX B) and including the information required in part B of this section. The amount billed per each work element is not to exceed the total amount authorized for that work element in the OWP. Each expenditure by work element must meet the minimum required or contracted local match, if applicable, on every Request for Reimbursement. Reimbursements under this MFTA will be allowed if based upon actual costs expended and supported by MPO's accounting system. MPO must not only have incurred the allowable project cost on or after the effective date of the annual OWPA and on or before its termination date but must also have paid those expenses.

2. MPO shall prepare and electronically submit to STATE, not more frequently than once a month, but at least quarterly, one signed Request for Reimbursement of actual allowable costs incurred by MPO. This submission must be consistent with work elements described in the OWP (conforming to the format provided in APPENDIX B) and include the information required in part B of this section. The amount billed per each work element is not to exceed the total amount authorized for that work element in the OWP. Each expenditure by work element must meet the minimum required or contracted local match, if applicable, on every Request for Reimbursement. Reimbursements under this MFTA will be allowed if based upon actual costs incurred and supported by the MPO accounting system. The MPO accounting system must adhere to Generally Accepted Accounting Principles. This adherence enables the determination of allowable incurred costs by accruing due to the costs billed to the MPO and recognized by the MPO as valid, undisputed, due, and payable.
3. By submitting accrued but unpaid costs for reimbursement, MPO agrees that within ten (10) working days of receipt of STATE's reimbursement, the full amount of all cost items submitted as reimbursable accrued costs shall be paid to each billing entity. Any reimbursed accrued cost not paid within this ten (10) working day grace period shall accrue interest payable to STATE at the then present interest rate established by the State Treasurer's Pooled Money Investment Account. Interest incurred must be timely remitted to STATE. Reimbursed incurred costs not paid to the billing entities by MPO within forty-five (45) days of MPO's receipt of STATE's reimbursement will thereafter be deemed unallowable. All unallowable costs must be immediately remitted to STATE. MPO agrees to submit a revised Disadvantage Business Enterprises Utilization Report (ADM 3069) as soon as reimbursement occurs.

If MPO is found, through audit or other means, not to have paid a billing entity its

invoiced sums then owed within the ten (10) working day grace period, MPO must immediately revert to the reimbursement process described in subpart 1 above.

- B. In order to receive reimbursements, MPO agrees to furnish with each billing, at a minimum, the information provided for in APPENDIX B3, a detailed financial management system report from the MPO accounting system which denotes those reimbursable costs, as well as those used for local match, were either expended or incurred, as applicable.
- C. STATE agrees to make reimbursements to MPO, in conformance with Federal regulations, as promptly as STATE fiscal procedures will permit upon the receipt of a signed and electronically submitted Request for Reimbursement (conforming to the format provided in APPENDIX B) that includes all required information, as applicable, (conforming to the format in section B) of actual allowable costs incurred for the period of time covered by that Request for Reimbursement. Incomplete or inaccurate requests for reimbursement shall be returned to MPO unapproved for correction as soon as errors are discovered.
- D. No State and/or Federal funds administered under this MFTA will be dispersed on the advance basis defined in 2 CFR 200.305.

Section 2. Travel and Per Diem Reimbursement

- A. Payments to MPO for travel and subsistence (per diem) expenses of MPO staff and its contractors and subcontractors claimed for reimbursement using funds administered through this Agreement or as local match credit shall not exceed rates authorized to be paid non-state employees under current State Department of Human Resources (CalHR) rules unless written verification is supplied that government hotel rates are not commercially available to MPO, or its contractors, its subcontractors, and/or its subrecipients, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process. The requirements of this section shall only apply to direct project costs and do not extend to indirect costs allocated through a federally approved Indirect Cost Rate Proposal.

Section 3. Final Request for Reimbursement and OWP Closeout Documentation

- A. MPO shall electronically submit an OWP/annual OWPA closeout documentation package and OWP final products to STATE no later than August 31st of each fiscal year. The closeout package shall conform to the format provided in APPENDIX C.
- B. The closeout package must be attached to a transmittal letter, typed on MPO letterhead. Failure to submit these documents by August 31st of each fiscal year may result in STATE withholding future apportionments and/or allocations to MPO. STATE

election not to withhold future apportionments and/or allocations immediately after the end of one fiscal year shall not limit STATE ability to initiate subsequent withholdings.

- C. Upon receipt of the required closeout documentation and OWP final products, STATE will issue a reconciliation letter to MPO stating the amount of unspent funds available to be carried over to the subsequent year's OWP. MPO may amend some or all of these funds into the OWPA only upon signature of the reconciliation letter by the MPO executive director or his or her appointee, and submittal of the signed letter to STATE. Any funds that are identified in the reconciliation letter, but not programmed by May 1 each year in which the letter is issued, will be forfeited.

Section 4. Funding Contingencies

- A. All obligations of STATE under the terms of the MFTA and each annual OWPA are subject to the availability of Federal and State funds, appropriation of resources by the Legislature, and the annual passage of the State Budget. The authorization and obligation of these funds by outside entities may be terminated, limited or otherwise adversely affected by factors which may include, but are not limited to, changes in State or Federal law regarding the encumbrance and reimbursement of the funds provided by each annual OWPA and this MFTA.

ARTICLE III - AUDITS AND REPORTS

Section 1. Cost Principles

- A. MPO agrees to comply with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), as applicable.
- B. MPO agrees, and will require that its contractors, subcontractors, and subrecipients be obligated to agree, that (a) the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items (subrecipients shall refer to, 2 CFR Part 200); and (b) all parties shall comply with Federal administrative procedures in accordance with 2 CFR Part 200. Every sub-recipient receiving project funds as a contractor, subcontractor, or sub-grantee under this MFTA shall comply with Federal administrative procedures in accordance with 2 CFR Part 200.
- C. MPO agrees and shall require that all of its agreements with contractors, subcontractors, and subrecipients funded in whole or in part with funds administered through this MFTA contain provisions requiring adherence to this section in its entirety, as applicable.

Section 2. Indirect Cost Agreement and Cost Allocation Plan (ICAP)

- A. Prior to MPO seeking reimbursement of indirect costs, MPO must prepare and submit annually to STATE for review and acceptance an indirect cost rate proposal and a central service cost allocation plan (if any) in accordance with 2 CFR, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards or applicable cost principles and Local Program Procedures Manual (Chapter 5).
- B. Prior to MPO seeking reimbursement of subrecipient indirect costs, and when subrecipient cognizant federal agency, as defined in 2 CFR part 200, is USDOT and/or STATE, MPO agrees and will require subrecipient to comply with section 2A.
- C. Prior to MPO seeking reimbursement of subrecipient indirect costs, and when subrecipient ICAP is approved by a cognizant federal agency other than USDOT, MPO agrees and will require subrecipient to submit to STATE a copy of the cognizant agency approval, the approved proposal, plan, subsidiary worksheets, and other relevant data on an annual basis as evidence of the approval.
- D. If a submitted ICAP does not meet the requirements of 2 CFR Part 200, and is determined to be insufficient, STATE will advise MPO of additional documentation or changes needed to meet Federal and State requirements. MPO agrees to provide requested documentation or required changes, and if MPO is non-compliant the submissions may be returned to MPO if requested documentation is not provided or required changes are not made.
- E. Material audit adjustments will require reimbursement to STATE or adjustment to subsequent years ICAPs if proposals are later found to have included costs that are unallowable as specified by law or regulation, or the terms and conditions of this MFTA.
- F. MPO agrees and shall require that all its agreements with subrecipients funded in whole or in part with funds administered through this MFTA contain provisions requiring adherence to this section in its entirety, as applicable.

Section 3. Record Retention/Audits

- A. MPO, its contractors, subcontractors and sub-recipients, agree to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. MPO shall maintain, and shall require its subrecipients, contractors and its subcontractors to maintain all source documents, books, records and supporting documents connected with their performance of OWP work initiated under this MFTA and each applicable annual OWPA for a minimum of five (5) years from the date of final payment to MPO or, if an audit is initiated within that timeframe, until audit resolution is achieved for each annual OWPA, whichever is later, and shall make all such supporting information available for

inspection, copying and audit by representatives of STATE, the California State Auditor, or the Federal Government upon request. Copies will be made and furnished by MPO, its contractors, its subcontractors and sub-recipients upon request made by STATE or its agents at no cost to STATE. Scanned original documents in electronic form are suitable to meet this requirement.

- B. MPO shall establish and maintain, and shall require that its subrecipients, contractors and subcontractors shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item (i.e. direct labor, other direct costs, subrecipients/subcontractor, etc.) and enable the determination of expenditures at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
- C. For the purpose of determining compliance with Government Code Section 8546.7, in connection with the performance of MPO contracts and/or agreements with third parties, MPO, MPO sub-recipients, contractors, and subcontractors which are funded in whole or in part with the funds administered through the this MFTA, shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts and/or agreements, including, but not limited to, the costs of administering those various contracts and/or agreements. All the above referenced parties shall make such contracts and/or agreements available at their respective offices at all reasonable times during the entire period of each annual OWPA and for five (5) years from the date of final payment to MPO or, if an audit is initiated within that timeframe, until audit resolution is achieved for each annual OWPA, whichever is later. 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 fulfillment of the contracts/ and/or agreements for audits, examinations, excerpts, and transactions, and MPO shall furnish copies thereof if requested.
- D. Where applicable, MPO agrees to comply with audit requirements for third party contractors, subcontractor and subrecipients in accordance with STATE Local Assistance Procedure Manual, Chapter 10 or any successor thereto.
- E. MPO agrees to include all costs associated with this MFTA, OWP and annual OWPA, and any amendments thereto; to be examined in the annual audit and in the schedule of activities to be examined under MPO single audit prepared in compliance with 2 CFR Part 200, subpart F. MPO is responsible for assuring that the Single Auditor has reviewed the requirements of this MFTA, the OWP and the annual OWPA. Copies of said audits shall be submitted to STATE.
- F. When conducting an audit of the costs and match credits claimed under the provisions

of each annual OWPA and this MFTA, STATE will rely to the maximum extent possible on any prior audit of MPO pursuant to the provisions of State and Federal law. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to STATE when planning and conducting additional audits.

- G. MPO agrees to furnish documentation to STATE supporting this requirement that all its agreements with contractors, subcontractors, and subrecipients funded in whole or in part with funds administered through this MFTA do contain provisions requiring adherence to this section in its entirety, as applicable.
- H. Neither the pendency of a dispute nor its consideration by STATE will excuse MPO from full and timely performance in accordance with the terms of this MFTA, the OWP, and the annual OWPA.

ARTICLE IV - MISCELLANEOUS PROVISIONS

Section 1. Federal Certifications and Assurances

- A. MPO shall comply with the FHWA "Metropolitan Transportation Planning Process Self-Certification" requirements in accordance with 23 CFR 450.334 and the Infrastructure Investment and Jobs Act (IIJA) Public Law 117-58) and the successors thereto. This certification is provided annually by FHWA and FTA. It may include, but is not limited to:
 - I. 23 U.S.C. 134, 49 U.S.C. 5303, and subpart C of 23 part 450;
 - II. In nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;
 - III. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1 and 49 CFR Part 21);
 - IV. 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
 - V. Section 1101 (b) of the FAST Act (Pub. L. 114-94) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;
 - VI. 23 CFR Part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction

contracts;

- VII. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and 49 CFR parts 27, 37, and 38;
 - VIII. The Older Americans Act, as amended (42 U.S.C. 6101, prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
 - IX. Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and
 - X. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.
- B. MPO shall comply with the annual FTA "Certifications and Assurances for FTA Assistance," including "Certifications and Assurances Required of Each Applicant" and the "Lobbying Certification" in compliance with 49 U.S.C. Chapter 53; published annually in the *Federal Register*, and found online at <https://www.transit.dot.gov>.
- The Federal Certification may include, but is not limited to the following areas under "Assurances Required of Each Applicant:"
- 1. Standard Assurances
 - 2. Standard Assurances: Additional Assurance for Construction Projects
 - 3. Procurement
 - 4. Suspension and Debarment
 - 5. Coronavirus Response and Relief Supplemental Appropriations Act, 2021, and CARES Act Funding
 - 6. American Rescue Plan Act Funding
- C. MPO shall comply with the "California Department of Transportation Debarment and Suspension Certification" as required by U.S. DOT regulations on governmentwide Debarment and Suspension (non-procurement), 49 CFR 29.100.
- D. Copies of these annual Certifications and Assurances shall be included by MPO in each

final OWP.

- E. MPO shall comply, and shall require its contractors, subcontractors, and subrecipients receiving funds or entering into agreements funded in whole or in part with funds administered through this MFTA, to comply, with these Certifications.
- F. MPO agrees to furnish documentation to STATE to support this requirement that all its agreements with contractors, subrecipients and subcontractors funded in whole or in part with funds administered through this MFTA, do contain provisions requiring adherence to this section in its entirety, as applicable.

Section 2. Disadvantaged Business Enterprise (DBE) Requirements

- A. As mandated by 49 CFR Part 26, MPO shall require that its contractors, subcontractors, and subrecipients do not discriminate on the basis of race, color, national origin, or sex in the award, administration, and performance of any FHWA/FTA fund-assisted contract or in the administration of MPO DBE program.
- B. MPO DBE program, as required by 49 CFR Part 26 and as approved by STATE, is incorporated by reference into this MFTA. Implementation of this program is a legal obligation and any failure by MPO to adhere to its terms shall be treated as a violation of this MFTA. Upon notification to the recipient of its failure to carry out its approved program, the US DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq. and 49 CFR Part 26.13(a).
- C. As required by 49 CFR part 26, the contract language in APPENDIX D relating to DBE requirements must be incorporated into all contracts funded in whole or in part with funds authorized in this Agreement.

Section 3. Non-Discrimination Clause

- A. In the performance of work undertaken pursuant to this MFTA, the MPO and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. MPO shall insure that the evaluation and treatment of

employees and applicants for employment are free of such discrimination.

- B. MPO shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Article 9.5 Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Section 11135-11139.8), and the regulations or standards adopted by the awarding state agency to implement such article. 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 MFTA by reference and made a part hereof as if set forth in full.
- C. MPO shall permit access by representatives of the Civil Rights Department and STATE upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or STATE shall require to ascertain compliance with this clause.
- D. MPO and MPO'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.
- E. MPO shall include the non-discrimination and compliance provisions hereof in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements with all of same that each of them in turn include a nondiscrimination and compliance provisions of this clause in all contracts and subcontracts the enter into to perform work under this MFTA.
- F. MPO shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 are made applicable to this MFTA by this reference. Wherever the term "Contractor" appears therein, it shall mean MPO.

Section 4. Federal Lobbying Activities Certification

- A. MPO certifies, to the best of its knowledge and belief, that no State or Federal funds have been paid or will be paid, by or on behalf of MPO, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.

- B. If any funds other than State or Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, MPO shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities" in accordance with those form instructions.
- C. This certification is a material representation of fact upon which reliance was placed when this MFTA and each annual OWPA was entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- D. MPO also agrees by signing this MFTA that MPO shall require that the language of this certification be included in all contracts and subcontracts funded wholly or in part by any fund sources listed on Page 1 of this MFTA and which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

ARTICLE V - GENERAL PROVISIONS

Section 1. Contract Award

- A. MPO, contractor, subcontractor and subrecipient contracts containing Federal and State planning funds are required to be bid and awarded in accordance with 2 CFR Part 200, and consistent with Local Assistance Procedure Manual, Chapter 10, or successors thereto as applicable. The requirements of this section apply to direct project costs and shall not apply to contracts included in MPO's federally approved Indirect Cost Rate Proposals.

Section 2. Contract Amendment

- A. No amendments to the terms of this MFTA, any OWP or any annual OWPA shall be valid unless made in writing and signed by the individuals legally authorized to contractually bind the parties hereto. Each party agrees that it has had or will have the opportunity to seek review by and approval from its legal counsel of the original documents and any proposed alteration or variation. No oral understanding or agreement not incorporated herein shall be binding on any of the parties thereto. For the purposes of this MFTA, the Chief of the Office of Regional and Community Planning, Division of Transportation Planning, shall be the Contract Administrator for STATE.

Section 3. Adjudication of Disputes by Way of Administrative Proceedings

- A. STATE hereby sets up an Administrative Procedure for adjudication of disputes that may arise when administering the program as defined by the terms and conditions of this Agreement.

MPO agrees to exhaust the administrative remedy prior to resorting to legal remedies. In case of disputes with STATE, MPO shall submit to the Chief of the Division of Transportation Planning, CALTRANS (DC PLANNING) or designee a written demand for a decision regarding the disposition of any dispute, arising under this Agreement. The DC PLANNING shall make a written decision regarding the dispute and will provide it to the MPO. The MPO shall have an opportunity to challenge the DC PLANNING determination but must make that challenge in writing, within ten (10) working days to the STATE Contract Officer or his/her designee. If the challenge is not made by MPO within the ten (10) day period, the DC PLANNING decision shall become the final decision of the STATE. If such a challenge is made, the DC PLANNING and MPO shall submit written, factual information and data in support of their respective positions to STATE Contract Officer within a timeframe established by the MPO at the time of challenge. The decision of the STATE Contract Officer or his/her designee shall be final, conclusive and binding regarding the dispute, unless MPO commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of Title 1 of the California Government Code.

Section 4. Intercept Clause

- A. Costs for which MPO receives reimbursement payment that are determined by a subsequent audit or other review by either STATE or Federal authorities to be unallowable under 2 CFR, part 200; or 48 CFR, Chapter 1, Part 31 are to be repaid to STATE by MPO within thirty (30) days of MPO receiving notice of audit findings. Should MPO fail to reimburse moneys due STATE within thirty (30) days of discovery or 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 MPO from STATE or any third-party source, including, but not limited to, the State Treasurer, the State Controller or any other fund source.

Section 5. Parties of Agreement

- A. This MFTA, OWP, annual OWPA, and any related agreements are solely between the named parties thereto and no express or implied benefit to entities or individuals not a party thereto is intended or to be inferred. There are no third-party beneficiaries to or of this MFTA or any OWP, or annual OWPA or any other agreement pertaining hereto.

Section 6. Hold Harmless and Indemnification Clause

- A. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by MPO, its officers, employees, agents, contractors, sub-recipients, or subcontractors under or in connection with any work, authority or jurisdiction conferred upon MPO under this MFTA and/or each annual OWPA. It is understood and agreed that, pursuant to Government Code section 895.4, MPO shall fully defend, indemnify and hold harmless STATE and its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by MPO, its officers, employees, agents, contractors, sub-recipients or subcontractors under this MFTA and each annual OWPA.
- B. Neither MPO nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by STATE, its officers, employees, agents, contractors, subrecipients, or subcontractors under or in connection with any work, authority, or jurisdiction conferred upon to STATE under this MFTA. It is understood and agreed that pursuant to Government Code section 895.4, STATE shall fully defend, indemnify and hold harmless MPO, its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE, its officers, employees, agents, contractors, sub-recipients or subcontractors under this MFTA.

Section 7. Default

- A. In the event that MPO (a) fails to comply with applicable Federal and State laws and regulations; (b) fails to timely proceed with OWP in accordance with the MFTA or OWPA; or (c) otherwise materially violates the terms and conditions of this MFTA and/or OWPA, STATE reserves the right to terminate all funding for that OWP, or a portion thereof. Any such termination shall be accomplished by delivery to MPO 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 MFTA is terminated and the date upon which such termination becomes effective. During the period before the termination date becomes effective, MPO and STATE shall meet to try to resolve any dispute. No such termination shall become effective if: (a) during the process described in Article V, Section 3, the termination is stayed, (b) within the thirty (30) day period after receipt of the Notice of Termination, MPO either cures the default, or (c) if that default is not reasonably susceptible to cure within said thirty (30) day period,

STATE approves a MPO plan and MPO thereafter diligently completes the cure in a manner and timeline acceptable to STATE.

- B. If STATE terminates funding for OWP pursuant to the above paragraph A, STATE shall pay MPO the sum due MPO under the annual OWPA for eligible work performed prior to termination.

Section 8. Termination

- B. This MFTA shall remain in full force and effect until the termination date stated on Page 1 of this MFTA, unless superseded or terminated in conformance with Section 7 of this Article. All indemnification, document retention, audit, claims, and legal challenge articles will remain in effect until terminated or modified in writing by mutual agreement or expiry by statute of limitations.

DRAFT

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Contract Officer

Date: _____

«AGENCY»

By: _____
Executive Director

Date: _____

By: _____
Attorney

Date: _____

APPENDICES

- A Overall Work Program Agreement
- B Request for Reimbursement
- B2 Request for Reimbursement Support Documentation
- C Closeout Documentation
- D DBE Contract Language (required)
- D2 DBE Semi-Annual Report
- D3 DBE Awards and Commitments
- D4 DBE Utilization Report
- D5 DBE Good Faith Efforts and Documentation
- E Federal Certifications and Assurances
- F Board Resolution