

Memorandum of Understanding

Proposition K Grant for Downtown Ferry Terminal - Pedestrian Circulation Improvements

This memorandum of understanding (the “MOU”) is entered into on the date below, by and between the San Francisco Bay Area Water Emergency Transportation Authority (“WETA”) and the City and County of San Francisco, acting by and through the San Francisco Port Commission (“Port”). This MOU is entered into on the basis of the following facts, understandings, and intentions of the parties:

- A. In November 2003, San Francisco voters approved Proposition K, a half-cent local sales tax for transportation that is administered by the San Francisco County Transportation Authority (“SFCTA”).
- B. The Proposition K Expenditure Plan describes the types of projects that are eligible for funds authorized by the proposition, establishes limits on sales tax funding by Expenditure Plan line item, and sets expectations for leveraging of sales tax funds.
- C. Category nine of the voter-approved Expenditure Plan is for “Improvements to downtown ferry terminals to accommodate increases in ferry ridership. Included are additional intermodal connections, new ferry berths, improved emergency response systems, and landside improvements to serve increased passenger flows. Also included is rehabilitation of passenger-serving facilities. Includes project development and capital costs.” There are two eligible sponsoring agencies for projects in this category: the Port of San Francisco and the Golden Gate Bridge, Highway and Transportation District.
- D. The Proposition K Expenditure Plan requires that each programmatic category (including category nine for ferries) develop a 5-Year Prioritization Program (“5YPP”) prior to receiving Proposition K funds allocations.
- E. During the process of updating the 5YPP for category 9 for fiscal years 2019-20 through 2023-24, the SFCTA prioritized and approved a \$300,000 project for the Downtown Ferry Terminal – Pedestrian Circulation Improvements. This funding is in addition to the prior allocation of \$1,100,000 for the Downtown Ferry Terminal – South Basin Improvements.
- F. WETA is undertaking the construction of, and will deliver, the Downtown Ferry Terminal – Pedestrian Circulation Improvements as part of its Downtown San Francisco Ferry Terminal Expansion Project (“Project”).
- G. WETA and the Federal Transit Administration (“FTA”) completed a Final Environmental Impact Statement/Environmental Impact Report (State Clearing House No. 2011032066, October 2014) that meets requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) for environmental

clearance of the Downtown Ferry Terminal Expansion Project, which includes the Pedestrian Circulation Improvements.

- H. As the Pedestrian Project sponsor, the Port is responsible for ensuring that Proposition K grant funds are expended in accordance with the terms set forth in the one or more Standard Grant Agreements (“SGA”) dated _____ between SFCTA and the Port a copy of which is attached and incorporated in this MOU.
- I. As the entity delivering the Project, WETA is responsible for complying with all provisions laid out in the SGA(s) and seeking reimbursement of eligible expenses through the Port.
- J. The Port and WETA, through this MOU, wish to set forth their essential understandings, and agreements, as they relate to expenditure and administration of Proposition K grant funds for the Project in accordance with the SGA(s).

Now, therefore, it is agreed as follows:

1. As the Project Sponsor and as memorialized herein, the Port agrees to serve as the fiscal agent for WETA on the Proposition K grant funds for the Project. The Port will serve as the Project Sponsor and fiscal agent for seeking reimbursement from SFCTA for eligible Project expenses incurred by WETA.
2. WETA shall not proceed with tasks resulting in expenses above the authorized grant amount specified in the SGA(s).
3. The Port agrees to waive the Building Permit fee for the Pedestrian Project.
4. Both parties agree to the following assignment and allocation of their roles and responsibilities, as they pertain to each major section of Section 2, Standard Terms and Conditions, of the SGA(s). (The following numbers correspond to SGA sections):

SGA Section	WETA Responsible	Port Responsible	Notes
II	A	X	
	B	X	
	C	X	X
	D	X	
	E	X	X
	F	X	
	G	X	X
	H	X	
	I	X	
III	A	X	
	B	X	X
			WETA shall maintain all records. Port’s record

				retention responsibility limited to maintaining documents it receives and reviews to facilitate reimbursements
	C	X	X	Please see section 5 and 6 below chart for procedure notes.
	D	X		
	E	X		
	F	X		
	G	X	X	If cost savings must be returned, WETA is responsible for returning funds to the Port who will then reimburse SFCTA.
IV	A-B	X		
V	A	X	X	Port's role is limited to providing information on the materials it has reviewed to process reimbursement requests. WETA has lead responsibility on audits and will accommodate audit staff at its office, if needed.
	B	X	X	WETA will prepare all materials, including certified financial statements, and provide to the Port for review and transmissions to SFCTA.
	C	X	X	
	D	X	X	
VI	A	X	X	
VII	A	X	X	
	B	X	X	
	C	X	X	
VIII		X	X	
IX		X	X	
X		X	X	
XI		X	X	
XII		X	X	
XIII		X	X	
XIV		X	X	

5. WETA will seek reimbursements on a quarterly basis in accordance with the SGA(s). Within two weeks after receipt of a complete reimbursement request package, the Port will transmit the reimbursement request to SFCTA. The Port will reimburse WETA within two weeks of receipt of funds from SFCTA.
6. WETA shall provide the Port with reimbursement requests that include appropriate support documentation and identification of expenses incurred. The reimbursement package will include:

- a. A cover page identifying the grant, the requested reimbursement amount, and the remaining grant balance;
 - b. A breakdown of the types of expenses incurred, the total for each type, and the proportion of expenses billed to Proposition K compared to other fund sources;
 - c. A detailed summary of the non-labor expenses, summarized by vendor or contractor; and
 - d. Any other information reasonably requested by the Port or WETA.
7. WETA shall comply with the deliverables and special conditions described on the Transportation Authority Recommendation of the Proposition Allocation Request Form appended to the SGA(s).

WETA and the Port of San Francisco have entered into this Memorandum of Understanding as of the last date set forth below.

**San Francisco Bay Area Water
Emergency Transportation Authority**

**City and County of San Francisco,
acting by and through the San
Francisco Port Commission**

By: _____

Nina Rannells
Executive Director

By: _____

Elaine Forbes
Executive Director

Date: _____

Date: _____

Reviewed:

Reviewed:

**Dennis J. Herrera
City Attorney**

By: _____

Madeline Chun
Legal Counsel to WETA

By: _____

Michelle Sexton
Deputy City Attorney

STANDARD GRANT AGREEMENT
Proposition K
Transportation Authority Project No. «Project_Numbers»
Resolution «Resolution_No»

SECTION 1

I. PURPOSE OF AGREEMENT

THIS AGREEMENT is entered into by and between the San Francisco County Transportation Authority (TRANSPORTATION AUTHORITY) and the «Sponsors_SGA_Name» (RECIPIENT), to document the funding conditions necessary for the RECIPIENT to comply with applicable law and TRANSPORTATION AUTHORITY policies as provided in the TRANSPORTATION AUTHORITY GRANT Resolution. This AGREEMENT consists of Sections 1 and 2 and all additional documents stated in these sections as being attached hereto and incorporated in the AGREEMENT by reference.

In consideration of the mutual covenants, promises, and representations herein, the parties hereto agree as follows:

II. PURPOSE OF GRANT

This GRANT, approved through Resolution «Resolution_No» of the TRANSPORTATION AUTHORITY, in accordance with the requirements of the TRANSPORTATION AUTHORITY'S Proposition K Expenditure Plan and Strategic Plan, is made for the following purposes identified in the RECIPIENT'S Proposition K Sales Tax Program Allocation Request Form (Attachment):

«ARF_Project_Name»

III. PROJECT DEFINITION AND SCOPE

The RECIPIENT agrees to undertake and complete the PROJECT with all practicable dispatch, in a sound, economical, and efficient manner, and in accordance with all the provisions of Sections 1 and 2 hereof, and as described in the Scope section and any Special Conditions of the Proposition K Sales Tax Program Allocation Request Form, which are attached to this AGREEMENT, and made a part hereof.

IV. GRANT

The TRANSPORTATION AUTHORITY hereby grants to the RECIPIENT the sum of \$«Total_Amount_Allocated» as designated in the GRANT Resolution cited below and included in this AGREEMENT by reference.

Res. No.	Date	Project #	Proposition K Funds Allocated	Proposition K Fund Expiration Date
«Resolution_No»	«Resolution_Date»	«Project_Numbers»	\$«Total_Amount_Allocated»	«Prop_K_Expiration_Date»

V. ACCEPTANCE OF GRANT

The RECIPIENT does hereby declare that all written statements, representations, covenants, and materials submitted as a condition of this AGREEMENT are true and correct and does hereby accept the TRANSPORTATION AUTHORITY'S GRANT and agrees to all of the terms and conditions of this AGREEMENT.

This AGREEMENT is effective as of the DATE OF EXECUTION as defined in SECTION 2, STANDARD TERMS AND CONDITIONS, DEFINITIONS, below.

SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY

By: _____
Tilly Chang, Executive Director

Date _____

RECIPIENT: «Sponsors_SGA_Name»

By: _____
«Sponsor_Signator», «Sponsor_Sig_Title»

Date _____

Approved As To Form: «Attorney_Name», «Attorney_Title»

By: _____
«Attorney_Sig_Title»

**SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY
STANDARD GRANT AGREEMENT**

**SECTION 2
STANDARD TERMS AND CONDITIONS**

I. DEFINITIONS

As used in this AGREEMENT:

- A. AGREEMENT shall mean Sections 1 and 2 of this Standard Grant Agreement and all additional documents stated in these sections as being attached and incorporated by reference.
- B. TRANSPORTATION AUTHORITY shall mean the San Francisco County Transportation Authority.
- C. DATE OF EXECUTION shall mean the date when the TRANSPORTATION AUTHORITY'S Executive Director or his/her designee signs this agreement.
- D. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM shall mean any DBE program adopted by RECIPIENT, or an equivalent program approved directly by the California Department of Transportation or accepted by the federal agency providing financial assistance, that is applicable to the PROJECT as defined by RECIPIENT.
- E. FORCE ACCOUNT shall mean personnel costs incurred by the RECIPIENT directly associated with implementing projects.
- F. FUND EXPIRATION DATE shall mean the final date when eligible costs may be charged against a GRANT.
- G. GRANT shall mean the allocation of any Proposition K sales tax funds.
- H. LOCAL BUSINESS ENTERPRISE (LBE) PROGRAM shall mean any LBE program adopted by RECIPIENT that is applicable to the PROJECT as defined by RECIPIENT.
- I. LOCAL HIRING PROGRAM shall mean any local hiring ordinance adopted by RECIPIENT or another employment opportunity program developed by RECIPIENT that is applicable to the PROJECT as defined by RECIPIENT.
- J. NEW EXPENDITURE PLAN shall mean the City and County of San Francisco Transportation Expenditure Plan approved by the voters on November 4, 2003.
- K. PROJECT shall mean the scope of work set forth in the attached Proposition K Sales Tax Program Allocation Request Form. This scope of work is based on the applicable project description of a line item that is in the EXPENDITURE PLAN.
- L. PROPOSITION K REQUEST TABLE shall mean the current schedule of cash flows shown in the Proposition K Sales Tax Program Allocation Request Form–Cash Flow Distribution Schedule by Fiscal Year table.
- M. RECIPIENT shall mean SPONSORING AGENCY that receives a GRANT from the TRANSPORTATION AUTHORITY for the purpose of carrying out the PROJECT.
- N. SMALL BUSINESS ENTERPRISE (SBE) PROGRAM shall mean any SBE program adopted by RECIPIENT that is applicable to the PROJECT as defined by RECIPIENT.
- O. SPONSORING AGENCY shall mean the RECIPIENT shown on page 20 of 21 of the EXPENDITURE PLAN for the PROJECT.
- P. STRATEGIC PLAN shall mean the long-range Strategic Plan adopted by the TRANSPORTATION AUTHORITY Board in place at the time of the allocation, which updates assumptions about level and availability of Proposition K revenues and sets policy on Proposition K expenditures, project budgets, cost eligibility, and expected cash flows.

II. GENERAL CONDITIONS

- A. Cost Eligibility

Cost eligibility shall be determined by the TRANSPORTATION AUTHORITY'S Strategic Plan policies. All costs incurred by RECIPIENT prior to the DATE OF EXECUTION of this AGREEMENT shall be ineligible for reimbursement by the TRANSPORTATION AUTHORITY, except in the following situations:

1. Where the TRANSPORTATION AUTHORITY has previously approved the scope of a project and that scope has incurred increased costs; and
2. Capital costs of a multi-year project to which the TRANSPORTATION AUTHORITY has made a formal commitment in a resolution for out-year costs, although the funds have not been allocated.

While these costs shall be eligible for reimbursement in the situations cited above, the timing and amount of reimbursement will be subject to a TRANSPORTATION AUTHORITY allocation, based on available revenues, other anticipated project requests, and project category and subcategory limits established in the EXPENDITURE PLAN. Travel costs shall not exceed the per diem rates and allowances established by the U.S. General Services Administration when traveling within the United States, and U.S. Department of State when traveling outside the United States. All costs incurred by RECIPIENT after the FUND EXPIRATION DATE shall be ineligible for reimbursement by the TRANSPORTATION AUTHORITY. Any waiver of cost eligibility policies must be included in the Proposition K Sales Tax Program Allocation Request Form as approved by the TRANSPORTATION AUTHORITY.

B. Non-Substitution of Funds

In accordance with Sections 131000 et seq. of the California Public Utilities Code under which the TRANSPORTATION AUTHORITY was created, a GRANT awarded to the RECIPIENT shall not replace funds previously provided by property tax revenues for transportation purposes and shall be used to supplement existing local revenues used for transportation purposes.

Any GRANT determined by the TRANSPORTATION AUTHORITY to replace existing local revenues shall be refunded by the RECIPIENT to the TRANSPORTATION AUTHORITY in a manner determined by the TRANSPORTATION AUTHORITY.

C. Compliance with Law

In the performance of its obligations pursuant to this AGREEMENT, the RECIPIENT shall keep itself fully informed of the federal, state and local laws, ordinances and regulations in any manner affecting the performance of this Agreement, and must at all times comply with such laws, ordinances, and regulations as they may be amended from time to time.

D. Budget and Scope

The RECIPIENT shall maintain a PROJECT budget. The RECIPIENT shall carry out the PROJECT and shall incur obligations against and make disbursements of the GRANT in conformity with the TRANSPORTATION AUTHORITY'S requirements and the budget. The PROJECT budget may be revised from time to time through the submission of a revised budget to the TRANSPORTATION AUTHORITY.

The RECIPIENT may not make any changes to the scope of the PROJECT without prior written approval of the TRANSPORTATION AUTHORITY. Approval by the TRANSPORTATION AUTHORITY of a change of scope shall not constitute an increase in the GRANT amount unless additional funds are specifically provided.

E. Third Party Contract Audits

The TRANSPORTATION AUTHORITY reserves the right to request an audit of other third party contracts for any reason. If the RECIPIENT is subject to third party financial audit requirements imposed by another funding source, copies of audits performed in fulfillment of such requirements shall be provided to the TRANSPORTATION AUTHORITY. If the RECIPIENT is an agency, department or other subdivision of the City and County of San Francisco, third party contracts include those contractual agreements entered into by the RECIPIENT and any other City and County of San Francisco entity.

F. Project Management

RECIPIENT shall be responsible for the PROJECT and provide management of consultant and contractor activities for which RECIPIENT contracts, including responsibility for schedule, scope, and budget, consistent with the TRANSPORTATION AUTHORITY'S resolution allocating the GRANT unless otherwise agreed upon in writing.

G. Project Oversight

The RECIPIENT shall cooperate with the TRANSPORTATION AUTHORITY'S project oversight team and shall provide any requested PROJECT information.

H. Attribution and Signage

If any portion of GRANT funds is used for production of reports, acknowledgment of the TRANSPORTATION AUTHORITY'S role shall be included in the documents. If any portion of GRANT funds are used for a project, the RECIPIENT shall, upon initiation of field work or at the earliest feasible time thereafter, install and maintain a sign at the construction site identifying Proposition K Local Transportation Sales Tax Funds and the TRANSPORTATION AUTHORITY as a funding source, in accordance with the standard format within this Section II.H. For construction projects, RECIPIENT shall, within 30 days of the date of initiation of fieldwork, submit to the TRANSPORTATION AUTHORITY as a jpeg or TIF file, a photograph documenting compliance with the Proposition K attribution and format requirements herein contained. For non-construction capital purchases funded by any portion of GRANT funds, RECIPIENT shall affix permanent signage identifying the TRANSPORTATION AUTHORITY and the Sales Tax Funds as a funding source according to the standard format. RECIPIENT shall demonstrate compliance with attribution and signage requirements as a mandatory condition for authorization of Proposition K reimbursement for project expenses. RECIPIENT shall submit a request for approval from the TRANSPORTATION AUTHORITY for any deviation from the specified attribution and signage described below. Exceptions may be made at the sole discretion of the TRANSPORTATION AUTHORITY.

All press releases related to projects with any phase of work (Planning/Preliminary Engineering, Environmental, Right of Way, Plans, Specifications and Estimates, Construction, and/or Procurement), partially or entirely funded by Proposition K funds shall include the following statement:

This project was made possible in part with Proposition K Sales Tax dollars provided by the San Francisco County Transportation Authority.

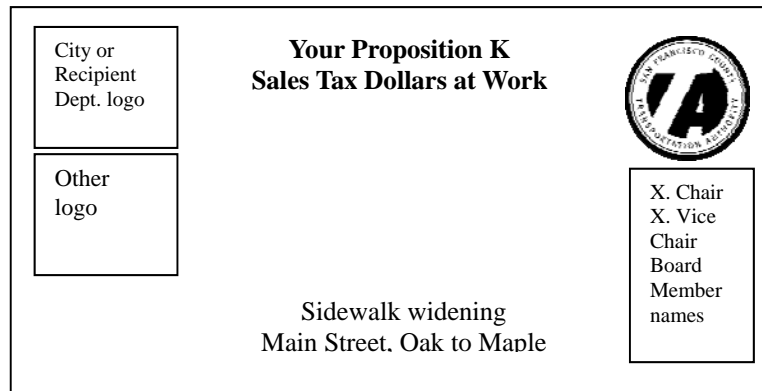
1. For a construction project undertaken with partial or complete funding from Proposition K for the Construction phase, RECIPIENT shall install and maintain a sign displaying the following items:
 - a. The official TRANSPORTATION AUTHORITY seal, provided to RECIPIENT in digital format at the time of execution of this AGREEMENT, placed on the upper or lower right hand corner of the sign, and sized 8 inches across or at the same size as the RECIPIENT’s own seal or official logo appearing on the sign, whichever is larger.
 - b. The following text:

***Your Proposition K
Sales Tax Dollars at Work***

centered horizontally across the top or across the bottom of the sign, such that the TRANSPORTATION AUTHORITY logo appears immediately to the right of the text, and displayed in 2-inch tall, or the same size as the text acknowledging RECIPIENT, if larger, Times Roman or comparable font. See example in Figure 1.

- c. A listing of current members of the TRANSPORTATION AUTHORITY Board of Commissioners, starting with Chair and Vice Chair, followed by Board members names listed in alphabetical order, centered vertically against the right margin of the sign. See Example in Figure 1.

Figure 1
Example of Construction Sign



2. For a project for which Proposition K funding was used for any prior phase (i.e., Planning/Preliminary Engineering, Environmental, Right of Way, Plans, Specifications and Estimates, and Procurement), but not for the Construction phase, RECIPIENT shall install and maintain a sign displaying the following items:
 - a. The official TRANSPORTATION AUTHORITY seal, placed on the upper or lower right hand corner of the sign, and sized 8 inches across or at the same size as the RECIPIENT’s own seal or official logo appearing on the sign, whichever is larger.
 - b. The following text:

This Project was made possible in part by Proposition K Local Transportation Sales Tax Funds.

centered horizontally across the top or across the bottom of the sign, such that the TRANSPORTATION AUTHORITY logo appears immediately to the right of the text. See example in Figure 2.

Figure 2

Example of Proposition K Attribution on Construction Sign

This Project was made possible in part by Proposition K
Local Transportation Sales Tax Funds



3. Required Format for Attribution and Acknowledgement of TRANSPORTATION AUTHORITY Funding for Non-Construction Capital Projects.

All capital purchases, including, but not limited to transit fleet and non-revenue fleet vehicles and maintenance vehicles, partially or entirely funded by Proposition K shall bear permanent signage as follows:

a. For vehicles (revenue and non-revenue):

A decal or painted version of the TRANSPORTATION AUTHORITY'S official seal, 5 inches across. Non-revenue vehicles shall display the seal on either side or on the rear of the vehicle, at least 6 inches in from the perimeter of the surface where it is displayed. Transit and paratransit vehicles shall display the TRANSPORTATION AUTHORITY'S seal prominently inside the vehicle, either on the rear-facing driver privacy panel, or on a wall or ceiling graphic display panel. The seal shall be displayed including the following text, centered under the seal: *Paid for by Your Prop K Sales Tax*, in two rows, as illustrated below:



*Paid for by Your
Prop K Sales Tax*

4. Required Format for Attribution and Acknowledgement of TRANSPORTATION AUTHORITY Funding of Studies and Reports

All reports prepared with funding from Proposition K shall bear the appropriate framed imprint on the back of the title page, right justified and printed in 12 point font. The Official TRANSPORTATION AUTHORITY seal, provided to RECIPIENT in digital format at the time of execution of the AGREEMENT, and sized at 1 inch across, as shown below, shall be placed immediately to the right of the text frame bearing the attribution imprint.

a. For reports entirely funded through Proposition K:

Preparation of this report was made possible by the San Francisco County Transportation Authority through a grant of Proposition K Local Transportation Sales Tax funds.



- b. For reports and studies partially funded through Proposition K:

Preparation of this report was made possible in part by the San Francisco County Transportation Authority through a grant of Proposition K Local Transportation Sales Tax funds.



5. Required Format for Attribution and Acknowledgement of TRANSPORTATION AUTHORITY Funding of Flyers, Brochures, Posters, Websites and Other Similar Materials.

All flyers, brochures, posters, websites and other similar materials prepared with Proposition K funding shall include the Authority's logo and the following statement:

This project is made possible by the San Francisco County Transportation Authority through a grant of Proposition K Local Transportation Sales Tax Funds.

The logo should be grouped with any other participating agency. The logo and attribution shall be readily visibly and distinguishable from a normal viewing distance for the item being produced. One copy of all such materials shall be delivered to the TRANSPORTATION AUTHORITY for archival purposes.

I. Environmental Compliance

The RECIPIENT shall undertake all environmental mitigation measures that may be identified as commitments in applicable documents (such as environmental assessments, environmental impact statements and reports, and memoranda of agreement), and comply with any conditions imposed as a part of a finding of no significant impact or a record of decision. All such mitigation measures are incorporated in this AGREEMENT by reference.

III. FINANCES

A. Documentation of Project Costs

All costs charged to the PROJECT, including any approved FORCE ACCOUNT services performed by the RECIPIENT, shall be supported by properly prepared and documented time records, invoices, or vouchers evidencing in detail the nature and propriety of the charges and the basis for the percentage charged to the TRANSPORTATION AUTHORITY.

B. Records

All checks, payrolls, invoices, contracts, vouchers, journal entries, work orders, and other accounting documents pertaining in whole or in part to the PROJECT shall be maintained by the RECIPIENT for a period of five (5) years after the later of PROJECT closeout or

termination of GRANT. Such PROJECT documents shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other similar documents not pertaining to the PROJECT.

C. Reimbursements

Payment shall be made to the RECIPIENT for costs reimbursable under the terms of this AGREEMENT and incurred prior to the termination date of this AGREEMENT. Payment to RECIPIENT of the GRANT shall be upon written approval by the TRANSPORTATION AUTHORITY, upon submittal by the RECIPIENT of appropriate support documentation and identification of expenses incurred. Reimbursement shall be made on a quarterly basis. The TRANSPORTATION AUTHORITY, in consultation with the RECIPIENT, may provide an alternate reimbursement schedule or quarterly calendar to the grantee. However, RECIPIENT shall submit fourth (4th) quarter reimbursement requests or an expenditure accrual schedule in time to meet the Authority's year end closing process. Except for the grant closeout or end of fiscal year billing, the minimum reimbursement request amount shall be \$5,000. In the case of grant closeout, the TRANSPORTATION AUTHORITY reserves the right to retain up to \$5,000 or 10% of the GRANT amount, whichever is less, until all project requirements, including special conditions and deliverables, have been met, and closeout documentation, including proof of attribution and project completion, have been submitted and accepted.

Reimbursements shall not exceed the schedule shown in the PROPOSITION K REQUEST TABLE. RECIPIENT may make a request for exceptions in writing. Exceptions may be made at the sole discretion of the Authority.

Each reimbursement request shall include RECIPIENT'S certification that the amounts sought are only for project elements included in the Allocation Request Form, and that RECIPIENT is in compliance with the TRANSPORTATION AUTHORITY'S requirements under Section IV. A (Progress Reports) and II. H (Signage and Attribution) of this Agreement.

D. Interest Expense

1. RECIPIENT acknowledges that the TRANSPORTATION AUTHORITY may have to issue debt to honor reimbursement requests, including, but not limited to, the planned reimbursement requests shown in the current PROPOSITION K REQUEST TABLE. If, as of the date of a reimbursement, the sum of the reimbursements for an Expenditure Plan line item exceeds such Expenditure Plan line item's cumulative pro-rata share of Proposition K revenues as such revenues and pro-rations are shown in the current adopted Proposition K Strategic Plan, and the Authority issues or services debt to satisfy its reimbursement obligations to RECIPIENT or any other recipient of Proposition K revenues, then such Expenditure Plan line item shall be responsible for and allocated its pro-rata share of the costs and expenses of such debt, including all interest expense, fees, and other costs of issuance (collectively, "Debt Expenses"). Actual Debt Expenses shall be reported at the end of the Fiscal Year in which the reimbursement occurs, and such Debt Expenses will be charged against applicable Expenditure Plan line item reimbursement limits.
2. The TRANSPORTATION AUTHORITY may request updated PROPOSITION K REQUEST TABLES, and RECIPIENT shall respond to any such request within ten (10) business days if RECIPIENT proposes any change in the PROPOSITION K REQUEST TABLE, with any such changes requiring approval by the TRANSPORTATION AUTHORITY. The most recently approved PROPOSITION

K REQUEST TABLE will be the basis for determining Debt Expenses and reimbursement request limits.

3. Notwithstanding anything to the contrary within this Section III.D., in the event that the TRANSPORTATION AUTHORITY specifically issues debt on behalf of RECIPIENT's specific project, any Debt Expenses related to such debt will be directly allocated and charged against the applicable Expenditure Plan line item and not prorated as set forth in Section III.D.1.
4. Notwithstanding anything to the contrary within this Section III.D.1, in the event that this GRANT funds one of the four projects grandfathered from the Prop B Expenditure Plan, no finance costs will be assigned to the project. These four projects are the Third Street Light Rail Project, the New Central Subway Project, the Illinois Street Bridge Project and the Bernal Heights Project.

E. Proportional Expenditure of GRANT

If this GRANT constitutes local match for federal, state, or regional funds, the RECIPIENT shall not expend this GRANT at a rate greater than the percentage share as listed in the Proposition K Sales Tax Program Allocation Request Form unless written approval by the TRANSPORTATION AUTHORITY is obtained to allow GRANT expenditure for a different percentage.

F. Proceeds from Sale of Equipment or Vehicles Purchased with GRANT

If RECIPIENT uses any portion of the GRANT to purchase equipment or vehicles, and later sells the equipment or vehicles, RECIPIENT shall return to the TRANSPORTATION AUTHORITY a portion of the proceeds from the sale of such assets. RECIPIENT shall return to the TRANSPORTATION AUTHORITY that proportion of the net sales proceeds that is equal to the percentage of the original purchase price that consisted of GRANT funds. The TRANSPORTATION AUTHORITY will program any returned funds in accordance with Strategic Plan policies.

G. Return of Project Cost Savings

If the actual costs of the PROJECT are less than the amount budgeted or the amount advanced by the TRANSPORTATION AUTHORITY, RECIPIENT shall return to the TRANSPORTATION AUTHORITY that proportion of the project cost savings that is equal to the percentage of the original project budget that consisted of Prop K grant funds. The TRANSPORTATION AUTHORITY will program any returned funds in accordance with Strategic Plan policies.

IV. REPORTING

A. Progress Reports

As a condition for reimbursement, RECIPIENT shall submit quarterly progress reports and an annual project report. RECIPIENT must submit a progress report for each grant regardless of progress made during the reporting period.

RECIPIENT shall submit no later than April 15, July 15, October 15, and January 15, a quarterly progress report describing the activities performed during the previous quarter. The TRANSPORTATION AUTHORITY in consultation with RECIPIENT may agree to

an alternate reporting schedule for the grantee. This report shall address the current scope, schedule, cost and status of each project element listed in the Allocation Request Form and approved amendments. Project updates shall include percent complete of the project's scope, photographs of projects under construction, the completed project, and verification of compliance with the TRANSPORTATION AUTHORITY'S signage and attribution requirements. Photos shall include identification for project number, location, date and activity being photographed.

B. Annual Reports

RECIPIENT shall submit no later than December 15 of each year a project update for potential inclusion in the TRANSPORTATION AUTHORITY Annual Report, in a format to be provided by the TRANSPORTATION AUTHORITY. This update shall include at least the following information: project sponsor, project contact, project description, project status including percent complete, expenditures, including SBE, DBE and LBE PROGRAM utilization to date and project goals, LOCAL HIRING PROGRAM utilization to date, and photos and other presentation quality materials. RECIPIENT shall limit this presentation to one page for all items except photos and one page for multiple photos.

All quarterly progress reports shall be submitted in electronic format. Electronic format shall include Microsoft Word or Excel documents for text portions and JPEG files for photos or as otherwise directed by the TRANSPORTATION AUTHORITY. The TRANSPORTATION AUTHORITY reserves the right to request hard copies of the progress report.

V. AUDITS AND CLOSEOUT PROCEDURES

A. Ongoing

The TRANSPORTATION AUTHORITY reserves the right at any time to conduct or require a financial or performance audit of the RECIPIENT'S compliance with this AGREEMENT. The TRANSPORTATION AUTHORITY will give advance notice of the requirement. The RECIPIENT shall permit the TRANSPORTATION AUTHORITY, or any of its duly authorized representatives, to inspect all work, materials, payrolls, and other data and records with regard to the PROJECT, and to audit the books, records, and accounts of the RECIPIENT and its contractors with regard to the PROJECT.

B. Closeout

PROJECT closeout occurs either when the TRANSPORTATION AUTHORITY notifies the RECIPIENT or forwards the final GRANT payment, or when the RECIPIENT'S remittance of the proper refund has been acknowledged by the TRANSPORTATION AUTHORITY. Within ninety (90) days of the PROJECT completion date or termination by the TRANSPORTATION AUTHORITY, whichever comes first the RECIPIENT shall submit a certified financial statement identifying all excess funds or ineligible expenditures, which the RECIPIENT shall be required to refund, as well as third party audit reports, as applicable, or provide a schedule and justification for an alternate closeout date. PROJECT closeout shall not terminate any continuing obligations imposed on the RECIPIENT by this AGREEMENT. For multi-year AGREEMENTS, the TRANSPORTATION AUTHORITY may request closeout of a portion of a PROJECT as it is completed. Final reimbursement will be in accordance with AUTHORITY policies and procedures.

RECIPIENT shall provide to the TRANSPORTATION AUTHORITY the following information at project closeout

1. Final Expenditure Report

This report shall consist of the total expenditures for the approved scope, revenues from all funding sources applied to the approved scope of work. The RECIPIENT shall provide supporting documentation for expenditures and revenues from its accounting and financial management system.

RECIPIENT shall certify that the amounts sought are only for project elements included in the Proposition K Sales Tax Program Allocation Request Form.

2. SBE, DBE, LBE and LOCAL HIRING PROGRAMS Utilization Report

This report shall include a breakdown of work performed by RECIPIENT forces and the work that has been contracted out, including a breakdown of work contracted out to SBE, DBE, LBE and/or local residents, which includes the contract and project goals and utilization to date in terms of percents and dollar amounts as applicable.

3. Final Project Update

The RECIPIENT shall provide a final project update in the format that is specified for the TRANSPORTATION AUTHORITY'S Annual Report in Section IV. A. of this AGREEMENT.

These project closeout documents shall be submitted under the signature of staff authorized to execute the AGREEMENT.

Release of the final reimbursement request or allocation of additional grants shall be subject to fulfillment of required closeout materials. The TRANSPORTATION AUTHORITY reserves the right to retain up to \$5,000 or 10% of the GRANT, whichever is less, until all closeout documentation, including proof of attribution and project completion, have been submitted and accepted.

C. Rescission of Authorization of Funds

The TRANSPORTATION AUTHORITY reserves the right to rescind its authorization of unneeded GRANT funds prior to, or at the time of, PROJECT closeout. Funds are determined to be unneeded if they are uncommitted at time of project closeout.

D. Repayment of Ineligible Costs

The TRANSPORTATION AUTHORITY reserves the right to offset RECIPIENT payback of ineligible costs against future GRANT approvals for this PROJECT or other projects in the EXPENDITURE PLAN for which RECIPIENT is the SPONSORING AGENCY.

VI. LIABILITY

A. Indemnification

RECIPIENT agrees to defend, indemnify and hold harmless the TRANSPORTATION

AUTHORITY, its officers, employees and agents, from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of RECIPIENT in connection with this AGREEMENT, except those arising by reason of the sole negligence of the TRANSPORTATION AUTHORITY, its officers, employees and agents.

TRANSPORTATION AUTHORITY agrees to defend, indemnify and hold harmless the RECIPIENT, its officers, employees and agents, from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of TRANSPORTATION AUTHORITY in its obligations under this AGREEMENT, except those arising by reason of the sole negligence of the RECIPIENT, its officers, employees and agents.

In the event of concurrent negligence of RECIPIENT and TRANSPORTATION AUTHORITY, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

VII. DEFAULT

A. Termination for Cause

The RECIPIENT agrees that, upon ten (10) working days written notice, the TRANSPORTATION AUTHORITY may suspend or terminate all or part of the financial assistance provided herein for failure to correct a breach of this AGREEMENT. Any failure to make reasonable progress, inconsistency with the EXPENDITURE PLAN or Proposition K Sales Tax Program Allocation Request Form, unauthorized use of GRANT funds as specified in this AGREEMENT, or other violation of the AGREEMENT that significantly endangers substantial performance of the PROJECT shall be deemed to be a breach of this AGREEMENT and cause for termination.

B. Correction of Breach

With respect to any breach, which is reasonably capable of being cured, the RECIPIENT shall have thirty (30) days from the date of notice of breach to initiate steps to cure. If the RECIPIENT diligently pursues cure, such RECIPIENT shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted in writing by the TRANSPORTATION AUTHORITY.

C. Obligations

In general, termination of financial assistance under this AGREEMENT will not invalidate obligations properly incurred by the RECIPIENT before the termination date, to the extent those obligations cannot be canceled.

VIII. INTEGRATION

This AGREEMENT represents the entire AGREEMENT of the parties with respect to the subject matter thereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

IX. AMENDMENT

Except as otherwise provided herein, this AGREEMENT may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this AGREEMENT shall be void and of no effect.

X. INDEPENDENT AGENCY

RECIPIENT performs the terms and conditions of this AGREEMENT as an entity independent of the TRANSPORTATION AUTHORITY. None of the RECIPIENT'S agents or employees shall be agents or employees of the TRANSPORTATION AUTHORITY.

XI. ASSIGNMENT

The AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

XII. BINDING ON SUCCESSORS, ASSIGNEES OR TRANSFEREES

This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of the TRANSPORTATION AUTHORITY or the RECIPIENT as may be the case. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

XIII. EXPENSES

Each party shall be solely responsible for and shall bear all of its own respective legal expenses in connection with any dispute arising out of this AGREEMENT and the transactions hereby contemplated. RECIPIENT may not use GRANT funds, or other TRANSPORTATION AUTHORITY programmed funds for the aforementioned purpose.

XIV. SEVERABILITY

Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decisions shall not affect the validity of the remainder of this AGREEMENT, which shall continue in full force and effect provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

Attachment: Proposition K Sales Tax Program Allocation Request Form, attached and incorporated by this reference.