

Master Funding Agreement
Between the XXXXXXXXXXXXXXXX and
The Tuolumne _____ Transportation Council

Agreement No. _____

THIS AGREEMENT is made effective _____, 2019 by the Tuolumne _____ Transportation Council, a regional transportation planning agency, hereinafter referred as the “**TCTC**”, and the _____, hereinafter referred to as the “_____”.

WHEREAS, as the Regional Transportation Planning Agency for Tuolumne _____, the TCTC is held responsible to manage various federal, state and local funding programs which may include, but are not limited to, the State Transportation Improvement Program (STIP); Planning, Programming and Monitoring (PPM); Regional Planning Assistance (RPA); Federal Transit Administration Sections 5310 and 5311 grants; the Transportation Enhancement Activities (TEA); Regional Surface Transportation Program (RSTP); Congestion Mitigation and Air Quality (CMAQ); Transportation Development Act (TDA) Program (Local Transportation Funds and State Transit Assistance Funds), hereinafter referred to as “**Funding**”; and

WHEREAS, the TCTC is authorized to allocate said Funding to various transportation programs and projects; and

WHEREAS, the TCTC is required to ensure agencies to whom it allocates Funding complies with the policies, procedures and requirements of the specific program from which the funds are allocated, such as, but not limited to, Article 19 of the California State Constitution and Sections 133(b) and 133(c) of Title 23, of the United States Code; and

WHEREAS, the _____ requests from time to time Funding from the TCTC for specific projects; and

WHEREAS, the TCTC is willing to enter into an Agreement with the _____ to delineate those certain obligations placed upon the _____ relative to the use of Funding allocated by the TCTC.

Section 1

IT IS MUTUALLY AGREED:

- 1.1. This Agreement shall have no force or effect with respect to any programmed project unless and until a project-specific resolution that allocates funds to the specific project and adopts the terms and conditions of this Agreement, hereinafter referred to as the “Allocating Resolution”, has been adopted by the TCTC, and a project-specific supplement agreement has been executed by both parties.
- 1.2. A financial commitment of TCTC funds will occur only following the execution of this Agreement together with the subsequent adoption of the appropriate project-specific Allocating Resolution.
- 1.3. Subject to Section 2.5, the _____ shall be responsible for implementing the various phases of each specific Project, the TCTC funding program and the matching funds provided by the _____ and/or others as appropriate. Adoption and execution of this Agreement together with the adopted Project-specific Allocating Resolution shall be sufficient to bind the _____ to these terms and conditions when performing the Project.

- 1.4. The Project shall be acquired, designed and constructed (a) as described in the _____'s Project-specific supplemental agreement and the _____'s Project Study Report, or equivalent document, attached as an exhibit to that supplemental agreement; (b) in compliance with all policies, procedures and requirements related to State Highway Account funding or other requirements as appropriate; (c) pursuant to such other TCTC procedures as are identified in the Allocating Resolution; and (d) as is specific in this Agreement.
- 1.5. Unless otherwise provided in the Project-specific supplemental agreement, the _____ shall be the lead agency for projects funded pursuant to this agreement. The _____ is specifically entitled to subcontracting any portion of the work necessary to complete projects.
- 1.6. The estimated cost, scope and schedule of each project will be as described in the _____ Project Study Report, or equivalent document, attached as an exhibit to project-specific supplemental agreement. TCTC funding is limited to the amounts established by TCTC as set forth in the project-specific supplemental agreement. A contract awarded by the _____ for an amount in excess of said approved estimate may exceed said project-specific supplemental agreement cost estimate provided (a) _____ provides the necessary additional funding or (b) a Project cost increase in TCTC funding is first requested by _____ and is approved by TCTC in the form of an amended project-specific supplemental agreement.
- 1.7. Subsequent to the inclusion of a project in a plan or program approved by the TCTC and _____, the _____ may request and receive payment for eligible work as follows:
 - A. Unless otherwise specified in funding supplemental agreement, the TCTC will reimburse the _____'s share of eligible Project costs monthly in arrears upon the _____'s submittal of signed acceptable monthly progress pay invoices for expenditures actually made by the _____.
 - B. TCTC funds will not participate in any portion of project work performed in advance of the effective date of this Agreement and the effective date of the approved project-specific supplemental agreement.
- 1.8. Invoices, an original and one copy, shall be submitted to the TCTC Executive Director on _____ letterhead and shall include (a) this Agreement number, (b) p title and number, (c) the progress billing number for the project, (d) appropriate back up documentation to support costs identified and (e) be signed by a representative of the _____ duly authorized to sign such documents on behalf of the _____.
- 1.9. The total of all _____ invoices (submitted monthly or quarterly in arrears) for reimbursement of eligible project costs, including all matching funds, must not exceed the actual total allowable project costs, including, but not limited to, all planning, administration, preliminary engineering work, right of way acquisition, design, construction and construction administration included within the project description contained in the project-specific supplemental agreement.
- 1.10. TCTC programmed amounts may be increased to cover project cost increases only (a) if such funds are available, (b) TCTC concurs with that proposed increase and (c) the parties execute an amended project-specific supplemental agreement.
- 1.11. Indemnification and Hold Harmless:

_____ shall hold the TCTC, its agents, officers, employees and volunteers, harmless from, and save, defend and indemnify the same against, any and all claims, losses, liability and damages

from every cause, including but not limited to injury to person or property, and related costs and expenses, including reasonable attorneys fees, arising directly or indirectly out of any act or omission of contract performance by _____, its agents, officers, employees or volunteers. This paragraph shall survive any expiration or termination of this Agreement.

- 1.12. The Executive Director of the TCTC is authorized to take any action on behalf of TCTC under this Agreement pertaining to plans, financial matters, audits, project inspection and monitoring.
- 1.13. The _____ Administrator is authorized to take any action on behalf of the _____ Board of Supervisors under this Agreement.

Section 2

- 2.1 As a condition of acceptance of Funding provided for under this Agreement, the _____ agrees to abide by all Federal, State and TCTC policies, procedures and requirements pertaining the specific funding program from which the funds are allocated.
- 2.2. The _____ agrees, as a condition to the release and payment of TCTC funds encumbered to the Project described in the project-specific supplemental agreement, to comply with the terms of this Agreement and all of the agreed upon special covenants and conditions attached or made a part of the Allocating Resolution, identifying and defining the nature of that specific project.
- 2.3. The _____ agrees to use the funds received from the TCTC pursuant to this Agreement and each project-specific supplemental agreement only for projects as defined under Article XIX of the California State Constitution and Sections 133(b) and 133(c) of Title 23, United States Code, or other funding program requirements as appropriate.
- 2.4. The _____ agrees to establish separate, special accounts for each project for the purposes of depositing therein all payments received from TCTC pursuant to this Agreement and each project-specific supplemental agreement within their _____ Road Fund, and for identifying project expenditures.
- 2.5. In the event increases in Project costs occur that are in excess of the funds included in the Project-specific supplemental agreement, additional TCTC funding may be programmed pursuant to Section 1.10 of this Agreement. When additional TCTC funds are not available, the _____ agrees that the payment of TCTC funds will be limited to the amounts already approved in the project-specific supplemental agreement and that any increases in Project costs must be defrayed with _____ funds; provided that the _____ is not obligated to provide additional funds for cost increases to complete a project, and may discontinue any project anytime and refund any used allocation back to the TCTC.
- 2.6. The Legislature and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain employment practices with respect to contract and other work financed with State funds. The _____ shall ensure that work performed under this Agreement is done in conformance with the rules and regulations embodying such requirements where they are applicable.
- 2.7. _____ agrees to produce and present reports, at least quarterly, to the TCTC on the progress and status of all projects receiving TCTC funds through this Agreement.

- 2.8. The _____ agrees to prepare a Final Report of Expenditures reporting actual costs expended on each Project receiving funds through this Agreement and submit that report to the Executive Director of the TCTC no later than 60 days following completion of expenditures.
- 2.9. The _____ and its subcontractors shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support reimbursement payment invoices which segregate and accumulate costs of Project work elements and produce monthly reports which clearly identify reimbursable costs, matching costs and other expenditures by _____.
- 2.10. The _____ agrees to grant TCTC and State of California auditors' access to _____'s books and records for the purpose of verifying that funds paid hereunder are properly accounted for and proceeds are expended in accordance with the terms of this Agreement and the respective Project's project-specific supplemental agreement. All documents shall be available for inspection by authorized TCTC and/or Caltrans agents at any time during project development and for a four-year period from the date of completion of Project or one year after the audit is completed or waived by the TCTC or Caltrans, whichever is later.
- 2.11. The TCTC reserves the right to audit on the project. The _____ agrees to provide records and allow an audit on the Project, if required by the TCTC.
- 2.12. The _____ agrees to maintain and operate the Project property acquired, developed, improved, rehabilitated or restored for its intended public use as proposed in those documents supplied by the _____ as part of the Project funding request and as described in this Agreement and the respective project-specific supplemental agreement until such time as the parties might amend this Agreement to otherwise provide. With the approval of the TCTC, the _____ or its successors in interest in the property may transfer this obligation and responsibility to maintain and operate the Project property to another public entity.

Section 3

- 3.1. The Executive Director of the TCTC may issue a Notice of Non-Compliance to _____ in the event the TCTC finds non-compliance issues with a specific project exist. The notice shall describe the instance(s) of non-compliance and specify the applicable documents and sections which address the issue.
- 3.2. The _____ shall respond to the issues addressed in the Notice of Non-Compliance within a reasonable period of time.
- 3.3. If the _____ fails to correct the non-compliance issues within a reasonable time period the Executive Director may issue a Notice to Repay Funding.
- 3.4. The _____ agrees that in the event _____ fails to use funds received hereunder in accordance with the terms of this Agreement and the respective project-specific supplemental agreement,, as proven through an audit, the _____ shall be required to repay all or a portion of the funds to the TCTC within thirty (30) days of the _____ receiving a Notice to Repay Funding from the TCTC.

Section 4

Amendments:

- 4.1. No alteration or variation of the terms of this Agreement or the Allocating Resolution shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

Section 5

Miscellaneous:

- 5.1. This Agreement is subject to any additional restrictions, limitations, conditions or any statute enacted by the State Legislature or adopted by the California Transportation Commission that may affect the provisions, terms or funding of this Agreement in any manner.
- 5.2. This Agreement and any project-specific supplemental agreement shall terminate upon sixty (60) days prior written notice by TCTC except that obligations relative to the _____'s indemnification shall not expire and the _____'s duties assumed under Sections 2.10, 2.11 and 2.12 shall continue for so long as Project remains operable.
- 5.3. Governing Law: The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.
- 5.4. Severability: In case any one or more provisions contained in this Agreement shall for any reason be held invalid or illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof; and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.
- 5.5. Headings and Subtitles: Headings and subtitles of this instrument have been used for convenience only and do not constitute matter to be considered as interpreting this Agreement.

The undersigned, having read the foregoing, accept and agree to the terms set forth therein.

**TUOLUMNE COUNTY
TRANSPORTATION COUNCIL**

Chairperson

Approved as to Legal Form:
_____ of Tuolumne, _____ Counsel

Date: _____

Approval Recommended:

Director of Public Works/Executive Director
TCTC

BOARD OF SUPERVISORS

Approved as to Risk Management:
_____ of Tuolumne, Risk Management

Chairperson

Date: _____