

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
BOARD ACTION SUMMARY

DEPT: Public Works

BOARD AGENDA #: \*C-1

AGENDA DATE: October 24, 2017

**SUBJECT:**

Approval to Authorize a Cooperative Agreement Between the San Joaquin Joint Powers Authority and the County of Stanislaus for the Turlock-Denair Amtrak Station Parking Lot Expansion Project

**BOARD ACTION AS FOLLOWS:**

No. 2017-599

On motion of Supervisor Withrow, Seconded by Supervisor Olsen  
and approved by the following vote,

Ayes: Supervisors: Olsen, Withrow, Monteith, DeMartini, and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended


2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST:

  
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
AGENDA ITEM**

DEPT: Public Works

Urgent

Routine

*Am*

BOARD AGENDA #: \*C-1

AGENDA DATE: October 24, 2017

CEO CONCURRENCE:

4/5 Vote Required: Yes  No

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**SUBJECT:**

Approval to Authorize a Cooperative Agreement Between the San Joaquin Joint Powers Authority and the County of Stanislaus for the Turlock-Denair Amtrak Station Parking Lot Expansion Project

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**STAFF RECOMMENDATIONS:**

1. Authorize the Director of Public Works to execute a Cooperative Agreement between the San Joaquin Joint Powers Authority and the County of Stanislaus for the Turlock-Denair Amtrak Station Parking Lot Expansion Project.

**DISCUSSION:**

The San Joaquin Rail Service (San Joaquins) began service on March 5, 1974 with one round-trip between Oakland and Bakersfield and a bus connection to Los Angeles. The San Joaquins grew to be one of the busiest intercity passenger rail services in the nation, carrying over 1.1 million passengers a year. Historically, leisure travel has been the primary market for the San Joaquins. However, in recent years the leisure travel market has declined, with business travel emerging as another strong market for the San Joaquins. To protect the existing San Joaquins and to promote its improvement, in 2012, local and regional agencies throughout most of the San Joaquin Corridor (Bakersfield-Fresno-Modesto-Stockton-Sacramento-Oakland) sponsored and supported Assembly Bill 1779 (AB 1779). This bill enabled regional government agencies to form the San Joaquin Joint Powers Authority (SJJPA) to take over the administration and management of the existing San Joaquin Rail Service from the State. AB 1779 was passed by the Legislature on August 30, 2012 with bi-partisan support, and was signed by Governor Brown on September 29, 2012.

Under the provisions of AB 1779, the State continues to provide the funding necessary for service operations, administration, and marketing of the San Joaquins.

The ten Member Agencies that make up the SJJPA are: Alameda County, Contra Costa Transportation Authority, Fresno Council of Governments, Kings County Association of Governments, Madera County Transportation Commission, Merced County Association of Governments, Sacramento Regional Transit, San Joaquin Regional Rail Commission, Stanislaus Council of Governments and Tulare County Association of Governments.

In 2015, SJJPA entered into an Interagency Transfer Agreement (ITA) with the State to transfer the administrative responsibilities from the State to SJJPA. Amtrak continues to operate the San Joaquins for SJJPA. On June 20, 2016, an additional daily roundtrip between

Approval to Authorize a Cooperative Agreement Between the San Joaquin Joint Powers Authority and the County of Stanislaus for the Turlock-Denair Amtrak Station Parking Lot Expansion Project

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Oakland and Bakersfield was deployed – bringing the San Joaquins to 7 daily round-trips. This was the first new round-trip between Oakland and Bakersfield in 22 years.

The SJJPA has proposed to improve existing rail service by optimizing scheduling and implementing various improvements, including additional parking. The parking will accommodate early morning travel from Fresno to Sacramento, and Fresno to the Bay Area as part of a new service called Morning Express Service. The services are anticipated to commence in FY 2017/2018 to Sacramento, and in FY 2018/2019 to the Bay Area. The proposed Cooperative Agreement designates Stanislaus County as the lead agency, and includes details for the parking lot expansion project. A new permanent lot with approximately 50 additional parking spaces will be built immediately south of the existing Turlock-Denair Amtrak Station parking lot. The existing parking lot has 10 parking stalls. Lighting and security cameras will be included in the project scope.

It is anticipated that the expanded parking lot will be complete by the end of the calendar year.

**POLICY ISSUE:**

The Board of Supervisors must approve all agreements with other governmental agencies.

**FISCAL IMPACT:**

The initial project cost is estimated to be \$270,276 and will not exceed \$291,000. Fencing may be included if it can be accommodated in the maximum budget of \$291,000. The SJJPA contribution will be \$150,000, plus up to \$100,000 if cameras, lighting and fencing are included in the project. Stanislaus County Public Works will contribute at least \$20,276 with a maximum contribution of \$58,200. The County’s contribution will be funded by the local sales tax revenues, Measure L, designated for local transportation maintenance and projects. Funding for the project is included in the 2017-2018 Roads and Bridges Adopted Proposed Budget.

<b>Cost of recommended action:</b>		\$ 291,000
<b>Source(s) of Funding:</b>		
SJJPA contribution	\$ 250,000	
Public Works, local sales tax, Measure L	41,000	
<b>Funding Total:</b>		291,000
<b>Net Cost to County General Fund</b>		\$ -

**Fiscal Year:**

2017-2018
<b>No</b>

**Budget Adjustment/Appropriations needed:**

Approval to Authorize a Cooperative Agreement Between the San Joaquin Joint Powers Authority and the County of Stanislaus for the Turlock-Denair Amtrak Station Parking Lot Expansion Project

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**BOARD OF SUPERVISORS' PRIORITY:**

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Well Planned Infrastructure System, and Effective Partnerships by entering into an Agreement with the San Joaquin Joint Powers Authority to expand and improve existing parking infrastructure that will accommodate the growing commuter community and improve the safety of travelers.

**STAFFING IMPACT:**

Existing Public Works staff is overseeing this project.

**CONTACT PERSON:**

Matt Machado, Public Works Director

Telephone: (209) 525-4153

**ATTACHMENT(S):**

1. Cooperative Agreement with San Joaquin Joint Powers Authority

ATTACHMENT 1

COOPERATIVE AGREEMENT WITH SAN JOAQUIN JOINT POWERS AUTHORITY

**COOPERATIVE AGREEMENT BETWEEN  
THE SAN JOAQUIN JOINT POWERS AUTHORITY AND THE COUNTY OF  
STANISLAUS**

This Cooperative Agreement (“Agreement”) is entered into by and between the San Joaquin Joint Powers Authority (“SJPA”), a joint powers authority comprised of several local member agencies (Sacramento Regional Transit District, San Joaquin Regional Rail Commission, Stanislaus Council of Governments, Merced County Association of Governments, Madera County Transportation Commission, Fresno Council of Governments, Kings County Association of Governments, Tulare County Association of Governments, Kern Council of Governments, Contra Costa Transportation Authority, Alameda County), and the County of Stanislaus, a municipal corporation (“County”). The SJPA and County may each be referred to herein as a “Party” or collectively as the “Parties”.

**RECITALS**

WHEREAS, the SJPA contracts and provides funds for the operation and capital improvements of the San Joaquin Rail Service which is the passenger rail service known as the “San Joaquins” operated by Amtrak providing rail service in the San Joaquin Valley and eastern parts of the Bay Area;

WHEREAS, San Joaquin Rail Service includes passenger train service within the County of Stanislaus, through the Turlock/Denair Station (“Station”), and relies on land-side infrastructure within the County of Stanislaus, including the station building, parking, and the surrounding road infrastructure to provide service;

WHEREAS, the SJPA has proposed to improve existing rail service by optimizing scheduling and implementing various improvements including additional parking to accommodate early morning travel from Fresno to Sacramento and Fresno to Bay Area as part of a new service called Morning Express Service (“Morning Express”) which is anticipated to commence in FY 17/18 to Sacramento and in FY 18/19 to the Bay Area;

WHEREAS, the SJPA has identified that the addition of Morning Express will require additional land-side infrastructure and additional parking (“Project”) as detailed in Exhibit B at the Station to meet the anticipated increase in ridership at that station;

WHEREAS, the County recognizes the economic and social benefits of increased rail services to the County and its residents, and is committed to constructing the Project at the Station to meet the anticipated demands of increased ridership at that location;

WHEREAS, the Parties have identified and secured the funding necessary for the Project, and that the County will act as Lead Agency for and complete the Project;

WHEREAS, the BNSF Railway Company (BNSF) owns the land where the additional parking will be constructed and will be leased to Amtrak, BNSF will be the owner of the parking facility and Amtrak will maintain the facility;

WHEREAS, Amtrak may require a separate access agreement to allow the County to construct the Project;

WHEREAS, the County and the SJPA desire to enter into this Agreement, which outlines the collaborative process used to plan, fund, and construct the Station Project .

NOW, THEREFORE, it is mutually understood and agreed to by the Parties as follows:

## **SECTION ONE: RESPONSIBILITIES**

### **A. OBLIGATIONS OF THE COUNTY**

1. Project Costs. County’s share of the Project costs shall be 20% of project costs, not-to-exceed Fifty-Eight Thousand Two Hundred Dollars (\$58,200) as shown in **Exhibit A**. Due to restrictions of the funding source for the SJPA’s share of the Project costs as set forth in Section One, B.1, under no circumstance shall the budget for the Project exceed Two Hundred Ninety One Thousand Dollars (\$291,000.00). The cost of any work referred to herein in this Agreement shall include all direct and indirect costs (functional and administrative overhead assessment)

attributable to the Project, applied in accordance with standard accounting procedures. The County shall timely pay its share of the costs for the Project.

2. **Project Planning.** The County shall perform, or under its direction perform, all aspects of Project planning, engineering design, and environmental process, including the preparation of right-of-way plans, maps, documentation, preliminary and final project design, environmental analysis reports, and plans and specifications consistent with the Project details in Exhibit B. In the event the County chooses to begin the design of the Project prior to Amtrak has confirmed in writing that it has obtained the necessary lease rights of the Project site, and Amtrak is unable to obtain the necessary lease rights for the Project within a reasonable time, this Agreement shall terminate and SJJPA shall not be responsible for payment of any Project costs. County will submit all plans and change orders to SJJPA for review and pre-approval.
3. **Lead Agency.** The County shall be the “Lead Agency,” as defined and used in sections 15050 and 15367 of Title 14 of the California Code of Regulations, for purposes of compliance with the California Environmental Quality Act (Pub. Res. Code., 5210 00 et sec.).
4. **Project Accountability.** Pursuant to Government Code section 6505, the County shall be strictly accountable for all funds used to pay for the Project. Pursuant to Government Code section 6512 , any surplus funds remaining after completion of the Project shall be returned to the Parties in proportion to the Project funding contributions made by each. Additionally, the County shall make available to the SJJPA all documents showing all cost incurred by County pertaining to the Project.
5. **County Reimbursement from SJJPA.** The County shall invoice SJJPA for all expenses incurred on the Project, and associated expenses as described



herein. The County shall submit all invoices and supporting documentation to SJJPA on or before 5:00 pm on the tenth (10th) calendar day of the month following the date in which the County requests reimbursement payments.

6. Project Construction. County shall be responsible for the construction of the Project. County shall comply with the procurement and procedural requirements set forth in Appendix D of the SJJPA-California Department of Transportation Interagency Transfer Agreement, a copy of which is attached hereto as **Exhibit C** for design services, obtaining bids and contracting with contractors, and constructing the Project, including, but not limited to, the Public Contract Code and Labor Code.

#### B. OBLIGATIONS OF SJJPA

1. Project Costs. SJJPA's share of the Project costs shall be 80% of project costs, not-to-exceed Two Hundred Thirty-Two Thousand Eight Hundred Dollars (\$232,800) as shown in **Exhibit A**. The cost of any Project work referred to in this Agreement shall include all direct and indirect costs (functional and administrative overhead assessment) attributable to the Project, applied in accordance with standard accounting procedures. County shall invoice SJJPA for its share of Project costs as they are incurred. SJJPA shall pay undisputed invoices within 90 days of receipt.

#### C. OBLIGATIONS OF BOTH PARTIES

1. If it becomes necessary, the Parties will collaborate to pursue additional federal/state/regional/local funds for the construction of the improvements, to match any authorized or allocated funds.
2. The Parties will notify each other in a timely manner in the event that funding, construction timelines, or operational expansions become constrained or changed.

**SECTION TWO: EFFECTIVE DATE AND AMENDMENT**

This Agreement shall become effective upon the date last signed below. This Agreement may be amended or modified upon the mutual consent of County and SJJPA as approved by the County Board of Supervisors and SJJPA Board.

**SECTION THREE: GOVERNING LAW**

This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of California.

**SECTION FOUR: RECORD KEEPING AND AUDIT**

County, County’s contractors, and its sub-contractors, shall maintain and make available upon request all books, documents, papers, accounting records, certified payrolls, and other evidence pertaining to performance under this Agreement, including, but not limited to, the costs of Project construction. All parties shall make such materials available at their respective offices at all reasonable times during the performance of the Project work for three (3) years from the date of final payment for such work. SJJPA shall have access to any books, records, and documents of County that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be made available at County’s place of business if requested.

**SECTION FIVE: NOTICES**

All notices required by this Agreement or related to the PROJECT shall be in writing and be directed to the official identified herein by personal delivery or by deposit in the mail via first class mail, postage paid:

For County: Matthew Machado, County Public Works Director  
Department of Public Works, Stanislaus County  
1716 Morgan Road  
Modesto, California 95358

For the SJJPA: Stacey Mortensen, Executive Director  
San Joaquin Joint Powers Authority  
949 East Channel Street  
Stockton, California 95202

The title and addresses set forth herein may be changed at any time by either party hereto by notice in writing to the other.

**SECTION SIX: ENTIRE AGREEMENT**

This Agreement, inclusive of Exhibits A-C, constitutes the entire agreement between the Parties with respect to the Project. There are no other agreements, whether expressed or implied. All prior agreements and understandings between them with respect to the Project are subsumed within this Agreement. No change or modification in or to this Agreement shall be of any force or effect unless in writing, dated and executed by duly authorized officers of the SJJPA and County.

**SECTION SEVEN: CONSTRUCTION MANAGEMENT AND CONTROL**

County shall have complete management and control of the Project. SJJPA shall have no management or control of the Project.

**SECTION EIGHT: NO THIRD PARTY BENEFICIARIES**

This Agreement shall not be construed to create any third party beneficiaries under this Agreement and provides no right or claim to any party not a party to this Agreement to bring any claim for payment, damages, injunction or specific performance of this Agreement. This Agreement shall not be construed as creating any relationship between SJJPA and any contractor retained by County or any subcontractor, material man or other party retained by County. County shall be responsible for all payments to such parties.

**SECTION NINE: ASSIGNMENT**

Neither party may assign any rights, interests, and obligations in this Agreement to another person or entity without express prior written consent of the other party.

**SECTION TEN: INSURANCE**

County shall cause any contractor or subcontractor it retains who will be paid using the subsidy funds set forth in Exhibit A to perform the work to provide automobile and commercial general liability insurance written on an occurrence basis for bodily injury, property damage and death of no less than \$1 million per occurrence. In addition, County

shall furnish a Worker's Compensation insurance as required by the laws of the State of California. SJJPA, its officers, agents, and employees ("Insured Parties"), shall be included as an additional insured on all policies of general liability insurance required for the Project. Prior to start of the work on the Project, County shall provide SJJPA with evidence of such coverage by submitting to SJJPA a certificate of insurance from each such contractor or subcontractor.

#### **SECTION ELEVEN: INDEMNIFICATION**

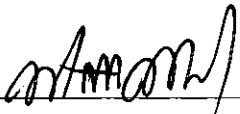
County shall defend, indemnify and hold harmless, SJJPA and its officers, agents and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including personal property, personal injury and including, but not limited to, injury to County's officers, agents or employees that arise from or are connected with, or are caused or claimed to be caused by acts or omissions of County, or its officers, agents, or employees in performing any of their duties, responsibilities or services herein, and all costs and expenses of investigating and defense, provided however, that County's duty to indemnify and hold harmless shall not include any claims or liability arising solely from the negligence or willful misconduct of SJJPA or its officers, agents, or employees.

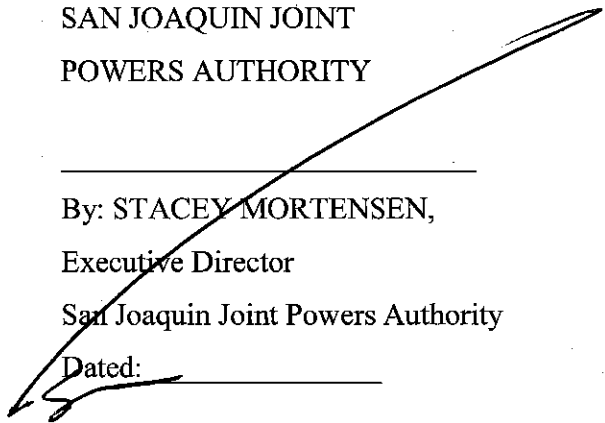
SJJPA shall defend, indemnify and hold harmless, County and its officers, agents and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including personal property, personal injury and including, but not limited to, injury to SJJPA officers, agents, or employees that arise from or are connected with, or are caused or claimed to be caused by acts or omissions of SJJPA, or their officers, agents, or employees in performing any of their duties, responsibilities or services herein, and all costs and expenses of investigating and defense, provided however, that SJJPA's duty to indemnify and hold harmless shall not include any claims or liability arising solely from the negligence or willful misconduct of County, its officers, agents, or employees.

IN WITNESS WHEREOF, the County of Stanislaus has authorized the execution of this Memorandum of Understanding between the San Joaquin Joint Powers Authority and the County of Stanislaus by its County Public Works Director and the San Joaquin Joint Powers Authority has authorized its execution by the Executive Director of SJJPA evidenced by their signatures of their representatives on the dates set forth below.


COUNTY OF STANISLAUS

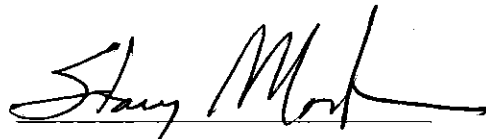
SAN JOAQUIN JOINT  
POWERS AUTHORITY

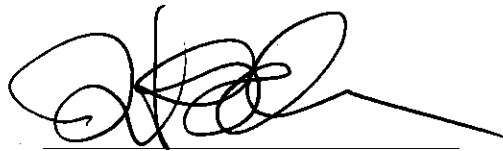
  
By: MATTHEW MACHADO,  
County Public Works Director  
County of Stanislaus  
Dated: 10/31/17

  
By: STACEY MORTENSEN,  
Executive Director  
San Joaquin Joint Powers Authority  
Dated: \_\_\_\_\_

APPROVED AS TO FORM:

  
BY: ~~JOHN P. DOERING~~  
*Deputy* *Amanda Destert*  
County Counsel

  
BY: STACEY MORTENSEN  
SJJPA Board Secretary

  
BY: DANIEL J. SCHROEDER  
SJJPA General Counsel

**Exhibit A**  
**Project Funding and Sources**

**Project Budget:** \$270,276 (maximum Project budget shall not, under any circumstances, exceed \$291,000)

**SJJPA Contribution:** 80% of Project Costs, Not-to-Exceed \$232,800

Available Funding Sources:

- \$150,000 – Funding Source: Caltran’s FY 16-17 Minor Capital Funds for State-Supported Intercity Rail
- \$50,000 – Funding Source: Governor’s Office of Emergency Services FY 16-17 California Transit Security Grant Program (Note: These funds will be applied **only** to cameras and lighting associated with the parking lot. Fencing, which was originally planned for, will not be installed to ensure total project budget stays under \$291,000.
- \$32,800 – Funding Source: Additional Caltran’s Minor Capital Funds for State-Supported Intercity Rail and/or other funding sources.

**Stanislaus County Contribution:** 20% of Project Costs, Not-to-Exceed \$58,200

Available Funding Source:

- \$58,200 – Stanislaus County Measure L Funds

## **Exhibit B**

### **Project Details**

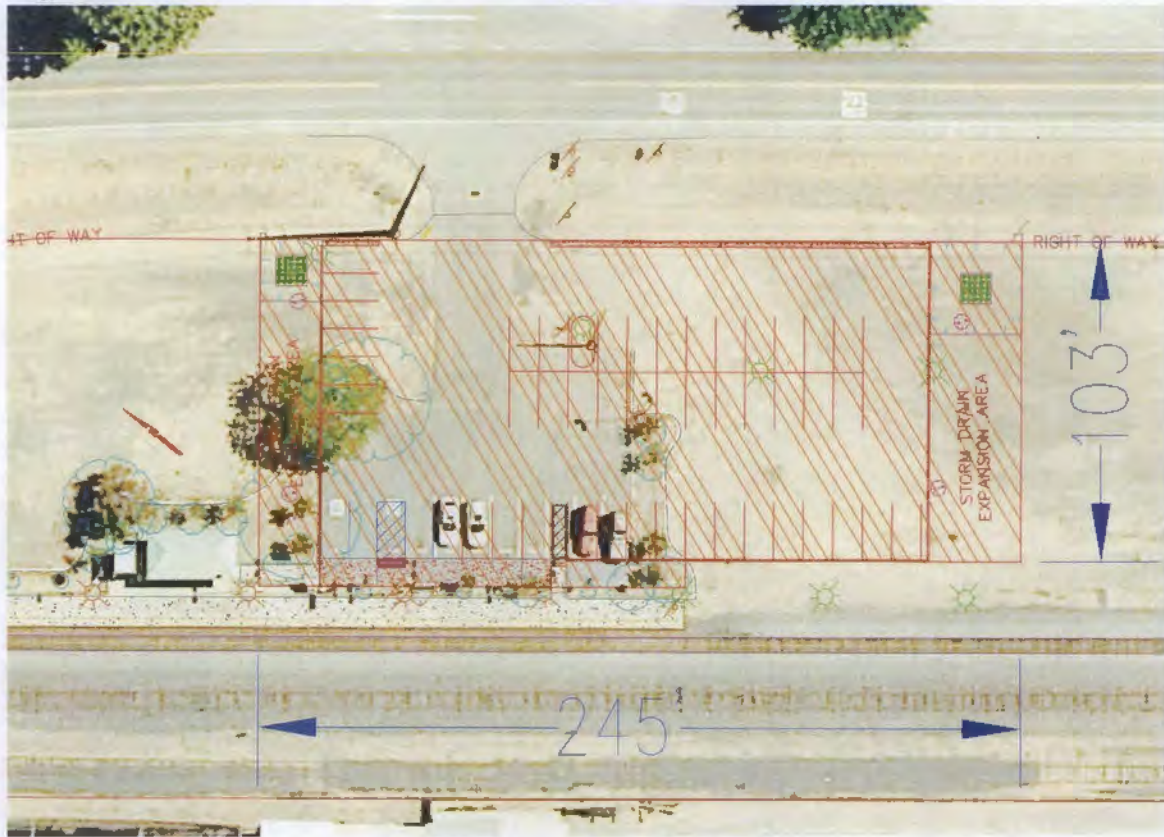
#### **Description:**

A new permanent parking lot with up to 53 parking spaces will be built in an area that incorporates the existing Turlock-Denair Amtrak Station parking lot and land immediately to the south. The scope of the project includes the following improvements:

- Grading and paving of the existing BNSF right of way to allow for additional parking.
- Storm drainage retention facilities will be installed to drain into a combination of open swales and horizontal drains.
- Additional site lighting.
- Up to three additional security cameras will be added to the existing system
- High curbs will be placed around the existing and proposed parking area.
- Minor landscape improvements including landscape islands with irrigation and trees.
- Flagging is required by BNSF for days work takes place in the railroad right-of-way. Due to high daily cost of flagging, the project will be planned to minimize the number days that will require flagging.
- Temporary parking and access to the platforms will be provided during construction.

Figure 1 below shows a conceptual site plan developed by Stanislaus County. This site plan refined by the County during the design process.

**Figure 1.**



**Schedule:**

The schedule for this project is as follows:

Process CEQA CE: early July 2017

Topographic Survey: mid-July 2017

Plans/Specifications: September 2017

Advertise: September 2017

Award: early November 2017

Construction: mid-December 2017 - early February 2018



**Exhibit C**

**San Joaquin Joint Powers Authority-California Department of Transportation  
Intertransfer Agreement (Appendix D)**

**APPENDIX D**

**MASTER FUND TRANSFER AGREEMENT**

**STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION**  
**MASTER FUND TRANSFER AGREEMENT**

Recipient:	SJJPA
Effective Date of this MFTA:	July 1, 2015
Termination Date of this MFTA:	July 1, 2018

This Master Fund Transfer Agreement (MFTA), effective as of the date set forth above, is by and between the San Joaquin Joint Powers Authority (SJJPA), a joint powers authority (JPA) as amended pursuant to Assembly Bill 1779 (Chapter 801, Statutes of 2012), and the State of California, acting by and through its Department of Transportation, hereinafter referred to as Department.

**RECITALS**

1. On September 29, 2012, the Governor signed into law AB 1779, also known as the Intercity Passenger Rail Act of 2012 (Act), authorizing the Department, with approval from the Secretary of Transportation, to enter into an interagency transfer agreement (ITA) under which the SJJPA would assume responsibility for administering the state-funded intercity rail service for the corridor between Sacramento, Oakland, Bakersfield, and Los Angeles. AB 1779 amends sections 14031.8, 14070.2, 14070.4 and 14070.6 of, and to repeal and add Article 5.4 (commencing with Section 14074) of Chapter 1 of Part 5 of Division 3 of Title 2 of, the Government Code relating to transportation.

2. The following public agencies are authorized to contract with each other for the joint exercise of any common power under Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California, and each has been designated by the Act and signed on to be the Member Agencies of the SJJPA:

- Sacramento Regional Transit District
- San Joaquin Regional Rail Commission
- Stanislaus Council of Governments
- Merced County Association of Governments
- Madera County Transportation Commission
- Fresno Council of Governments

- Kings County Association of Governments
- Tulare County Association of Governments
- Contra Costa Transportation Authority
- Alameda County
- Kern Council of Governments has not yet appointed members and signed on to the SJJPA but may do so at any time in the future. If the rail service boundaries of the San Joaquin Corridor are extended, an additional Member Agency from each county receiving rail service may be added to the board with the approval of a two-thirds vote by the SJJPA.

3. The San Joaquin Corridor rail termini are at Oakland, Sacramento, and Bakersfield, with intermediate stations at Wasco, Corcoran, Hanford, Fresno, Madera, Merced, Turlock (Denair), Modesto, Stockton, Lodi, Antioch, Martinez, Richmond, and Emeryville.

4. Department and SJJPA have concurrently entered into an ITA, for the transfer of responsibility to SJJPA for the State-supported administration, marketing, and operation and maintenance of rail and related services in the San Joaquin Corridor, including feeder bus services related thereto, as expanded, modified and developed by SJJPA pursuant to the ITA or any amendment thereto (Service).

5. This MFTA shall have no force or effect unless and until an annual fiscal year-specific supplement to this MFTA, hereinafter referred to as MFTA Supplement, and has been fully executed by both Department and SJJPA.

6. Department has prepared this MFTA, which hereby, together with the ITA, approved Annual Business Plan, and annual MFTA Supplement, found in EXHIBIT A, sets forth the entire terms and conditions under which State funds are to be expended by SJJPA for the fiscal year period of that Business Plan and annual MFTA Supplement.

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

**EXHIBITS**

- Exhibit A Board Resolution Approving MFTA
- Exhibit B Annual MFTA Supplement
- Exhibit C Disclosure Form to Report Lobbying (Form LLL)

**DEFINITIONS**

The terms defined below shall for all purposes of this MFTA have the meanings specified herein.

- a. "Annual Business Plan" shall mean the business plan submitted by SJJPA to the Secretary by April 1<sup>st</sup> of each year.
- b. "California Department of Transportation" or "Caltrans" means the Department of Transportation of the State of California.
- c. "CalSTA" shall mean the California State Transportation Agency.
- d. "Department" shall mean the State of California, acting by and through its Department of Transportation of the State of California or "Caltrans", and any entity succeeding to the powers, authorities and responsibilities of the Department invoked by or under the Agreement or the Supplemental Agreements.
- e. "Initial Business Plan" shall mean the business plan which has been submitted by SJJPA and approved by to the Secretary of CalSTA.
- f. "Interagency Transfer Agreement" and "ITA" shall mean the Interagency Transfer Agreement dated June 30, 2015 entered into between the Department and SJJPA including and its Appendices whereby the Department transfers, as provided for in the Act and as set forth herein, responsibility for operating and administering the Service to SJJPA, including all applicable cost controls established hereunder or by statute.
- g. "ITA" shall mean the Interagency Transfer Agreement dated June 30, 2015 entered into between the Department and SJJPA.
- h. "Managing Agency" shall mean the agency under contract with SJJPA to provide all necessary administrative, professional and technical support to SJJPA and for the oversight of the San Joaquin Corridor, including performance of SJJPA's obligations in the ITA.
- i. "Member Agencies" shall mean those public entity members of SJJPA named in Recital 2 of this Agreement, subject to future revision if any public entities withdraw or are added to SJJPA.
- j. "MFTA Supplement" shall mean the fiscal-year specific agreement executed annually, which includes the approved Annual Business Plan for that year, as a supplement to this MFTA.
- k. "Operating Reserve Fund" shall mean the surplus funds retained by SJJPA that represent the difference between the Department's operating subsidy payments and the actual costs invoiced by the operator, and will not exceed 12.5 percent of the immediate prior operating subsidy as is further described in Section 7.3 of the ITA.
- l. "Request for Advance Payment" shall mean a requested submitted by SJJPA to the Department for payment of costs incurred or to be incurred against the approved Annual Business Plan.

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

n. "Service" shall, pursuant to the Act, mean, the State-supported administration, marketing, and operation and maintenance of rail and related services in the SJJPA Corridor, including feeder bus services related thereto, as expanded, modified and developed by SJJPA pursuant to this Agreement or any amendment thereto, and shall not include the services operated or funded by the Member Agencies.

o. "Surplus Funds" shall mean the difference between the allocated amount for the operation of the Service and the aggregate amount of actual billings for the operation of the Service in the fiscal year by each respective passenger rail operating service provider and further described in Section 7.3 of the ITA.

## **ARTICLE 1 - PROGRAM ADMINISTRATION**

### **1.1. Annual Business Plan**

1.1.1. SJJPA agrees to develop and submit an Annual Business Plan, in compliance with Government Code 14070.4, by each April 1 for approval by CalSTA. The Business Plan identifies the scope of operations and capital improvements, if any, to the Service for the identified State fiscal years and shall be the basis for projecting funding requirements for the performance of the Service by SJJPA. The Secretary will approve on or before July 31st of each year, each Annual Business Plan, and shall exercise reasonable efforts to secure from the Legislature the appropriation for the level of the Service agreed upon therein.

1.1.2. Each annual MFTA Supplement will expressly adopt and incorporate the terms and conditions of this MFTA by reference.

### **1.2. Annual MFTA Supplement**

1.2.1. SJJPA shall be responsible for the complete performance of the Service contained in this MFTA and revised, as deemed appropriate by the Department and SJJPA, in each MFTA Supplement. The description of all work, as identified in the ITA and any other MFTA Supplement, shall be accomplished in accordance with applicable provisions of the ITA, and State and Federal law.

1.2.2. The fully executed annual MFTA Supplement shall serve as the encumbrance document. Encumbrance and disbursement of funds by Department will occur only after the execution of this MFTA; approval of the Annual Business Plan by CalSTA; execution of the annual MFTA Supplement; and the State budget for that fiscal year has been passed.

1.2.3. No funds of any nature are allocated or encumbered in this MFTA unless included in a fully executed annual MFTA Supplement.

1.2.4. Department agrees to pass through available State funds and to reimburse allowable costs incurred in executing the tasks, projects, and products incorporated in the approved Annual Business Plan and executed annual MFTA Supplement.

1.2.5. Only work performed during the term of, and consistent with, the work elements in the approved Annual Business Plan and executed annual MFTA Supplement may be reimbursed. Reimbursements are based upon the fiscal year, July 1 to June 30. All work performed subsequent to the end of each fiscal year (June 30) is subject to the approved Annual Business Plan and annual MFTA Supplement for that corresponding fiscal year and reimbursed from the corresponding fiscal year budgeted funds.

1.2.6. SJJPA may incur costs against its approved Annual Business Plan and executed annual MFTA Supplement and may submit Requests for Advance Payment with the understanding that Department is unable to approve any payments until such time as the funds are included in that Fiscal Year's Annual State Budget which is passed by the Legislature and is signed by the Governor.

### **1.3. Amendments to MFTA Supplement**

1.3.1. While amendments to the Annual Business Plan are not anticipated, SJJPA further agrees to ensure that amendments to a previously approved Annual Business Plan are approved by CalSTA, adopted by SJJPA Board, and incorporated by reference in the ITA, prior to initiating any work identified in those amendments. Such requests for amendments to the Annual Business Plan shall occur no more frequently than once per year. Changes requiring amendments generally include adding, deleting, or revising a work element; adding funds to, deleting funds from a work element; or revising a scope of work. If a work element or project will not be completed as approved, SJJPA will amend the Annual Business Plan and notify Department of the need to amend the annual MFTA Supplement. Amendments to MFTA Supplements shall be submitted no later than 14 days from the approval of the amended Annual Business Plan. The parties must execute the amended MFTA Supplement no later than 45 days from the approval of the amended Annual Business Plan.

### **1.4. Progress Reports**

1.4.1. SJJPA agrees to submit to Department all reports as required by the ITA. Department may withhold payment of Requests for Advance Payment/Reimbursement submitted pending the submission of required documentation.

## **ARTICLE II - ALLOWABLE COSTS AND REIMBURSEMENT**

### **2.1 Operating Reserve Funds, Surplus Funds, Cost Savings**

2.1.1 In accordance with the ITA, SJJPA may retain certain funds as identified below:

2.1.2 Operating Reserve Fund, as defined in the ITA, which shall include surplus funds retained by SJJPA that represent the difference between the Department's operating subsidy

payments and the actual costs invoiced by the operator, and will not exceed 12.5 percent of the immediate prior yearly operating subsidy.

2.1.3 Surplus Fund, as defined in the ITA, which shall include the difference between the allocated amount for the operation of the Service and the aggregate amount of actual billings for the operation of the Service in the fiscal year by each respective passenger rail operating service provider.

2.1.4 Cost Savings ("Cost Savings") realized from operational improvements or efficiencies achieved by it, or increases in operating revenues in excess of Business Plan projections and farebox recovery requirements specified in the Uniform Performance Standards, to provide for service improvements that increase ridership of the Service. Cost Savings are to be based on trackable management actions, including but not limited to proposals either in the Initial Business Plan/Annual Business Plan or otherwise documented and quantified during the course of performance of the Service during the then fiscal year. Cost Savings prospectively quantified in a Business Plan based on management actions proposed for the future may be directly budgeted for targeted service improvements. Cost Savings based on management actions taken during the regular administration of the Services shall be tracked, and the current fiscal year savings specifically identified for utilization in future year service improvements identified in the next Business Plan, allowing the funds to remain available for service improvement expenditure rather than be designated as Surplus Funds. Increases in operating revenues above those anticipated in the Business Plan forecast shall be available for service improvement expenditure only after the Operating Reserve Fund maximum level is achieved, and subject to their identification and budgeting in an approved Business Plan.

## 2.2 Requests for Advance Payment

2.2.1 Department agrees to make advance payments to SJJPA, in conformance with state and federal regulations, as promptly as Department fiscal procedures will permit upon the receipt of a signed and electronically submitted Request for Advance Payment that includes all required information, as applicable, for the period of time covered by that Request for Advance Payment. Incomplete or inaccurate Requests for Advance Payment shall be returned to SJJPA unapproved for correction as soon as errors are discovered.

2.2.1.1 Administration and Marketing Funds: SJJPA shall prepare and electronically submit to Department, not more frequently than once a year, one signed Request for Advance Payment for the annual administration and marketing budget as specified in the executed annual MFTA Supplement and approved Annual Business Plan.

2.2.1.2 Operating Funds: SJJPA shall prepare and electronically submit to Department, not more frequently than once a month, one signed Request for Advance Payment for the monthly operating payment as specified in the payment schedule included in the operating agreement between SJJPA and the operator of the Service.

2.2.1.3 These amounts or such other amounts as are set forth in the approved



Annual Business Plan and executed annual MFTA Supplement, shall be transferred to SJJPA following appropriation by the Legislature.

2.2.2 In the event that future MFTA Supplements are not executed by June 30th of the prior fiscal year, payments will be made under the prior fiscal year MFTA Supplement. Payments made under this provision will be made no more than monthly for administration, marketing, and operations, upon receipt of a properly executed Request for Advance Payment. Advance payments made under this provision for administration and marketing, will be in the amount of 1/12<sup>th</sup> of the amount that was approved for the prior fiscal year MFTA Supplement. Advance payments made under this provision for operating expenses, will be in the amount specified in the operating agreement between SJJPA and the operator of the Service.

### **2.3 Advance Payment Reconciliation and Closeout Documentation**

2.3.1 SJJPA shall electronically submit MFTA Supplement closeout reports to Department no later than six months (December 31<sup>st</sup>), from the close of the fiscal year for administration, marketing expenditures, and operations expenditures. The closeout report shall show actual expenditures for administration, marketing and operations as compared to advance payments received by SJJPA. Notwithstanding the foregoing, SJJPA may request an extension of time to the Department, which shall not be unreasonably withheld, for the submission of the closeout reports referenced in this Section 2.3.

2.3.2 The closeout report(s) must be attached to a transmittal letter, typed on SJJPA's letterhead. If these documents are not received by the dates set forth above, Department may withhold future apportionments and/or allocations to SJJPA. Department's election not to withhold future apportionments and/or allocations immediately after the end of one fiscal year shall not limit Department's ability to initiate subsequent withholdings.

2.3.3 Any Surplus Funds in excess of the 12.5% of the State subsidy level in the most recently completed Amtrak contract year, as defined in the ITA, upon receipt of the required closeout documentation, Department shall issue a reconciliation letter to SJJPA stating the amount of unused Surplus Funds shall be returned to the Department or deducted from the next Advance Payment from the Department.

### **2.4 Funding Contingencies**

2.4.1 All obligations of Department under the terms of the MFTA and each annual MFTA Supplement are subject to the availability of State funds, appropriation of resources by the Legislature, and the annual passage of the State Budget Act.

## **ARTICLE III – COST PRINCIPLES AND AUDITS**

### **3.1 Section 1. Cost Principles**

3.1.1 SJJPA agrees to comply with Title 2, CFR, part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and 49

CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.

3.1.2 SJJPA 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, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ); and (b) all parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. 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 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

3.1.3 SJJPA agrees and shall require that all of its agreements with contractors, subcontractors, and subrecipients contain provisions requiring adherence to this section in its entirety.

## **3.2 Record Retention/Audits**

3.2.1 SJJPA shall maintain, and shall require its subrecipients, contractors and its subcontractors to maintain all source documents, books and records connected with their performance of Annual Business Plan work initiated under this MFTA and each applicable annual MFTA Supplement for a minimum of three (3) years from the date of final payment of each annual MFTA Supplement to SJJPA or, if an audit is initiated within that timeframe, until audit resolution is achieved for each annual MFTA Supplement, whichever is later, and shall make all such supporting information available for inspection and audit by representatives of Department, the Bureau of State Audits, or the Federal Government upon request. Copies will be made and furnished by SJJPA upon request at no cost to Department. Scanned original documents in electronic form are suitable to meet this requirement.

3.2.2 SJJPA 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.

3.2.3 For the purpose of determining compliance with Title 2, California Government Code, Chapter 6.5, Article 2, Section 8546.7, in connection with the performance of SJJPA contracts and/or agreements with third parties, SJJPA, SJJPA's sub-recipients, contractors, and subcontractors, 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 of 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 MFTA Supplement and for three (3) years from the date of final payment to SJJPA or, if an audit is initiated within that timeframe, until audit resolution is achieved for each annual MFTA Supplement, whichever is later. Department, the California State Auditor, or any duly authorized representative of Department 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 SJJPA shall furnish copies thereof if requested.

3.2.4 Where applicable, SJJPA agrees to comply with audit requirements for third party contractors, subcontractor and subrecipients in accordance with Department Local Assistance Procedure Manual, Ch.10 or any successor thereto.

3.2.5 SJJPA agrees to include all costs associated with this MFTA, Annual Business Plan and annual MFTA Supplement, and any amendments thereto; to be examined in the annual audit and in the schedule of activities to be examined under SJJPA’s single audit prepared in compliance with Office of Management and Budget Circular A-133. SJJPA is responsible for assuring that the Single Auditor has reviewed the requirements of this MFTA, the Annual Business Plan and the annual MFTA Supplement. Copies of said audits shall be submitted to Department.

3.2.6 When conducting an audit of the costs and match credits claimed under the provisions of each annual MFTA Supplement and this MFTA, Department will rely to the maximum extent possible on any prior audit of SJJPA 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 Department when planning and conducting additional audits.

3.2.7 SJJPA agrees to furnish documentation to Department demonstrating that all of its agreements with contractors, subcontractors, and subrecipients do contain applicable provisions requiring adherence to the requirements in this section.

3.2.8 Neither the pendency of a dispute nor its consideration by Department will excuse SJJPA from full and timely performance in accordance with the terms of this MFTA, the Annual Business Plan, and the annual MFTA Supplement.

#### **ARTICLE IV - MISCELLANEOUS PROVISIONS**

##### **4.1 Non-Discrimination Clause**

4.1.1 In the performance of work undertaken pursuant to the ITA and for which funding is provided pursuant to this MFTA, SJJPA shall not, and shall affirmatively require that its contractors shall not, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition

(cancer), age (over 40), marital status, denial of family and medical care leave, and denial of pregnancy disability leave.

4.1.2 SJJPA shall ensure, and shall require that its contractors and all subcontractors and/or subrecipients ensure, that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. SJJPA shall comply, and require that its contractors and subcontractors and/or subrecipients comply, with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this MFTA by reference and made a part hereof as if set forth in full.

4.1.3 Each of SJJPA'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. SJJPA shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this MFTA.

4.1.4 SJJPA 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 SJJPA.

4.1.5 SJJPA shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by Department to investigate compliance with this Section 4.

## 4.2 Federal Lobbying Activities Certification

4.2.1 SJJPA 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, SJJPA 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.

4.2.2 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 a State or Federal contract, grant, loan, or cooperative agreement, SJJPA shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with those form instructions, unless exempt under Federal law.

4.2.3 This certification is a material representation of fact upon which reliance was placed when this MFTA and each annual MFTA Supplement 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.

4.2.4 SJJPA also agrees by signing this MFTA that SJJPA 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**

### **5 Sanctions for Compliance**

5.1 In the event of a final determination by the Department under Section 5.4 of this MFTA of a claim of SJJPA's noncompliance with the nondiscrimination provisions of Section 4.2 of this MFTA, the Department may take such action as authorized by law which include but are not limited to a withhold of payments to SJJPA under the ITA, cancellation, suspension, or termination of the ITA, in whole or in part.

### **5.2 Contract Award**

5.2.1 SJJPA, contractor, subcontractor and subrecipient contracts containing Federal and State funds are required to be bid and awarded in accordance with Title 49, CFR, Part 18 and consistent with Local Assistance Procedure Manual, Ch. 10 or successors thereto as applicable.

### **5.3 Contract Amendment**

5.3.1 No amendments to the terms of this MFTA, and any annual MFTA Supplement 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 any amendments prior to their execution. 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, Division of Rail and Mass Transportation, shall be the Contract Administrator for Department.

### **5.4 Dispute Resolution**

#### **5.4.1 Adjudication of Disputes by Way of Administrative Proceedings**

5.4.1.1 Department hereby sets up an administrative procedure for

adjudication of disputes that may arise relating to the administration of the funding under this MFTA. All disputes must exhaust the informal dispute resolution process outlined in Section 5.4.2. In the event the parties are unable to resolve their disputes through informal dispute resolution, the parties shall follow the arbitration process outlined in Section 5.4.2.

5.4.1.2 SJJPA agrees to exhaust the administrative remedy prior to resorting to legal remedies. In case of disputes with Department, SJJPA shall submit to the Chief, Division of Rail and Mass Transportation for the Department or designee a written demand for a decision regarding the disposition of any dispute, arising under this MFTA. The Chief, Division of Rail and Mass Transportation for the Department shall make a written decision regarding the dispute and will provide it to SJJPA. SJJPA shall have an opportunity to challenge the determination by the Chief, Division of Rail and Mass Transportation for the Department but must make that challenge in writing, within ten (10) working days to the Department's Contract Officer or his/her designee. If the challenge is not made by SJJPA within the ten (10) day period, the Chief, Division of Rail and Mass Transportation for the Department shall become the final decision of the Department. If such a challenge is made, Chief, Division of Rail and Mass Transportation for the Department and SJJPA shall submit written, factual information and data in support of their respective positions to Department's Director or his designee within a timeframe established by the parties at the time of challenge. If the dispute is not resolved by the time established by the parties at the time of challenge, the parties may exercise their rights under Section 5.4.2.

#### 5.4.2 Arbitration

5.4.2.1 Unless otherwise agreed to by the Parties, in the event of a dispute between the Parties which has not been satisfactorily resolved by those parties within sixty (60) days of the commencement of the dispute, said dispute shall be submitted to arbitration by a panel of three arbitrators who shall conduct the arbitration pursuant to the rules of the American Arbitration Association. The panel of arbitrators shall consist of one arbitrator appointed by each of the disputants, the third arbitrator to be appointed by mutual consent of the other two arbitrators.

5.4.2.2 The arbitration panel shall resolve the dispute in accordance with the terms of this MFTA, and such resolution shall be final and binding upon the parties. Each party shall bear its own costs of arbitration, including reasonable attorney's fees. The cost of the third arbitrator shall be divided equally between the disputants. Any proceeding convened under this provision shall be conducted in the City of Sacramento, California. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Upon failure of a party to comply with an arbitration award issued pursuant to this Section, the other party may refer the matter to a court of competent jurisdiction for enforcement of the award.

5.4.2.3 Unless otherwise agreed by the disputants, only disputes regarding a disputant's rights and obligations arising under the terms of: (i) this MFTA, (ii) the MFTA Supplements, or (iii) any other agreement between the disputants in which this arbitration provision is incorporated by reference shall be subject to arbitration.

5.4.2.4 The foregoing notwithstanding, with respect to contract claims or disputes arising under this MFTA or any exhibit hereto which may be subject to the provision of California Public Contract Code Section 10240, such claims or disputes shall be resolved by arbitration conducted by a single arbitrator selected by the parties from the certified list created by the California Public Works Contract Arbitration Committee and in accordance with the requirements and procedures set forth in such Section 10240.

## 5.5 Intercept Clause

5.5.1 Costs for which SJJPA receives reimbursement payment or credit that are determined by a subsequent audit or other review by either State or Federal authorities to be unallowable under 2 CFR, part 200; 48 CFR, Chapter 1, Part 31; or 49 CFR, Part 18, are to be repaid to Department by SJJPA within thirty (30) days of SJJPA receiving notice of audit findings. Should SJJPA fail to reimburse moneys due department within thirty (30) of discovery or demand, or within such other period as may be agreed in writing between the Parties hereto, Department is authorized to intercept and withhold future payments due SJJPA from Department or any third-party source, including, but not limited to, the State Treasurer, the State Controller or any other fund source.

## 5.6 Parties of Agreement

5.6.1 This MFTA, the annual MFTA Supplement, 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, annual MFTA Supplement, or any other agreement pertaining hereto.

## 5.7 Hold Harmless and Indemnification Clause

### 5.7.1 Indemnification by SJJPA

5.7.1.1 SJJPA agrees to indemnify, defend and save harmless the State, the Department, its officers, agents and employees from any and all claims, suits or actions of every name, kind and description including but not limited to, contractual losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this MFTA; from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by SJJPA in the performance of this MFTA; or tortious or other theories or assertions of liability occurring by reason of anything done or omitted to be done by SJJPA and/or its agents under this MFTA. If any claim, action or proceeding shall at any time be brought against the State or Department asserting a liability for such injury, death, damage or loss, the State or Department shall promptly give notice to SJJPA of such claim, action or proceeding and SJJPA shall thereafter provide all such information as the State or Department may from time to time request.

5.7.1.2 Provided that SJJPA furnishes and maintains all of the insurance that it

is contractually required to obtain under this MFTA, then, in accordance with the present terms of the joint exercise of powers agreement pursuant to which SJJPA has been organized, any indemnity obligation of SJJPA hereunder shall not flow through to become obligations of any Member Agency of SJJPA as a consequence of that Member Agency's status as a Member Agency of SJJPA. In addition, no Member Agency shall have any liability or obligation for indemnification hereunder to the extent that its activities arise out of its obligations under this MFTA, its appointment of a member to SJJPA Board of Directors as its representative thereto, and its participation on SJJPA Board of Directors or any committees thereof in Board and committee activities to the extent permitted by law and in the usual and customary manner. To the extent that the negligence of any Member Agency outside of the foregoing activities causes or contributes to a loss for which the State has been final adjudged jointly, or jointly and severally, liable with the Member Agency, the State may seek contribution and/or indemnification from that Member Agency to the extent permitted by applicable law.

### 5.7.2 Indemnification by Department

5.7.2.1 The Department shall, to the extent permitted by law, indemnify, defend and hold harmless SJJPA and the Managing Agency, its Member Agencies, officers, directors, employees and agents, from any and all claims, suits or actions of every name, kind and description including injury or damages occurring by reason of anything done or omitted to be done by the Department and/or its agents under this MFTA.

5.7.3 The indemnifying party shall bear all expenses, costs and shall pay all settlements or final judgments arising out of any claim, action or proceeding involving the injury to and/or death of any person or damages to or any loss of property arising from any indemnification obligation of the indemnifying party under Section 5.7 above, including the costs of defense and settlement. Should a claim, action or proceeding of any nature be brought at any time against a party entitled to indemnification pursuant to Section 5.7 above, asserting liability on the part of the such party for such injury, death, damage or loss, the party entitled to such indemnification shall promptly provide notice to the indemnifying party of such claim, action or proceeding and shall tender the defense of such claim, action or proceeding to the indemnifying party which shall thereafter provide full such defense, indemnity and protections as are necessary under the provisions of this MFTA. The party entitled to indemnification shall provide such additional information or assistance as is reasonably requested by the indemnifying party to assist in the defense, prosecution or settlement of any such claim, action or proceeding. The indemnifying party may engage counsel of its choice to defend the indemnified party subject to the indemnified party's consent, such consent not to be unreasonably withheld.

## 5.8 **Default**

5.8.1 In the event that SJJPA (a) fails to comply with applicable Federal and State laws and regulations; (b) fails to timely proceed with the approved Annual Business Plan, in accordance with the MFTA and/or Supplemental MFTA; or (c) otherwise materially violates the terms and conditions of this MFTA and/or Supplemental MFTA, Department reserves the right to terminate all funding for that approved Annual Business Plan, or a portion thereof. Any



such termination shall be accomplished by delivery to SJJPA 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, SJJPA and Department shall meet to try to resolve any dispute. No such termination shall become effective if, (a) during the process described in Section 5.9, the termination is stayed, (b) within the thirty (30) day period after receipt of the Notice of Termination, SJJPA either cures the default, or (c) if that default is not reasonably susceptible to cure within said thirty (30) day period, Department approves a SJJPA plan and SJJPA thereafter diligently completes the cure in a manner and timeline acceptable to Department.

5.8.2 If Department terminates funding for the approved Annual Business Plan pursuant to the above Section 5.8, Department shall pay SJJPA the sum due SJJPA under the MFTA Supplemental for eligible work performed prior to termination.

## 5.9 Termination

5.9.1 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 5.8. 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.

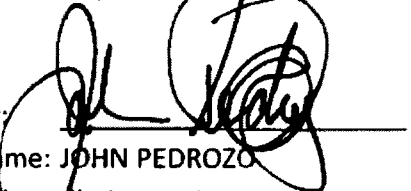
**[signature page immediately follows]**

IN WITNESS WHEREOF, the parties have signed this MFTA as of the date set forth above.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

By:   
Name: MALCOLM DOUGHERTY  
Title: Director

**SAN JOAQUIN JOINT POWERS AUTHORITY**

By:   
Name: JOHN PEDROZO  
Title: Chairperson

**APPROVED AS TO FORM AND EXECUTION:**

Name: K. Assouzi  
Title: Deputy Attorney

**APPROVED AS TO FORM AND EXECUTION:**

Name: Thomas J. [Signature]  
Title: \_\_\_\_\_