Local Programs Procedures

LPP 04-02 Manual Update
Subject: Environmental Enhancement and Mitigation Program Guidelines

Reference: *Local Assistance Program Guidelines*, Chapter 20, "Environmental Enhancement and Mitigation Program,"; Local *Assistance Procedures Manual*, Chapter 17, "Project Completion," and Chapter 20, "Deficiencies and Sanctions."

Effective Date: January 29, 2004 Approved: **Original Signed By**
TERRY L. ABBOTT, Chief
Division of Local Assistance

WHAT IS AN LPP?

LPPs are Local Programs Procedures. These documents are used for the rapid deployment of new procedures and policies between updates of the manual and guidelines. They are numbered according to calendar year and order in which released. This is the second LPP issued in 2004, hence it is LPP 04-02.

PURPOSE

The purpose of this LPP is to update Chapter 20, "Environmental Enhancement and Mitigation" (EEM) Program of the *Local Assistance Program Guidelines* (LAPG). Other minor administrative changes have been made as well.

BACKGROUND

Chapter 20 contains the policies and procedures, EEM Program funding recipients must follow to be in compliance with EEM funding rules. It also outlines Caltrans' EEM district coordinators' activities and steps to ensure that recipients are able to complete their projects successfully. Chapter 20 has not been updated since December 1996. The changes in this 2003 version clarify critical program elements, including: the Agreement Declaring Restrictive Covenants, the language for conservation easements, invoicing and timelines.

PREVIOUS PROCEDURE

All but one of the procedures remains the same.

NEW PROCEDURE

One major procedural change is to require applicants to sign the Applicant-State Agreement within 90 days of notice of approval by the California Transportation Commission (CTC). The CTC and the Resources Agency have agreed to this change. It only affects Headquarters (HQ) and the Applicant, not the districts. Other non-procedural changes are clarifications to existing procedures.

USER FRIENDLY FEATURES:

- These new procedures are incorporated in the electronic version of the *Local Assistance Program Guidelines* (LAPG) and *Local Assistance Procedures Manual* (LAPM) that are available at the Division of Local Assistance Home page on the Internet at: http://www.dot.ca.gov/hq/LocalPrograms/ Once there, click on "Publications" and then click on File/Link: lapg.htm. for "*Local Assistance Program Guidelines*" or lapm.htm. for "*Local Assistance Procedures Manual*." You may also purchase a Compact Disc (CD) which acts as a one-stop shop for information and promotes flexible access to helpful information for local project delivery.

- This LPP releases an entire new Chapter 20 that you will need to replace in your current *Local Assistance Program Guidelines*. The affected pages of the LAPG, Chapter 8 and LAPM Chapters 17 and 20 are included in this LPP and can be easily inserted into existing hard copies of the LAPG and LAPM.

- To receive an electronic notification when new information is posted on the DLA website, please subscribe to the DLA list server at: http://www.dot.ca.gov/hq/LocalPrograms/sub.htm.

SUMMARY OF CHANGES IN LAPG AND LAPM

LAPG Item	Change
Chapter 20, EEM Table of Contents, Exhibits	Added new exhibits and reordered the exhibit letter label in the document as well. Exhibit 20-C, "Request for CTC Allocation Vote"—specific to EEM Exhibit 20-E1, "EEM Restrictive Covenants Agreement for Conservation Easements" Exhibit 20-K, "CTC guidelines for Allocating, Monitoring and Auditing of Funds for Local Assistance Projects" Exhibit 20-L, "Assignment and Assumption Agreement" Exhibit 20-M, "Final Project Expenditure Report" Exhibit 20-N, "Scope Change Request"
Section 20.5, page 20-7	Added bullet in Section 20.5 under Mandatory Requirement, *"Within 90 days of receipt, sign and return the Applicant-State Agreement to Caltrans."*
Section 20.8, page 20-12	Added in Section 20.8, item number four (4) "Procedures Following CTC Adoption of EEM Program" in the 1st paragraph "…*within 90 days of receipt*."
Section 20.8, page 20-12	Added in Section 20.8 item number five (5): *"Applicant is strongly encouraged to submit its 1st invoice by the end of the 1st fiscal year."*
Section 20.8, page 20-18	Added in Section 20.8, item10, in the 4th paragraph: *"Applicant is strongly encouraged to submit its 1st invoice by the end of the 1st fiscal year."*

Exhibit References in Body of Document	Changed exhibit's lettering to match exhibits throughout the chapter.
All Exhibits	Broke down the process steps into smaller units where necessary.
Page 20-21, Exhibit 20-A	Updated the exhibit with current dates.
Page 20-25, Exhibit 20-C	Clarified the instructions in the exhibit.
Page 20-49, Exhibit 20-E1	Clarified the instructions in the exhibit.
Page 20-71, Exhibit 20-H	Clarified the instructions in the exhibit.
Page 20-73, Exhibit 20-I	Clarified the instructions in the exhibit.
Page 20-81, Exhibit 20-K	Clarified the instructions in the exhibit.
Page 20-91, Exhibit 20-L	Clarified the instructions in the exhibit.
Page 20-99, Exhibit 20-M	Clarified the instructions in the exhibit.
Page 20-101, Exhibit 20-N	Clarified the instructions in the exhibit.
LAPM Item	**Change**
Chapter 17, "Project Completion", Page17-7	Under "State Funded Projects", corrected 1st sentence of last paragraph to read as: *"For EEM projects, the DLAE will forward the original plus two copies of "Final Project Expenditure Report," to the Division Accounting, Office of Local Programs, with a copy to the EEM Program Manager in the Division of Local Assistance, HQ."*
Chapter 20, "Deficiencies and Sanctions", Page 20-3	Deleted 7th bullet. (It's no longer accurate.)

REFERENCES

- Section 164.56 of the Streets and Highways Code
- Resources Agency's *EEM Program Procedures and Criteria at:* http://resources.ca.gov/
- *California Transportation Commission Guidelines for Allocating Monitoring, and Auditing of Funds for Local Assistance Project*s, Resolution G-99-25 (August 18, 1999) (Exhibit 20-K): http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm
- Caltrans'*Local Assistance Procedures Manual and* http://www.dot.ca.gov/hq/LocalPrograms/

CHAPTER 20 ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM

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CHAPTER 20 ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM

20.1 INTRODUCTION

GENERAL

These guidelines are being prepared to assist you through your application process and to ensure compliance with the rules of the Environmental Enhancement and Mitigation (EEM) Program. Through the provision of State grants, the purpose of the EEM program is to mitigate the environmental impacts of new or modified public transportation facilities above and beyond that are required by the environmental document for that transportation facility project. Eligible applicants may apply for and receive grant funds to undertake environmental enhancement and mitigation projects that are directly or indirectly related to mitigating the environmental impact of modified existing transportation facilities, or for the design, construction or expansion of new transportation facilities. The EEM program was enacted under AB 471 (Katz) (Chapter 106 of the Statues of 1989) and was made a permanent program under SB 117 (Murray) (Chapter 739 of the 1999 Statutes) and codified in Section 164.56 of the Streets and Highways Code. The Legislature is authorized to allocate $10 million annually to local, State, and federal agencies, and nonprofit entities. Funding for the annual EEM program is subject to the appropriation of funds in the State Budget Act. The State Resources Agency (RA) of California prescribes the procedures and criteria to evaluate grant proposals and based on their evaluations, prepares and submits recommended projects for funding to the California Transportation Commission (CTC). The CTC annually awards grants to fund proposals from the RA's list, and the Department of Transportation (Caltrans) is responsible for the contract development, contract administration, and reimbursement of the program once it is approved for funding. Caltrans does not determine eligibility of the projects.

DEFINITIONS

Applicant Funding Participation (Match) - Local cash contributions.

State Funding Participation - EEM funds allocated to the project by the CTC.

Participating Costs - Project related costs (inclusive of both EEM funds and match) incurred during the project performance period and prescribed in the Resources Agency's *EEM Procedures and Criteria* (http://www.resources.ca.gov/eem.html) as eligible for reimbursement. Reimbursement for participating costs will be limited to those specified in the project budget, EEM Grant Application, CTC Allocation Resolution, and the Applicant-State Agreement (Agreement) or its amendments.

Nonparticipating costs - Any costs incurred on the project over and above participating costs of EEM funds and match. Nonparticipating costs may be incurred on a project but are excluded from the reimbursement calculations.

Reimbursement ratio - A percentage used to pay the applicant; the State's pro rata share of EEM funds on the project. The reimbursement ratio is derived from the State's share of EEM funds to the total project cost and is calculated from the applicant's original project budget and the CTC approved EEM funding. The reimbursement ratio does not vary and is included in the Applicant-State Agreement.

Funding allocation - Distribution (approval) of EEM funds by the CTC to a specific project. An applicant must receive their funding allocation from the CTC within the first fiscal year of program adoption.

20.2 ELIGIBILITY CONSIDERATIONS

ELIGIBLE APPLICANTS

Any state, local and federal governmental agencies, and nonprofit organizations are eligible to apply for EEM grant funds. Applicants are not required to be a transportation or highway-related organization but must be able to demonstrate adequate charter or enabling authority to carry out the type of project proposed. Eligible nonprofit organizations are those classified under Section 501(c)(3) of the Internal Revenue Service code.

ELIGIBLE PROJECTS

EEM projects must meet the minimum requirements listed under Section 20.5, "Project Evaluation and Selection," "Mandatory Requirements" of this chapter. To be eligible for consideration, each EEM project must be directly or indirectly related to the environmental impact of the modification of an existing transportation facility or construction of a new transportation facility, implemented after January 1, 1990, or the related transportation facility may be a project that is not yet under construction but is included in an adopted State Transportation Improvement Program (STIP), or in a locally adopted regional transportation improvement program and certified capital outlay program. "Indirectly," as opposed to "directly," may be used in reference to the geographic location of an EEM project, that is, the project may not be in the immediate vicinity of the transportation project but in the general area, or it may be used to characterize the type of benefits produced. It is the responsibility of the applicant to explain the cause and effect relationship between the impact of the transportation project and the proposed EEM project.

A transportation facility, as defined in the California Constitutional Provisions Article XIX, Section 1, and for the purposes of this program, is a public street, highway, mass transit guideway or their appurtenant features (e.g., park-and-ride facilities, high-occupancy vehicle lanes, transit stations, etc.). If the EEM project is on State-owned right-of-way, applicable State design and construction standards and practices shall be used. If the EEM project is off State-owned right-of-way, applicable design and construction standards and practices of the local government having jurisdiction over the project location shall apply. All necessary encroachment permits to access right-of-way must be obtained before construction may begin on a project. If a transportation facility is constructed in separate and distinct phases, each phase may be considered a separate project for purposes of this definition, provided that each phase provides an operable transportation improvement.

All eligible projects must fall within one of the following project categories:

- **Highway Landscape and Urban Forestry -** These projects are designed to offset vehicular emissions of carbon dioxide through the planting of trees and other suitable plants. Projects may be within or outside the right-of-way of the related transportation facility, however, planting within a public roadway right-of-way is limited to trees. Projects within the right-of-way, however, are not intended to supplant landscaping which would normally be funded by the responsible public agency. EEM grant funds are not to be used for this purpose.

- **Resource Lands -** These projects involve the acquisition of real property in fee title or through a conservation easement. Projects may include the restoration or enhancement of resource lands to mitigate the loss of, or the detriment to resource lands lying within or near the right-of-way acquired for proposed transportation improvements. Resource lands include natural areas, wetlands, forests, woodlands, meadows, streams or other areas containing fish or wildlife habitat as well as features of archaeological or historical value. Enhancement of resource lands may include the restoration of wildlife corridors.

- **Roadside Recreational -** These projects provide for the acquisition and/or development of roadside recreational opportunities, including parks and greenways, roadside rests, scenic overlooks, vista points, trails, trailheads, and sno-parks (see *Public Resources Code*, Section 5091.02).

ELIGIBLE COSTS

Only direct project-related costs as prescribed by the Resources Agency's *EEM Program Procedures and Criteria* and incurred during the project performance period, as specified in the project budget and grant agreement are considered eligible for reimbursement. Indirect project costs such as general program administration, general overhead (e.g., phone, fax, and rental space), as well as costs incurred outside the project performance period such as maintenance are <u>not</u> eligible for reimbursement. However, the services of applicant employees directly engaged in project development/implementation are eligible. The State will make payment(s) on a reimbursement basis of its proportionate share of actual costs incurred to date on the project after expenses and debts have been paid by the applicant. Invoices submitted for payment must include back-up documentation such as appropriate invoices, purchase orders, cancelled warrants, and other records.

Costs (for which EEM funds and matching funds will contribute) eligible for reimbursement may not be incurred until <u>after</u> all the following occur: 1) the project is adopted into a State program, 2) the project has received a CTC funding allocation, and 3) the project Agreement has been signed by both the applicant and the State and fully executed including certification of the agreement by the Caltrans Local Program Accounting (LPA) office showing EEM funds have been encumbered for the project. Costs incurred in advance of these events are <u>not</u> eligible for reimbursement.

20.3 PROJECT APPLICATION

The State Resources Agency (RA) of California in Sacramento is responsible for the development and distribution of the EEM Grant Application packet including the procedures and criteria. This can be found at website: http://resources.ca.gov/eem/. This maintains a current mailing list of applicants included in previously funded cycles and compiles addresses throughout the year for applicants interested in future cycles. Any local, State, and federal governmental agencies, and nonprofit organizations interested in receiving an EEM Grant application should contact the RA by mail, phone, or fax at:

The State Resources Agency of California
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Phone: (916) 653-5656
Fax: (916) 653-8102

Annually, usually in September, the RA mails out applications for the next fiscal year. All applicants must submit their completed applications to the RA usually in November. In April of the following year, the RA prepares and submits a list of projects it recommends for funding to the CTC. All project applicants are notified of their project status at that time. It is anticipated the CTC will adopt the annual EEM Program each July. A new program is adopted each fiscal year and a new "cycle" of projects for funding are identified for that State fiscal year's program. A listing of critical dates for the 2004/05-grant cycle is provided in Exhibit 20-A, "EEM Program Critical Dates," of this chapter. Due to the sometimes-late passage of the State Budget, the dates may be pushed back as well. Once the CTC adopts the EEM program for a particular year, the three-year life of the project begins.

20.4 RESPONSIBILITIES OF KEY PARTICIPANTS

LOCAL, STATE, AND FEDERAL GOVERNMENTAL AGENCIES, AND NONPROFIT ORGANIZATIONS

Eligible projects are conceived and initiated through submittal of a Grant Application by an eligible local, State, or federal agency, or nonprofit organization. Applicants must provide assurance, to the satisfaction of the RA and Caltrans that they are capable of performing the requisite tasks of the program. All local governmental agencies and nonprofit organizations must also submit a signed resolution (see Exhibit 20-B, "Sample Resolution Approving an EEM Project," of this chapter), as part of their application package from their governing body approving the project as a candidate for the EEM Program.

RESOURCES AGENCY (RA)

The Resources Agency (RA) is directly responsible to the Legislature for project evaluation. Its responsibilities include:

- Prescribing and maintaining the *EEM Program Procedures and Criteria* to evaluate grant proposals.

- Developing and maintaining a mailing list of interested local, State, and federal governmental agencies, and nonprofit organizations.
- Receiving Grant Applications.
- Based on its evaluation, prepares and submits a list of ranked proposals they recommend for funding in accordance with their procedures and criteria to the CTC (this list includes projects which in total exceed the available funding for the program, therefore, the CTC must reduce this list to a fundable program of projects).
- When requested by Caltrans, reviewing major changes in project scope.

CALIFORNIA TRANSPORTATION COMMISSION (CTC)

The CTC has primary responsibility for programming and allocating funds for the EEM program. The following responsibilities are performed by the CTC:

- Reviews the RA's list of candidate projects and reducing this list to a fundable amount of projects.
- Approves annual EEM Program and award grants to fund the proposals from the RA's list.
- Ensures that the proper environmental documentation has been completed and submitted to CTC staff prior to the project being included in the annual EEM program.
- Allocates funds to approved projects in the EEM program.
- When applicable: 1) reviews major changes in scope (although no additional EEM funding will be allocated for project cost increases), and 2) reviews transfer of applicant status on a project from one eligible agency to another.

CALTRANS HEADQUARTERS, DIVISION OF LOCAL ASSISTANCE (DLA)

The CTC delegated the EEM program administration to Caltrans. This responsibility has been assigned to the Division of Local Assistance (DLA). The DLA is responsible for:

- Reviewing the proposed project applications, and providing comments to the CTC regarding the following:

  - Environmental documentation
  - Project readiness and project merit
  - Resolution of governing body
  - Impact on State-owned or -maintained facilities and non-State owned or non-State maintained facilities
  - Conformance with scheduled or anticipated plans for future Caltrans facility construction or modification
  - Maintenance responsibilities
  - Conformance with:
    1) RA *EEM Program Procedures and Criteria* found at: http://resources.ca.gov
    2) *CTC Guidelines for Allocating Monitoring, and Auditing of Funds for Local Assistance Projects*, Exhibit 20-K of this chapter
    3) Caltrans' *Local Assistance Program Guidelines* (LAPG), Chapter 20, both are found at: http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm
    4) Caltrans' *Local Assistance Procedures Manual* (LAPM).

- Processing applicant requests for funding allocation (CTC).
- Developing and processing Applicant-State Agreements (Agreements).
- Developing and processing Agreements Declaring Restrictive Covenants (ADRC) (for projects involving acquisition of real property) and Conservation Easements.
- Providing guidance to District EEM Coordinators on policies and procedures.
- Monitoring project status and the expenditure of EEM funds on a statewide basis.
- Assigning Caltrans Expenditure Authorization (EA) number.
- Processing scope change requests and applicant status transfer requests.
- Processing amendments.
- Revising and updating policies, guidelines, and manuals, on the EEM website at: http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm.

CALTRANS DISTRICTS

The Caltrans District Directors have the primary responsibility for administering the EEM program at the district level. The Caltrans District Local Assistance Engineer (DLAE) assists the District Director. These responsibilities include:

- Providing general guidance to applicants on the EEM Program and for project specific information.
- Commenting on candidate projects to assist the CTC in selecting the projects prior to being funded. Areas of concern include but are not limited to:

  - Forwarding Grant Applications involving acquisition of real property or a conservation easement to the District Right-of-Way Office for their early review and involvement in acquisition projects.
  - Providing assistance to applicants to find a Caltrans transportation facility that may qualify as the "related transportation project" for the EEM project.
  - Environmental documentation.
  - Impact on State-owned or -maintained facilities.
  - Conformance with plans for future facility construction or modification.
  - Comments on specific items such as amount of water required for a proposal and its availability.
  - Conflicts with State, local, or federal law.
  - Maintenance responsibilities.

- Assisting the HQ EEM Program Coordinator in administering projects, including making contacts with the project applicants to resolve issues on projects.
- Coordinating the processing of the acquisition documents for projects involving the acquisition of real property or a conservation easement including preparation and submittal of the Final Report of Real Property or Conservation Easement Expenditures for acquisition projects involving direct deposit of EEM funds to an escrow account.
- Forwarding applicant submitted funding allocation request letters and applicant submitted scope change request letters, along with their recommendation to the Caltrans EEM Program Coordinator.
- Final inspection of the completed project and approval of payment of the final invoice. For projects on State-owned right-of-way, the District Landscape Architect reviews the completed project and approves payment of the final invoice.
- Processing final paperwork to close out the project.

20.5 PROJECT EVALUATION AND SELECTION

MANDATORY REQUIREMENTS

All candidate EEM projects must meet the following minimum requirements:

- Demonstrate a direct or indirect relationship with the environmental impact of modifying an existing or constructing a new transportation facility.
- Provide mitigation or enhancement above and beyond the mitigation required under the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA) as part of the transportation projects to which they are related.
- Be compatible with and not interfere with the operation or safety of the transportation facilities when the mitigation measure is in or near the right-of-way.
- Not limit currently planned or anticipated future improvements to the transportation facility.
- Applicant must submit environmental documentation for EEM project prior to being included in annual program.
- Within 90 days of receipt, Applicant must sign and return the Applicant-State Agreement to Caltrans.

EVALUATION CRITERIA

All candidate EEM projects are evaluated by the RA using the following general criteria and assigning values based on a point system within the ranges indicated. Projects are evaluated using general criteria (up to 55 points) and the appropriate project category criteria (up to 45 points). A maximum of 100 points may be assigned to any one project. In summary, the scoring allocation is as follows:

GENERAL EVALUATION CRITERIA (55 POINTS)

The general evaluation criteria consists of:

- Increased Mitigation and Enhancement (0-20 points)
- Project Readiness (0-15 points)
- Statewide Project Goals and Local Cash Contributions (0-20 points)

PROJECT CATEGORY CRITERIA (45 POINTS)

Highway Landscape and Urban Forestry Project

- Cost Effectiveness (0-20 points)
- Sustainability and Suitability (0-20 points)
- Other Benefits and Community Participation (0-5 points)

Resource Lands Projects

- Important Resource Values (0-30 points)
- Sustainability (0-10 points)
- Other Benefits and Community Participation (0-5 points)

Roadside Recreational Projects

- Need for the Project (0-30 points)
- Sustainability (0-10 points)
- Other Benefits and Community Participation (0-5 points)

A complete description of the above evaluation criteria is contained in the application packet developed by the RA.

20.6 FUNDING CONSIDERATIONS

MAXIMUM GRANT AMOUNT

Generally, grants for individual projects are limited by the RA to $250,000. Under special circumstances, applications may be recommended for awards exceeding this amount, if warranted by the following conditions:

- Project involves the acquisition of resource lands or a conservation easement of substantial size.
- Combined benefits would be realized in more than one project category.
- Mitigation would be achieved to offset the environmental impacts of more than one related transportation project.
- Current grant cycle presents an immediate, onetime opportunity for maximum mitigation benefits that could not be achieved in the future.

NORTHERN/SOUTHERN COUNTIES SPLIT

In keeping with the provisions in Sections 187 and 188 of the California Streets and Highways Code, an attempt will be made to allocate 40 percent of the total amount of EEM funds recommended to projects in the northern counties, and 60 percent of the total amount of EEM funds recommended to projects in the southern counties. The southern counties are: San Luis Obispo, Kern, Mono, Tulare, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial. All other counties are considered northern counties for purposes of the EEM Program.

20.7 CONSIDERATIONS FOR ACQUISITION OF REAL PROPERTY OR CONSERVATION EASEMENTS

If federal funds are used on an EEM project for the acquisition of real property or a conservation easement, all acquisition matters must comply with applicable federal and state laws and regulations (see Chapter 13, "Right-of-Way," of the *Local Assistance Procedures Manual* (LAPM) at: http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm).

If no federal funds are involved, the basic requirements of the State Uniform Act must be followed:

- The real property or conservation easement is appraised before the initiation of negotiations.
- The property owner (seller) is provided with a written offer of just compensation.

- The property owner (seller) is not coerced, as defined in Government Code Section 7267.5.
- The property owner (seller) is reimbursed for any expenses incidental to the transfer of title.
- If any persons are displaced by the project, all appropriate relocation assistance services and benefits are provided.

Projects involving acquisition of real property or a conservation easement are subject to an appropriate form of State approved restrictive covenants, which must be signed by both parties, notarized, executed and recorded in the county where the subject acquisition takes place. These restrictive covenants protect the State's investment of EEM funding on the subject property from unapproved use should the subject property be sold, traded, condemned, or, is not managed and maintained as specified in the Grant Application and the State agreement(s). In such cases, the restrictive covenants would require the applicant to reimburse the State at least an amount equal to the State's funding participation, or the pro rata fair market value of the subject property including improvements at the time of the sale or condemnation, whichever is higher.

For acquisition of real property in fee title, the Agreement Declaring Restrictive Covenants (ADRC) (see Exhibit 20-E, "Agreement Declaring Restrictive Covenants (ADRC)," of this chapter) is the document required for record. For projects involving the acquisition of real property "rights," that is, a conservation easement, the ADRC is not applicable. For such projects, the applicant is required to use restrictive covenants language in the project Deed of Conservation Easement or use the EEM Restrictive Covenants Agreement (see Exhibit 20-E1, "EEM Restrictive Covenants Agreement for Conservation Easement (RCACE))." ADRC/RCACE must be signed and notarized to permit Caltrans' approval. RCACE must be recorded at escrow closing.

The applicant may request for Caltrans to deposit EEM funds directly into an escrow account set up by the applicant with a title company when acquisition of real property or a conservation easement is involved (see Section 20.8, "Procedures Following CTC Adoption of EEM Program," Item 12, "Payment Directly to Escrow Company," of this chapter). The opening of the escrow with a title Company or an Escrow Agency is the responsibility of the applicant. The applicant is solely responsible for paying the costs of these services. Any interest earned on EEM funds held in an escrow account **MUST** be repaid to Caltrans immediately after close of escrow.

When an EEM project involves acquisition of real property or a conservation easement, it is strongly recommended that the District Right-of-Way Unit be involved early in the project development process. It is the responsibility of the District EEM Coordinator to contact the Caltrans District Right-of-Way Office for review and approval of the subject acquisition by the applicant <u>before</u> the close of escrow.

20.8 PROCEDURES FOLLOWING CTC ADOPTION OF EEM PROGRAM

Following CTC adoption of the annual EEM program in which an applicant's project has received preliminary funding (see Sections 20.1, "Introduction," 20.2, "Eligibility Considerations," and 20.3, "Project Application," of this chapter regarding the application process), the steps for implementing EEM projects are as follows:

1. **Request for Funding Allocation by the CTC** – Once the CTC has adopted the annual EEM Program, thus approving preliminary funding of up to $10 million for the program, each applicant is responsible for submitting a request in writing, on applicant's letterhead (see Exhibit 20-C "Request for CTC Allocation Vote," of this chapter) to the District EEM Coordinator for an allocation vote from the CTC by March 31 in the fiscal year of adoption. This will allocate the funds specifically to their project. The applicant can also submit its request in time to receive its vote at the time of CTC program adoption. Applicants MUST receive their funding allocation by March 31 of the fiscal year of program adoption or the project will be dropped from the program, this allowing another project to be selected (encumbrance authority expires June 30 of the first fiscal year). The three-year project funding begins in the fiscal year the project was adopted.

2. **Project Commencement -** The applicant may not commence any reimbursable project work (for which EEM funds and match funds will contribute) until after all the following occur: 1) The project is adopted into a State program, 2) The project has received a CTC funding allocation, 3) The project Applicant-State Agreement (Agreement) (see Exhibit 20-D of this chapter) has been signed by both the applicant and the State and fully executed, including certification of the agreement by the Caltrans LPA Office showing EEM funds have been encumbered for the project.

3. **Change of EEM Applicant Status -** For a request to change applicant status prior to the CTC funding allocation, the original applicant must submit a written request (Exhibit 20-F, "Change of EEM Applicant Status Request Letter: Pre-Allocation Vote," of this chapter) to the District EEM Coordinator. It will require Caltrans and CTC approval. The District EEM Coordinator forwards the request to the EEM HQ Program Coordinator for inclusion on the CTC agenda along with the funding allocation request.

   For a request to change applicant status after the funding allocation, the original applicant must submit a written request (Exhibit 20-G, "Change of EEM Applicant Status Request Letter: Post-Allocation Vote") to the District EEM Coordinator. It will require Caltrans and CTC approval. The District EEM Coordinator forwards the request to the EEM HQ Program Coordinator for inclusion on the CTC agenda.

   The request letter states the transfer of all rights, responsibilities, payments, and the "title" of applicant on the project, has been mutually agreed to by the original applicant and new applicant agency. Authorizing signatures of both parties must appear on the request letter, along with the RA's Grant Application cover page and the signed assurances, completed and signed by the new applicant agency. New applicants that are local government agencies and nonprofit entities must also attach a resolution by the new applicant agency's governing board. Nonprofit organizations must include a copy of the letter showing their classification under section 501(c)(3) of the IRS code.

Upon CTC approval of the transfer of applicant status, a new EEM Agreement must be executed in the name of the new applicant agency. No reimbursements to the new applicant agency may occur prior to the date of the new agreement. Any work done prior to the date of the new agreement is not reimbursable to the new applicant agency.

4. **Agreements with the Applicant**

An Applicant-State Agreement (Agreement) (see Exhibit 20-D, "Applicant-State Agreement," of this chapter) is required for all projects receiving EEM program funds. This Agreement:

- Provides the Expenditure Authorization (EA) Number.
- States the Applicant's name (must be consistent with CTC Resolution adopting EEM Program, if not, a "Change of EEM Applicant Status Request Letter: Post Allocation Vote (Exhibit 20-G)," form must be completed) along with an "Assignment and Assumption of Agreement (Exhibit 20-L)."
- States the effective date of the Agreement.
- Defines the description and location of the project.
- Establishes State and local contributions funding commitments along with the percentages of EEM funding and local contributions.
- Contains a current cost proposal prepared by the applicant.
- Defines the EEM program requirements for applicable design standards, acquisition procedures and construction standards/procedures.
- Defines specific roles and responsibilities for all entities involved in performing the work on the project including, management and maintenance of the property, records retention, and audits.

The EEM Program Coordinator prepares the Agreement with the above information except the cost proposal. The Coordinator sends the following EEM Agreement package to the applicant:

- Cover letter with instructions to complete Agreement.
- One (1) original of the project Agreement (applicant must make a copy and sign both as originals).
- One (1) original of the project ADRC or RCACE (only for projects involving acquisition of real property or conservation easements).

The websites for required policies and procedures: *CTC Guidelines for Allocating, Monitoring and Auditing of Funds for Local Assistance Projects* and *Caltrans'EEM Guidelines* are at: http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm and *RA's Procedures and Criteria* are at: http://resources.ca.gov/eem.

For projects involving acquisition, see Item 6, "Acquisition of Real Property or a Conservation Easement," of this section for the processing procedures of the ADRC or RCACE and other acquisition related documents.

Upon receipt of the agreement, the applicant must review it for completeness, and complete the Cost Proposal (except for acquisition-only projects) (see Exhibit 20-D, "Applicant-State Agreement," Attachment B, "Cost Proposal" of this chapter). For acquisition projects requesting the direct deposit of EEM funds into an escrow account, the applicant must complete the escrow account information in Exhibit 20-D, Attachment E "Remarks and Covenants" of the "Applicant-State Agreement." **Two original Applicant-State Agreements must be signed by the applicant and returned to the HQ EEM Program Coordinator for final execution within 90 days of receipt.**

The EEM Program Coordinator will add the EA to the cover page of the Agreement and forward both original Agreements to LPA. LPA certifies and encumbers the Agreement and funds and returns it to the EEM Program Coordinator for signature.

One original conformed executed Agreement is returned to the applicant. The remaining original Agreement is retained by the EEM Program Coordinator and made part of Caltrans' permanent EEM files. Conformed copies of the Applicant-State Agreement are sent to LPA and DLAE (EEM District Coordinator).

5. **Project Commencement -** Following execution of the agreement, reimbursable work may begin on the project. Applicant is strongly encouraged to submit the 1st invoice by April of the 1st fiscal year.

6. **Acquisition of Real Property or a Conservation Easement -** Legal and physical control of the property shall be acquired in accordance with applicable state laws and regulations prior to the applicant's advertising for bids for construction or development of the project. The State provides reimbursement only for the purchase of property that is required for the project. When an applicant acquires property that includes excess land, the cost of the excess portion must be excluded from the reimbursement requests submitted to Caltrans.

   The Applicant-State Agreement for acquisition projects should be executed as specified in Item 4, "Agreements with the Applicant" of this section.

   Any land acquisition in fee simple purchase using EEM funds is subject to restrictive covenants (ADRC), which must be executed and recorded on the subject acquisition. The ADRC (Exhibit 20-E, "Agreement Declaring Restrictive Covenants (ADRC)" of this chapter) is prepared by the HQ EEM Program Coordinator, completed by the applicant, signed and notarized by the applicant and State and to be recorded by the applicant along with the Grant Deed to the property being purchased. The ADRC must include the legal property description and original EEM application.

   For projects involving the acquisition of real property rights, that is a conservation easement, the ADRC document is not applicable. Instead, the applicant is required to execute the EEM RCACE (see Exhibit 20-E1, "EEM Restrictive Covenants Agreement for Conservation Easements (RCACE)" of this chapter). It is prepared by the HQ EEM Program Coordinator, signed and notarized by the applicant and State and to be recorded by the applicant along with the Deed of Conservation Easement for the easement being purchased. The ADRC and the RCACE must include the legal property description and original EEM application.

Preparation of the ADRC or the RCACE by the HQ EEM Program Coordinator (except where noted) includes:

- Providing the Project Number (application number)
- Providing the Agreement Number
- Providing the Applicant's Name
- Providing the effective date of the ADRC or RCACE (completed by applicant)
- For the ADRC: Attachment A, "Legal Description of Real Property," and Attachment B "Original EEM Application" of Exhibit 20-E.
- For the RCACE: Attachment A "Legal Description of Conservation Easement" and Attachment B, "EEM Original Application" of Exhibit 20-E1.

Another option for the applicant, other than executing the RCACE, is to include the following restrictive rights covenants language in the Deed of Conservation Easement for the project:

> "CONDEMNATION: *The Conservation Easement ("*EASEMENT*"), described in Attachment A, Exhibit 20-E1 ("Legal Description of Conservation Easement" consistent with EEM Grant Application), attached hereto and incorporated herein by this reference, to be acquired, developed, rehabilitated or restored pursuant to the Applicant-State Agreement No. _____ by the APPLICANT, will be operated, managed, and maintained into the future consistent with Attachment B, Exhibit 20-E1 (*"EEM Original Application*"), attached hereto and incorporated herein by this reference. If the EASEMENT is taken by the exercise of the power of eminent domain by any public, corporate, or other authority, the State of California, Department of Transportation* ("STATE") *shall make the determination if such a taking creates a loss of use, as described in Attachment B due to an unsustainable environmental habitat resulting from the material loss of water, access, ground water flows, etc., so as to annul the purposes intended to be achieved by this* EASEMENT.
>
> *If the* STATE *determines there is such a loss, the* Grantee *shall be entitled to compensation in accordance with applicable law for the value of the* EASEMENT *taken and* Grantor *shall be entitled to compensation in accordance with applicable law for the value of the underlying fee taken.*
>
> *The* Grantor *and* Grantee *shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of* Grantee's *and* Grantors*' interests at the time of this grant, it being expressly agreed that this* EASEMENT *constitutes a compensable property right. All expenses incurred by* Grantor *and* Grantee *in such action shall be paid out of the recovered proceeds.*
>
> Grantee *shall be entitled to compensation in accordance with applicable law for the value of the* EASEMENT *taken and* Grantor *shall be entitled to compensation in accordance with applicable law for the value of the underlying fee taken. The ratio of the value of the* EASEMENT *to the value of the underlying fee is _____%, such amount having been determined at the time of the grant of this* EASEMENT *by that certain real property appraisal prepared by _____, dated _____, on file with the* Grantee.

The EEM grant made to the Grantee *is for the purpose of acquiring the* EASEMENT *in the amount of $_____ (the "EEM Grant"). The EEM Grant represents _____% (the "EEM Share") of the total cost of the Easement. If the* EASEMENT *is proposed to be taken in whole or in part, by exercise of the power of eminent domain, the condemning authority shall notify* STATE *of the proposed taking by sending written notice to:*

State of California, Department of Transportation,
Attn: Legal Department
1120 N Street, MS 57
Sacramento, California 95814

and the State Highway Account shall be reimbursed as follows: Grantee *shall pay* STATE *the EEM Share, _____%, of net proceeds received by* Grantee *from any taking of the* EASEMENT *(after* Grantee *deducts costs incurred by* Grantee *from the gross proceeds received by* Grantee *in connection with the condemnation) to reimburse* STATE *for the EEM Grant.*

Grantee *shall not be obligated to pay* STATE *as set forth above if* STATE *approves in writing* Grantee's *use of those proceeds for the protection of equivalent environmental resources protected by similar conditions to the extent applicable.*

If the EEM Share, _____%, of the net proceeds received by Grantee *is less than the EEM Grant, $_____, then* Grantee *shall pay* STATE *from the balance of the net proceeds received by* Grantee *(i.e., the remaining _____% of the net proceeds which shall be referred to herein as the "Remainder Proceeds"), an amount sufficient that S*TATE *is reimbursed a total of the EEM Grant, $_____, or as close thereto as the Remainder Proceeds will allow.* Grantee *shall not be obligated to pay* STATE *any portion of the Remainder Proceeds if the Remainder Proceeds are contractually required to be paid to any other source who provided funds for the acquisition of the* EASEMENT*, or if* STATE *approves in writing* Grantee's *use of the Remainder Proceeds for the protection of alternative environmental resources subject to the protection of* STATE's *interests in those resources with similar conditions to the extent applicable.*"

Should the property or conservation easement be sold, traded, condemned, or no longer used for the purpose intended as part of the EEM program, the restrictive covenants require the applicant to reimburse the State at least an amount equal to the State's funding participation, or the pro rata fair market value of the acquisition including improvements at the time of the sale or condemnation, whichever is higher.

Notarization of the restrictive covenant document qualifies them to be publicly recorded. After all of the issues and demands presented in the escrow are resolved, it is the escrow agent's duty to take both the original Grant Deed and original restrictive title or rights covenants agreement to the County Recorder's Office for recordation.

Prior to the close of escrow date, and not more than 60 days prior to the anticipated close of escrow date for projects requesting the direct deposit of EEM funds into an escrow account, the applicant forwards the following acquisition documents to the District EEM Coordinator for review and approval by the Caltrans District Right-of-Way Division Chief:

1) An original of the ADRC or the EEM RCACE with notarized signatures, or a copy of the Deed of Conservation Easement with restrictive covenants language.
2) A copy of the Preliminary Title Report.
3) A current appraisal.
4) Escrow instructions.
5) Invoice for payment (only for projects requesting direct deposit of EEM funds into an escrow account).

The District EEM Coordinator forwards the above documents along with the project Grant Application and a copy of the Applicant-State Agreement to the District Right-of-Way Division Chief, who must:

- Assure the real property or conservation easement acquired is a part of the approved project (see Attachment A, "Project Description and Financing" of Exhibit 20-D).
- Review the preliminary title report and assure it adequately covers the property or conservation easement for which the EEM funds have been allocated. Also assure the title for the property or conservation easement is sufficient for the proposed use and no adverse conditions affect title (see Attachment A, "Legal Description of Real Property" of Exhibit 20-E, or Attachment A, "Legal Description of Conservation Easement" of Exhibit 20-E1).
- Assure that Exhibit 20-E, (Attachment B, "Original EEM Application") or Exhibit 20-E1,"(Attachment B, "EEM Original Application") is attached.
- Assure the settlement does not unreasonably exceed or fall below the appraised value for the property or easement to be acquired.
- Assure the amount, when added to any previous payments for the project does not exceed the amount approved by the CTC.
- Provide additional Caltrans instructions to the Title Company escrow instructions. If EEM funds are to be direct deposited into an escrow account, the instructions should include how the funds are to be used (i.e., for the purchase of the subject real property or conservation easement when escrow requirements have been met, and requests the ADRC or RCACE is recorded that a certified copy of the recorded Grant Deed, or Deed of Conservation Easement, and Closing Escrow Statement are forwarded to the District EEM Coordinator upon Close of Escrow).
- Assure that the "Condemnation" language is included in the Deed of Conservation Easement if there is no RCACE.
- Approve the Invoice for payment (only for projects requesting direct deposit of EEM funds into an escrow account).

If after reviewing the acquisition documents, the Caltrans District Right-of-Way Division Chief is assured the project meets all EEM acquisition requirements, he/she approves and signs the Invoice for payment, and signs and notarizes the ADRC, or other restrictive rights covenants agreement, if applicable. All the above documents are returned to the District EEM Coordinator who makes copies of the original ADRC, or other restrictive rights covenant agreement, the invoice for payment, and escrow instructions. The District EEM Coordinator forwards the original ADRC, or other restrictive rights covenant agreement, and escrow instructions to the escrow company. The original invoice is forwarded to the Caltrans LPA Office for processing.

For applicants seeking reimbursement of EEM funds after the close of escrow for the purchase of the real property or a conservation easement, the State will pay the applicant the State's proportionate share of EEM funding for costs incurred for the acquisition in accordance with the standard reimbursement procedures in Item 10, "Invoice and Reimbursement Process" of this section.

For applicants who wish to request direct deposit of EEM funds into an escrow account with the Title Company, the procedures for payment of EEM funds will be different than the standard reimbursement process. The applicant must request the payment to an escrow account by completing Exhibit 20-D of the Applicant-State Agreement, Item 12, "Payment Directly to Escrow Account" of this section. Since EEM funds are paid out in advance of the Close of Escrow, the following project completion approval process must be completed after the close of escrow in order to close out the project:

- The Title Company forwards a certified copy of the recorded Grant Deed, or Deed of Conservation Easement, and the Closing Escrow Statement to the District EEM Coordinator.
- The District EEM Coordinator must receive the original recorded ADRC (or the recorded restrictive rights covenants agreement or the recorded Deed of Conservation Easement) from the county where the property is purchased.
- Upon receipt of the above documents, the District EEM Coordinator completes final report for the project (see this chapter, "Project Completion," Exhibit 20-M, "Final Report of Acquisition of Real Property or Conservation Easement Expenditures,") and provides the District Right-of-Way Unit with a copy of the recorded document. The original recorded ADRC, with Attachment A and B or other recorded restrictive rights covenants agreement, are forwarded to the HQ EEM Program Coordinator. The Final Report of Real Property or Conservation Easement Expenditures is completed by the District EEM Coordinator and forwarded with Closing Escrow Statement to the LPA Office with a copy to the HQ EEM Program Coordinator.

The HQ EEM Program Coordinator forwards copies of both the recoded Grant Deed, or Deed of Conservation Easement and the ADRC to the HQ Right-of-Way and Asset Management Program. The original ADRC, or Restrictive Rights Covenants Agreement becomes a part of Caltrans permanent files.

If an EEM funded property is sold, traded, condemned or, is no longer managed, maintained, and used for the intended EEM purpose and the State is reimbursed, a notice of revocation of restrictive covenants (see Exhibit 20-E "Agreement Declaring Restrictive Covenants (ADRC)") shall be properly prepared and processed for recordation by the Caltrans District Right-of- Way Unit and signed by the District Right-of-Way Division Chief and the applicant.

7. **Project Cost Decreases -** If the cost or scope of a project decreases for any reason, the allocation of State funds will be decreased proportionately with a decrease in the applicant's participating contributions and amount of work completed.

8. **Scope Changes -** In cases where the CTC-approved EEM funding amount is less than the amount for which the applicant originally applied due to a budget reduction by the RA, the applicant is required to complete the project without downscoping it, unless downscoping is specifically authorized in writing by the RA or the CTC. When the approved EEM funding amount is reduced, the applicant must complete the project by supplementing the project cost with additional funding sources or by finding a less costly way to complete the project.

   In cases where the applicant does not use all the allocated EEM funding to complete the project, the remaining amount reverts back to the EEM Program. The applicant may not expend the unused EEM funding on the project for features not already included in the approved Grant Application and the Applicant-State Agreement.

   The State must approve changes in scope for the project. For a minor scope change, the applicant must submit a scope change request in writing using the form Exhibit 20-N "Scope Change Request," to the District EEM Coordinator for DLA approval. Request for major changes in the project scope may require CTC and/or RA approval. If DLA approved, the EEM funds will be reduced proportionately with the reduced scope of work and costs incurred. A contract award may exceed the estimated cost proposal on the project, but in no case can the allocation of EEM funds exceed the amount approved by the CTC.

9. **Inspection of Work and Recommendation of Payment -** All EEM projects on State-owned right-of-way shall be inspected by Caltrans District Landscape Architect to ensure that the applicant complied with State design, construction standards, practices and with the conditions of all permits. If the inspection requires abilities or special knowledge that are outside the landscape function, the District Landscape Architect has the authority to request assistance from other Caltrans functions having the appropriate expertise.

   For EEM work "off" the State-owned right-of-way, the applicant is responsible for ensuring that the facility is constructed in accordance with design, construction standards, and practices of the local government having jurisdiction over the project. The District EEM Coordinator will review the facility upon project completion to verify that the project was built consistent with the approved project application using "Final Project Expenditure Report", see Exhibit 20-M.

10. **Invoice and Reimbursement Process -** All work on the project must be completed prior to the end of the second fiscal year following the first fiscal year of program adoption. Once the project has been completed, the project completion approval process for closing out the project begins. It requires the applicant to submit one original and two copies of a final invoice (see Exhibit 20-D, "Applicant-State Agreement," under Attachment D "Sample of EEM Project Invoices," of this chapter) with copies of all back-up documentation for costs incurred on the project. The applicant also must prepare and submit one original of the Final Project Expenditure Report (Exhibit 20-I,"Invoice Payment Request Memo for Projects Involving Acquisition of Real Property or a Conservation Easement " and Exhibit 20-M, "Final Project Expenditure Report"). These must be submitted to the District EEM Coordinator at least 60 days prior to the expiration date of the Applicant-State Agreement. This allows the District EEM Coordinator time for a final inspection of the project site to ensure the project was completed as scoped in the Grant Application and forwarding the final invoice and the final expenditure report to the Caltrans LPA Office for processing prior to the EEM funds reverting. Failure to meet this deadline may result in nonpayment of the final invoice and the EEM funds reverting and no longer available for reimbursement on the project.

    Back-up documentation to close out an acquisition project must include: a copy of the recorded Grant Deed or Deed of Conservation Easement, a copy of the Closing Escrow Statement, and the original recorded ADRC, or RCACE, which must be sent to the District EEM Coordinator from the county where the property is purchased.

    The project completion approval process for projects involving acquisition of real property or a conservation easement with direct deposit of EEM funds into an escrow account, is covered under Item 6, "Acquisition of Real Property or a Conservation Easement," in this section.

    Applicants may submit progress invoices directly to the LPA Office for reimbursement along with supporting documentation for costs incurred at the address under "For Progress Invoices" on the invoice format. Applicant is strongly encouraged to submit its 1st progress invoice by April of the 1st fiscal year.

    The LPA Office provides accounting services for the State and will ensure eligible EEM payments are made. Once the applicant or the District EEM Coordinator has forwarded the invoice to LPA, the invoice is processed and then forwarded to the State Controllers Office for payment. Applicants should allow up to 50 days for processing of the invoice from the time it is received by LPA. The invoice format is the means for applying to Caltrans for reimbursement. The following requirements must be satisfied prior to reimbursement of eligible project costs on a project:

    - The project must be on a stamped CTC resolution list of projects.
    - There must be an executed Applicant-State Agreement for the project.
    - LPA must have certified the agreement and encumbered State funds for the project.
    - Caltrans' District Landscape Architect must inspect and authorize payment of the final invoice for the work <u>on</u> State-owned right-of-way, and the District EEM Coordinator must inspect and authorize payment of the final invoice for work <u>off</u> State-owned right-of-way.
    - The payment of State funds is typically made upon completion of the work (but at the option of the applicant, monthly progress payments can be arranged).

11. **Payment Directly to Escrow Company -** The applicant may request that Caltrans deposit EEM payments directly into an escrow account to be opened by the applicant with the Title Company when acquisition of real property or a conservation easement is involved. The applicant is solely responsible for paying the costs of these services. The applicant must complete Attachment D, "Remarks and Covenants" of Exhibit 20-D of this chapter, as follows:

    Pursuant to the terms of Applicant-State Agreement No. _____ , dated _____ and effective immediately, the _____*(Name of Applicant)*_____requests and authorizes that the EEM fund warrants be made out in the name of the:

    _____*(Name of Title Company)*_____,
    _____*(Address of Title Company)*_____,
    _____*(Name of Escrow Agent) for Escrow No.*_____
    (Phone no.)
    (Title Company Tax I.D. No._____)
    Escrow Close Date: _____

12. **Project Completion -** Upon completion of a project, the applicant is responsible for submitting back-up documentation and preparing a Final Project Expenditure Report and Final Invoice for submittal to the District EEM Coordinator as described under Item 10, "Invoice and Reimbursement Process," of this section. The project completion approval process for projects involving acquisition with direct deposit of EEM funds into an escrow account is described under Item 6, "Acquisition of Real Property or a Conservation Easement," of this section.

13. **Audit -** Local agency expenditures of EEM program funds are subject to financial and compliance audits by the State Controllers Office and Caltrans Office of Audits and Investigations. These guidelines are in Chapter 10, "Consultant Selection," Exhibit 10-N, "Accounting and Auditing Guidelines for Contracts with Caltrans," of the *Local Assistance Procedures Manual* (LAPM) at: http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p10consul.pdf. The applicant shall maintain an accurate and detailed record of the costs for its project per these guidelines. Such records shall be retained and made available for examination by the State's auditors for a minimum of four years after the Final Project Expenditure Report is submitted to the State.

14. **Fees and Administrative Charges -** This program is believed to be a benefit to Caltrans as well as the applicants, therefore, all fees and administrative charges for Caltrans permits and inspection will be waived.

15. **Maintenance and Operation of Project –** The applicant, or its successors, is responsible for maintaining the project after it is completed and the EEM project has been approved consistent with the Grant Application and project agreement and closed out by the District EEM Coordinator. The applicant is responsible for ensuring that the subject acquisition of real property or a conservation easement acquired, developed, rehabilitated, or restored with program funds is managed and maintained, in perpetuity, consistent with applicable provisions in the Grant Application and project agreement.

Caltrans' Chief, Office of Program Management in the DLA, or his/her assignee, is responsible for approving any transfers in the management and maintenance responsibilities for the property, and for the approval of reassignment in whole or in part, of the project agreement. For transfer forms see Exhibit 20-L, "Assignment and Assumption of Agreement." For management and maintenance of acquisition projects, see Item 6, "Acquisition of Real Property or a Conservation Easement," of this section.

20.9 REFERENCES

- Section 164.56 of the Streets and Highways Code;
- Resources Agency's *EEM Program Procedures and Criteria at:* http://resources.ca.gov/*;*
- *California Transportation Commission Guidelines for Allocating Monitoring, and Auditing of Funds for Local Assistance Project*s, Resolution G-99-25, August 18, 1999 (Exhibit 20-K): http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm
- Caltrans' *Local Assistance Procedures Manual(* LAPM) at: http://www.dot.ca.gov/hq/LocalPrograms/

ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM CRITICAL DATES

(NOTE: Years shown apply to 2004/2005 grant cycles. Dates for future cycles will vary, however, the months shown should be fairly consistent from cycle to cycle—depending on when the State Budget is passed.)

DATE	ACTIONS
8/03	Date the State Resources Agency (RA) is scheduled to mail the EEM Application Packet to applicants on their mailing list.
11/03	Date the applications are due back to RA.
4/04	The RA publishes a "short list" of recommended projects and forwards to the California Transportation Commission (CTC) for funding consideration along with four (4) copies of each application. All project applicants will be notified of the status of their project at that time. Applicants making the short list should prepare "Request for CTC allocation vote and submit to District Local Assistance Engineer (DLAE)/District EEM Coordinator for July CTC meeting.
4/04	CTC provides two (2) copies of each application to Caltrans Headquarters EEM Program Coordinator.
4/04	Caltrans EEM Program Coordinator distributes one copy of each application to the appropriate district for review by the DLAE/EEM Coordinators and District Landscape Architect.
4/04	CTC requests final approved copy of Environmental Document (ED) for the EEM project from applicants on the "short list." No ED means project is taken off the list.
4/04 to 5/04	CTC, Caltrans EEM Program Coordinator and DLAE/EEM Coordinator, and if applicable, the District Landscape Architect and/or Right-of-Way, review project applications short list.
5/04	Final deadline for submitting final approved environmental documents to CTC, if not included in original application. Final Caltrans comments on applications submitted to CTC. District EEM Coordinators should begin working with applicants to submit their funding allocation request, for submittal at program adoption meeting.
6/04	RA's short list of EEM projects is presented as "information" item at June CTC meeting.
7/04	The CTC adopts the EEM program. It approves funding allocations as available. Caltrans HQ EEM Coordinator transmits "CTC Stamped" resolution for annual EEM Program to the Caltrans DLAE/EEM Coordinators and Applicants.
7/04 to 9/04	Period during which the CTC allocation vote must be approved by CTC, the Agreement must be executed, and Caltrans Local Program Accounting Office (LPA) must encumber the EEM funds.
4/07	Date the applicant should complete the project, submit a final invoice and final project expenditure report to the Caltrans' DLAE/EEM Coordinator to verify and approve project completion.
6/01/07	Deadline for DLAE/EEM Coordinator to submit final invoice to the Caltrans LPA Office.
6/30/07	Budget Authority expires for the expenditure of State funds. All remaining unexpended EEM funds for this cycle will revert.

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SAMPLE RESOLUTION
APPROVING AN EEM PROJECT

Resolution No: _____

RESOLUTION OF THE _____
(GOVERNING BODY)

OF _____ APPROVING
(NONPROFIT ORGANIZATION/SPECIAL PURPOSE LOCAL AGENCY))

THE APPLICATION FOR GRANT FUNDS FOR THE ENVIRONMENTAL ENHANCEMENT AND

MITIGATION (EEM) PROGRAM UNDER SECTION 164.56 OF THE STREETS AND HIGHWAYS CODE

FOR THE FOLLOWING PROJECT:

_____
(PROJECT NAME)

WHEREAS, Senate Bill 117 (Statutes of 1999, Chapter 739) established the EEM Program as a permanent program funded at $10 million annually by the Legislature for grant funds to local, State and federal governmental agencies, and nonprofit organizations for projects to enhance the environment and mitigate the environmental impacts of modified or new public transportation facilities; and

WHEREAS, the State Resources Agency of California has established the procedures and criteria for reviewing grant proposals and is required to submit to the California Transportation Commission a list of recommended projects from which the grant recipients will be selected; and

WHEREAS, said procedures and criteria established by the State Resources Agency of California require a resolution certifying the approval of application by the applicant's governing body before submission of said application to the State; and

WHEREAS, the application contains assurances with which the applicant must comply; and

WHEREAS, the applicant, if selected, will enter into an agreement with the State of California, Department of Transportation, to carry out the environmental enhancement and mitigation project;

NOW, THEREFORE, BE IT RESOLVED THAT THE

_____
(GOVERNING BODY)

1. Approves the filing of an application for the Environmental Enhancement and Mitigation Program for grant assistance.

2. Certifies that said applicant will make adequate provisions for operation and maintenance of the project.

3. Appoints _____ as agent of
(NAME AND TITLE)

the _____ to
(NONPROFIT ORGANIZATION/SPECIAL PURPOSE LOCAL AGENCY)

conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the aforementioned project.

Approved and Adopted the _____ day of _____ , 20 _____ . I, the undersigned,

hereby certify that the foregoing Resolution Number _____ was duly

adopted by _____
(GOVERNING BODY)

Following roll call vote:

Ayes: _____

Noes: _____

Absent: _____

_____
(CLERK/SECRETARY FOR THE GOVERNING BODY)

Distribution: Local agency submits original with the EEM Application.

REQUEST FOR CTC ALLOCATION VOTE
Local Agency Letterhead

To: (*DLAE Name*)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(*District Address*)

Date:____
Project Number:
Project Title:

Dear (*DLAE Name*):

We request the California Transportation Commission allocate from the Environmental Enhancement and Mitigation (EEM) $_____. This is the amount requested in the EEM program application for _____ (project location and description and what will be accomplished. The funding is for:

	Total Cost	CTC Allocation Share
Preliminary Eng.	$_____	$_____
Right-of-Way	$_____	$_____
Construction	$_____	$_____
Const. Eng.	$_____	$_____
Acquisition of Property	$_____	$_____
TOTAL	$_____	$ _____

Status of Projects:

Environmental:
- CEQA - Define project clearance type and date.
- NEPA - Define project clearance type and date (if applicable).

Engineering:
- The PS&E development was/will be completed on (date) (if applicable).
- R/W: The project right-of-way acquisition is scheduled to begin (date) (if applicable).
- Construction: The project advertisement is scheduled for (date) (if applicable).

The project was adopted in the CTC Program Adoption Resolution for FY20xx-20xx for amount of $_____ under EEM Program for FY 20xx-20xx. We request that CTC vote the funds at its next available meeting.

Please advise us as soon as the fund allocation has been voted. You may direct any questions to (*Name*) at (*phone number*) and (e-mail).

CERTIFICATION:

I hereby certify I will:

1. Sign the Applicant-State Agreement (Agreement) within 90 days of the date on the Agreement cover letter from Caltrans.

2. Begin this project as soon as the Agreement is executed.

3. Let Caltrans know by April of the fiscal year in which the funds were allocated if we will not be able to implement the project, this allowing another project to receive an allocation. We understand our project will be put at the bottom of the list.

4. If property is being acquired, an Agreement Declaring Restrictive Covenants will be recorded and submitted to Caltrans.

Sincerely,

Signed: _____
Title: _____

This document is under "Policies, Procedures, Dates at website:
http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm

Distribution: Local agency sends original to the DLAE

FOR CALTRANS USE: I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.								
				Accounting Officer		Date:	$	
Chapter	Statutes	Item	Fiscal Year	Program	BC	Category	Fund Source	$
Note to LPA; check Exhibit D for payment to escrow account.								

APPLICANT-STATE AGREEMENT NO._____
ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM

STATE PROJECT NUMBER: EEM-
20xx/20xx FISCAL YEAR ALLOCATION

EA:

THIS AGREEMENT, made effective this ___ day of ___20xx, by and between _____ hereinafter referred to as "APPLICANT", and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WITNESSETH

WHEREAS, as provided by Streets and Highways Code Section 164.56, Senate Bill 117 (Statutes of 1999, Chapter 739) established the EEM Program as a permanent program, funds have been allocated to APPLICANT by the California Transportation Commission (CTC) after the PROJECT submitted by APPLICANT had been recommended for funding by the Resources Agency; and as described in the application (APPLICATION);

WHEREAS, STATE and APPLICANT now desire to enter into an Agreement relative to fund transfers and cost sharing on the described PROJECT.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - Project Administration and General Provisions

1. PROJECT shall mean that EEM PROJECT described in the APPLICATION submitted by APPLICANT and summarized in Attachment A to this Agreement including financing information as set forth in Section III of Attachment A to this Agreement.

2. APPLICANT shall adhere to: California Transportation Commission (CTC*) Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects*, the *EEM Guidelines* at website: http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm, under "Policies and Procedures," and the Resource Agency's *Environmental Enhancement and Mitigation Program Guidelines at* http://www.resources.ca.gov/eem.html.

3. The PROJECT submitted by APPLICANT, together with all conditions and assurances contained therein, and specifically including information on how the PROJECT shall be financed, are made an express part of this Agreement. Should any conflict exist between the APPLICATION and the Agreement, the Agreement shall prevail.

4. APPLICANT shall complete PROJECT, which shall be acquired, developed, designed and constructed as provided in this Agreement.

5. If PROJECT is located on STATE-owned right-of-way, APPLICANT shall comply with all applicable STATE design and construction standards and practices. If PROJECT is not on STATE-owned right-of-way, APPLICANT shall comply with the applicable design and construction standards and practices of the local government having jurisdiction over the PROJECT location.

6. In cases where the CTC approved funding is less than the amount for which APPLICANT originally applied due to a Budget Reduction on the project required by the State Resources Agency, APPLICANT is obligated to complete PROJECT without downscoping it, unless specifically authorized to do so, in writing, by the State Resources Agency. This will be accomplished by APPLICANT supplementing PROJECT costs with another funding source or by finding a less costly way to complete the PROJECT.

7. The estimated total cost of PROJECT is as shown in Section III of Attachment A of this Agreement. While APPLICANT may, with the STATE's written approval, award a contract in an amount exceeding the estimated total PROJECT cost specified in Section III-A of Attachment A of the Agreement, the allocation of STATE funds for PROJECT will never be greater than the amount specified in Section III-C of Attachment A of this Agreement.

8. Section III of Attachment A specifies the APPLICANT's estimated total PROJECT cost, each party's proportionate percentage of those costs and the maximum amount of STATE funds the CTC has authorized for the PROJECT. The STATE's proportionate share of funding is a certain percent of the estimated total PROJECT cost and approved scope of the PROJECT (STATE's PROPORTIONATE SHARE) and will be used as the reimbursement ratio on this project. In the event the actual cost of PROJECT exceeds the estimated total cost of the PROJECT, the STATE shall pay its PROPORTIONATE SHARE of the cost only up to the amount specified in Section III-C of Attachment A of the Agreement.

9. In the event the PROJECT scope decreases, a decrease in the STATE's PROPORTIONATE SHARE shall be made. In the event the actual cost of PROJECT decreases for any reason from the estimated total PROJECT cost specified in Section III of Attachment A, the allocation of STATE funds will be decreased proportionately with any decrease in APPLICANT's participating contribution so that the STATE's PROPORTIONATE SHARE of costs relative to TOTAL PROJECT COST remains as specified in Section III-B of Attachment A of the Agreement.

10. No changes of any kind may be made to the PROJECT without prior written notice to and written acceptance by the STATE of the proposed change. The STATE shall acknowledge a written notice of proposed change by either accepting or rejecting the proposed change in writing. In the event the STATE responds to a proposed change by stating that the proposed change requires discussion and amendment, such action shall constitute a rejection of the proposed change and any work performed in spite of that rejection shall not be eligible for reimbursement unless and until there is a written, duly executed amendment to this Agreement which addresses that work. Any amendment to this Agreement shall not be effective until executed by both parties. In addition, the parties should take special notice of ARTICLE XII, paragraph 6 of this Agreement.

11. After completion and acceptance of PROJECT by both APPLICANT and STATE, STATE shall pay STATE's PROPORTIONATE SHARE of the cost of PROJECT to APPLICANT, within sixty (60) days after receipt of a signed invoice for payment submitted by APPLICANT. At the option of APPLICANT, monthly or quarterly pro rata progress payments in arrears may be made on a reimbursement basis upon submittal of invoices by APPLICANT and approval by STATE of the PROJECT costs incurred. Pro rata payments will be based on the amount of the STATE fund transfer authorized herein in proportion to the total cost of PROJECT, including APPLICANT's contributions. An invoice format document is included as Attachment D, Exhibit 20 D of this Agreement.

12. If PROJECT involves work anywhere on the State Highway System, a separate standard form of encroachment permit between STATE and APPLICANT must be prepared and executed before PROJECT work may commence.

13 APPLICANT shall comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Attachment C) and further agrees that any agreement or service contract entered into by APPLICANT with a third party for performance of work connected with the PROJECT shall incorporate Exhibit B as a part of such agreement.

14. Upon completion of all work under this Agreement and prior to the expiration of this Agreement, APPLICANT shall prepare and file with STATE one (1) original Final Project Expenditure Report. The Final Project Expenditure Report must be submitted with the final invoice on the PROJECT.

ARTICLE II - Rights-of-Way

1. The acquisition, clearance, and improvement of rights-of-way necessary for the development of PROJECT shall be the responsibility of APPLICANT. Right-of-way acquisition and clearance costs may be included as a participating item of total PROJECT costs if included as part of the PROJECT scope of work.

2. APPLICANT shall perform all PROJECT right-of-way activities in accordance with applicable state laws and regulations unless the STATE determines, in writing, that the State Uniform Relocation Assistance and Real Property Acquisition Policies Act (Government Code Section 7260-7277) do not apply to PROJECT.

3. APPLICANT, as part of its PROJECT design responsibility, shall identify and locate all utility facilities within the PROJECT area. All utility facilities, including those not relocated or removed in advance of construction, shall be identified on PROJECT plans and specifications.

4 If any existing public and/or private utilities conflict with the construction of PROJECT, APPLICANT will make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. If utility relocation is required within STATE right-of-way, APPLICANT shall conform to STATE standards, policies and procedures. If utility relocation is outside of STATE right-of-way, APPLICANT shall conform to local government policies.

5. APPLICANT shall certify as to legal and physical control of that PROJECT right-of-way once it is ready for construction, and that the PROJECT right-of-way was acquired in accordance with applicable State laws and regulations, subject to review and concurrence by STATE, prior to the advertisement for bids for construction/development of PROJECT.

6. If right-of-way acquisition and clearance costs are included as a participating item of PROJECT costs, STATE shall provide funds only for purchase of the actual right-of-way required for PROJECT. If APPLICANT acquires right-of-way, which includes excess land, STATE will not participate in the cost of the excess portion. In the event land initially acquired as part of PROJECT is declared excess at a later date, APPLICANT shall reimburse STATE, no later than one hundred twenty (120) days after PROJECT completion or upon the subsequent sale of that excess land, for either the pro rata fair market value of that excess at the time of disposal or, if that property is retained by APPLICANT, the pro rata fair market value of the excess land at that time. The pro rata fair market value shall be based on the total of the STATE fund transfer amount applied toward purchase of the property in proportion to the total purchase price of the property.

ARTICLE III - Safety

1. APPLICANT shall comply with OSHA regulations regarding necessary safety equipment and procedures. If PROJECT work is to be performed within STATE right-of-way, APPLICANT shall also comply with safety instructions issued by the District Safety Officer and other STATE representatives. APPLICANT's and APPLICANT's personnel shall see that all individuals wear white hard hats and orange safety vests at all times while working within STATE right-of-way.

2. Pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas are within the limits of the PROJECT and are open to public traffic, APPLICANT shall comply with all the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. APPLICANT shall take all reasonably necessary precautions for safe operation of its vehicles and its agent’s and the protection of the traveling public from injury and damage from such vehicles when performing work within STATE right-of-way.

ARTICLE IV - Inspection of Work

1. APPLICANT and any of its PROJECT subcontractors shall permit STATE to review and inspect PROJECT activities at all reasonable times during the performance period of this Agreement, including review and inspection on a daily basis.

ARTICLE V - Equipment Purchase

1. Prior authorization in writing by STATE shall be required before APPLICANT enters into any non-budgeted purchase order or subcontract exceeding $500 for supplies, equipment, or consultant services. APPLICANT shall provide an evaluation of the necessity or desirability of incurring such costs.

2. For purchase of any item, service or consulting work not identified in APPLICANT’s Cost Proposal and exceeding $500 with written prior authorization by STATE, three (3) competitive quotations must be submitted with that request or the absence of bidding must be adequately justified.

3. Any equipment purchased as a result of this Agreement is subject to paragraph 3 of this Article V. APPLICANT shall maintain an inventory of all nonexpendable property, defined as property having a useful life of at least two years and an acquisition cost of $500 or more. If purchased equipment needs replacement and is sold or traded in, STATE shall receive a proper refund or credit. Upon the expiration date of this Agreement, or if this Agreement is terminated, APPLICANT may either keep the equipment and credit STATE in an amount equal to its fair market value or sell such equipment at the best price obtainable at a public or private sale, in accordance with established STATE procedures, and credit STATE in an amount equal to the sales price. If APPLICANT elects to keep that equipment, fair market value shall be determined at APPLICANT's expense on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to STATE and APPLICANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by STATE.

ARTICLE VI - Management and Maintenance of Property

1. APPLICANT will operate, manage and maintain into the future all property acquired, developed, rehabilitated, or restored with funds transferred through this Agreement. With STATE's prior approval, APPLICANT or its successors in interest may transfer management and maintenance responsibilities over the property. If the property is not managed and maintained consistent with the PROJECT APPLICATION, APPLICANT or its successors in interest, at the discretion of STATE and within 45 days after receiving notice to APPLICANT by STATE, shall reimburse STATE an amount at least equal to the amount of STATE's funding participation in PROJECT together with all accrued interest at State Treasurer's pooled money investment account.

2. All real property, or rights thereto, acquired with these funds shall be subject to an appropriate form of restrictive title, or rights, covenants approved by STATE. If the PROJECT real property, or rights thereto, is sold, traded, condemned, or otherwise put to any use other than that use as approved in the Allocation for STATE funds, the State Highway Account, at the discretion of STATE and within 45 days notice to APPLICANT by STATE, shall be reimbursed an amount at least equal to the amount of the STATE's funding participation in PROJECT or the pro rata fair market value of the real property, or rights thereto, including improvements at the time of sale, whichever is higher. The pro rata fair market value shall be based on the proportions of the fund transfer amount applied toward the purchase of the property, or rights thereto, and the design and construction of improvements in proportion to the total purchase price of the real property, or rights thereto, and the cost of all improvements made prior to the time of sale.

ARTICLE VII – Retention of Records/Audit Review Procedures

1. For the purpose of determining compliance with Public Contract Code 10115, et seq., and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code 10532, APPLICANT, its contractors and their subcontractors and STATE shall each maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under this Agreement. STATE, the State Auditor, the Federal Highway Administration (FHWA), or any duly authorized representative of the federal government shall have access to any books, records, and documents of APPLICANT that are pertinent to this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished by APPLICANT or its contractors, if requested.

2. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not satisfactorily disposed of by Agreement shall be reviewed by the Chairperson of the STATE Audit Review Committee (ARC). The ARC will consist of: the Assistant Director, Audits & Security (Chairperson); Deputy Director of Transportation Engineering; the Chief Counsel, Legal Division, or their designated alternates; and two representatives appointment by the Director of Transportation from private industry whose role will be advisory in nature only and without voting rights.

3. Not later than 30 days after issuance of the final audit report, APPLICANT may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the Chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the Chief Deputy Director. The Chief Deputy Director will make the final decision for STATE within one (1) month following the receipt of the notification of dispute or following the ARC meeting recommendation date, whichever is later in time.

4. Neither the pendancy of a dispute nor its consideration by STATE will excuse APPLICANT from full and timely performance of its obligations in accordance with the terms of this Agreement.

5. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article VII.

6. Expenditures of EEM program funds are subject to financial and compliance audits by the State Controllers Office and Caltrans Office of Audits and Investigations. These guidelines may be found in *Local Assistance Procedures Manual*, Chapter 10, "Consultant Selection," Exhibit 10-N, "*Accounting and Auditing Guidelines for Contracts with Caltrans*." Website: http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm

ARTICLE VIII – Allowable Costs and Payments

1. The method of reimbursement authorized by STATE for PROJECT expenditures made by APPLICANT under this Agreement will be based on actual costs incurred. STATE will reimburse the STATE's PROPORTIONATE SHARE of actual costs (based on Section III of Attachment A of this Agreement and including labor costs, employee benefits, travel, equipment rental costs, and other direct costs) incurred by APPLICANT in performance of the work. APPLICANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, fringe benefit rates, and other estimated costs set forth in APPLICANT's cost proposal (Attachment B this Agreement) unless additional reimbursement is provided for by Agreement amendment. In the event that STATE determines additional work beyond that specified in APPLICANT's cost proposal and this Agreement is required to produce a satisfactory PROJECT, the actual costs reimbursable by STATE may be increased by Agreement amendment to accommodate that additional work. The maximum total costs as specified in Section III of Attachment A of this Agreement, shall not be exceeded unless authorized by Agreement amendment.

2. Reimbursement for transportation and subsistence costs shall not exceed the rates to be paid nonrepresented/excluded State employees under then current State Department of Personnel Administration rules detailed in the Caltrans Travel And Expense Guide.

3. General and administrative PROJECT overhead is unallowable under the Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria* guidelines.

4. Progress payments will be allowed and may be made no less than monthly in arrears based on PROJECT work performed and allowable incurred costs authorized as part of the PROJECT.

5. APPLICANT may not commence any reimbursable PROJECT development work or services or PROJECT capital outlay work before both program adoption and funding allocation by the California Transportation Commission and execution of this PROJECT agreement by both APPLICANT and STATE. Reimbursement is subject to annual appropriation by the Legislature in the State Budget for the Environmental Enhancement and Mitigation Program Fund.

6. APPLICANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by STATE's Local Program Accounting Office in the Division of Accounting of signed invoices. One original and two copies of the invoice (in the format shown in Attachment D of this Agreement) shall be submitted after the performance of work for which APPLICANT is billing. Invoices shall include detailed back-up information supporting the work performed. The final invoice must contain the final cost and all credits due STATE, including credits or reimbursements due STATE for any equipment purchased under the provisions of Article V of this Agreement. The final invoice shall be mailed to the Caltrans District Director, ATTN: District Local Assistance Engineer, for PROJECT completion and final invoice approval. Progress invoices shall be mailed directly to STATE at the following address:

DEPARTMENT OF TRANSPORTATION
Division of Accounting, MS 33
Local Program Accounting Branch
P. O. Box 942874
Sacramento, CA 94274-0001

ARTICLE IX – Cost Principles

1. APPLICANT agrees to comply with: 1) The Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria* at*:* http://resources.ca.gov/eem.html, and 2) California Transportation Commission *Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects* and the *EEM Guidelines*, at: http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm under "Policies and Procedures."

2. APPLICANT agrees to comply with the following, as applicable:

   A) The Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., which shall be followed to determine the allowability of individual items of cost for which reimbursement is sought.

   B) 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments.

   C) Office of Management and Budget Circular A-122, Cost Principles for Nonprofit Organizations, which shall be used to determine costs of grants, contracts and other agreements with nonprofit organizations (excluding colleges, universities and hospitals).

   D) Office of Management and Budget Circular A-122, Cost Principles for Nonprofit Organizations, which shall be used to determine costs of grants, contracts and other agreements with nonprofit organizations (excluding colleges, universities and hospitals).

   E) Office of Management and Budget Circular A-21, Cost Principles for Educational Institution establishing principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.

F) Office of Management and Budget Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations.

3. Any costs for which payment has been made to APPLICANT that are determined by subsequent audit to be unallowable under Paragraphs 1 and 2 of this Article IX are subject to repayment by APPLICANT to STATE. In addition, APPLICANT will remit any interest earned on EEM funds to the STATE immediately upon escrow close.

4. Should any conflict exist between the STATE guidelines as described in Paragraph 1 and 2 of this Article IX, the following order will prevail and be applied as follows: 1) Resources Agency of California's *Environmental Enhancement and Mitigation Program Procedures and Criteria* at http://resources.ca.gov/eem.html, 2) *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects*, and *Caltrans EEM Program Guidelines* at: http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm, 3) 48 CFR, *Federal Acquisition Regulations System*, Chapter 1, Part 31 et seq.; 49 CFR, *Federal Acquisition Regulations System*, Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government*; OMB A-21, *Cost Principles for Educational Institutions*; OMB A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations*; OMB A-122, *Cost Principles for Nonprofit Organizations*; and OMB A-87, *Cost Principles for State and Local Government*.

5. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article IX.

6. Should APPLICANT fail to reimburse moneys due STATE within thirty (30) days of demand, or within such other period as may be agreed between the parties hereto, STATE is authorized to withhold future payments due APPLICANT from any source, including but not limited to the State Treasurer, the State Controller and the California Transportation Commission.

ARTICLE X - Subcontracting

1. APPLICANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by STATE, except that which is expressly identified in APPLICANT's Cost Proposal (Attachment B, Exhibit 20-D of this Agreement).

2. Any subcontract in excess of $25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement and shall be applicable to all subcontractors.

3. Any substitution of subcontractors must be approved in writing by STATE.

4. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this Article X.

ARTICLE XI - Insurance

1. If the scope of APPLICANT services will not require APPLICANT or a subcontractor to enter upon STATE highway right-of-way, then the APPLICANT is not required to show evidence of general comprehensive liability insurance.

2. In the event that APPLICANT or an agent, contractor or subcontractor of APPLICANT will be present or working on STATE right-of-way, prior to commencement of the work described herein, the APPLICANT shall furnish to STATE a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for APPLICANT and/or its agents, contractors, and subcontractors who will be working (in any manner) on STATE property with a Combined Single Limit (CSL) of not less than one million dollars ($1,000,000) per occurrence.

3. The Certificate of Insurance must provide:

   A. That the insurer will not cancel the insured's coverage without 30 days prior written notice to the STATE.
   B. That the STATE, its officers, agents, employees, and servants are also included as additional named insured, but only insofar as PROJECT operations under this Agreement are concerned.
   C. That STATE will not be responsible for any premiums or assessments on the policy.

4. APPLICANT agrees that all bodily injury liability insurance or self-insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, APPLICANT agrees to provide at least thirty (30) days prior to said expiration date, a new Certificate of Insurance or Certificate of Self-Insurance evidencing coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New Certificates are subject to the approval of STATE and Department of General Services. In the event APPLICANT fails to keep coverage as herein provided in effect at all times, STATE may in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. If APPLICANT is self-insured, the EEM PROJECT APPLICANT shall submit a Certificate of Self-Insurance asserting that APPLICANT is covered for all purposes of liability for all work performed hereunder. STATE and APPLICANT acknowledge that only one Certificate of Self-Insurance will be required and that APPLICANT must maintain that level of Self-Insurance [not less than one million dollars ($1,000,000)]. It is also understood that STATE, its officer, agents, employees, and servants, are included as covered for all purposes insofar as the operations of APPLICANT under this Agreement are concerned.

ARTICLE XII - Miscellaneous Provisions

1. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority, or jurisdiction delegated to APPLICANT under this Agreement. It is understood and agreed, that pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless STATE and its officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interest is at stake.

2. APPLICANT, the agents and employees of APPLICANT, in performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of STATE.

3. Following written notice and at least thirty (30) days to cure, STATE may terminate this Agreement with APPLICANT should APPLICANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, STATE may proceed with the PROJECT work in any manner deemed proper by STATE. If STATE terminates this Agreement with APPLICANT, STATE shall pay APPLICANT the sum of allowable costs due APPLICANT under this Agreement prior to termination, provided, however, that the cost of PROJECT completion to STATE shall first be deducted from any sum due APPLICANT under this Agreement, and the balance, if any, shall then be paid APPLICANT upon demand.

4. Without the written consent of STATE, this Agreement is not assignable by APPLICANT, either in whole or in part.

5. Time is of the essence in this Agreement. Two original signed copies must be returned within 90 days of date on the Caltrans cover letter.

6. No alteration or variation of the terms of this Agreement 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.

7. The consideration to be paid APPLICANT, as provided herein, shall constitute full compensation for all of APPLICANT's allowable approved costs and expenses incurred in the performance hereof, unless otherwise expressly so provided.

8. APPLICANT warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by APPLICANT for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this Agreement without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the price of consideration, or otherwise recover from APPLICANT, the full amount of such commission, percentage, brokerage, or contingent fee.

9. In accordance with Public Contract Code Section 10296, APPLICANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against APPLICANT within the immediate preceding two-year period because of APPLICANT's failure to comply with an order of a Federal court that orders APPLICANT to comply with an order of the National Labor Relations Board.

10. APPLICANT shall disclose any financial, business, or other relationship with STATE, the Resources Agency, or the California Transportation Commission (CTC) that may have an impact upon the outcome of this Agreement. APPLICANT shall also list current associates or clients who may have a financial interest in the outcome of this Agreement.

11. APPLICANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would be in conflict with the performance of this Agreement.

12. APPLICANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE or Resources Agency employee. For breach or violation of this warranty, STATE shall have the right in its sole discretion, to terminate the Agreement without liability, to pay only for the work actually performed, or to deduct from the Agreement price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

13. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or the Federal Government that may affect the provisions, terms, or funding of this Agreement in any manner.

14. This Agreement shall terminate on June 30, 20xx, or upon the earlier completion of PROJECT, whichever is first earlier in time, except that APPLICANT duties regarding the continuing operations and maintenance of PROJECT property, credits due STATE, and indemnification of STATE shall survive.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
Office of Program Management

Division of Local Assistance

1120 "N" Street,
Sacramento, California 95814

DATE: _____

APPLICANT

By: _____
Signature of APPLICANT Representative

_____
APPLICANT Representative Name and Title

_____
Address Agency

_____
Address City, State, ZIP

_____
City, State, ZIP

_____
E-mail Address of Project Manager

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PROJECT DESCRIPTION AND FINANCING

(*Applicant: To make changes, cross out incorrect information, write in new and initial. Do not retype*.)

APPLICANT:
PROJECT NAME:
COUNTY:

I. Project Location:

II. Project Description of Work Proposed (*as set forth in Application No.___*):

III Proposed Project Funding:

A. ESTIMATED TOTAL PROJECT COST: $_____

Is this amount different from that set forth in the APPLICATION?

__Yes __No

B. PROJECT FINANCING:

State Funding	$	=% of total project cost*
Applicant Funding	$	=% of total project cost
Federal Funding (if any)	$0	
Total Project Funding	$	=100% of total project cost

* NOTE: This percentage is referred to in this Agreement as the STATE's PROPORTIONATE SHARE of costs and will be used as the reimbursement ratio on the project.

C. The maximum amount of STATE funding approved by the CTC that may be contributed to the PROJECT shall not exceed $_____.

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COST PROPOSAL

(*This must be completed by APPLICANT for all projects, except for acquisition-only projects, and returned with Applicant-State Agreement to the STATE.*)

APPLICANT:
PROJECT NAME:
COUNTY:

Direct Labor:
(*Labor rates must be calculated as actual dollar earned per hour and cannot include overhead costs.*)

Classification	Name	Hours		Rate	Total
Project Manager			@		
			@		
			@		
			@		

Total Direct Labor Costs

Fringe Benefits:
(*Benefits, such as vacation, medical, and retirement, etc., must be calculated as rates earned per hour.*)

Other Costs**:** (*Itemize with description, quantity, unit price, and total cost. Estimates acceptable.*)

Travel Costs:
Equipment and Supplies:
Other Direct Costs:

Subcontractor Costs:
(*Attach scope of work and detailed cost estimate for each subcontractor.*)

Volunteer Services:

Classification	Name	Hours		Rate	Total
Volunteer			@		
			@		
			@		

Total Volunteer Labor Costs

Donations:
(*Itemize with description, quantity, unit price, and total cost. Estimates acceptable.)*

Materials:
Other:

Total Project Cost:

Distribution: Local agency attach this with the application

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FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, APPLICANT will not discriminate against any employee for employment because of race, sex, color, religion, ancestry, or national origin. APPLICANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. APPLICANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. APPLICANT will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

3. Remedies for Willful Violation:

   a) The State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which APPLICANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the APPLICANT has violated the Fair Employment Practices Act and had issued an order, under Labor Code Section 1426, which has become final, or obtained an injunction under Labor Code Section 1429.

   b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services hereunder shall be borne and paid for by APPLICANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or the thereafter may become due to APPLICANT, the difference between the price named in the Agreement and the actual cost thereof to STATE.

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SAMPLE OF EEM PROJECT INVOICES

(Prepare On Letterhead of Applicant)

Date of Invoice

(*For Progress Invoice*)
Department of Transportation
Division of Accounting - MS 33
Local Program Accounting Branch
P.O. Box 942874
Sacramento, CA 94274-0001

(*For Progress Invoice*)
Name, District Director
Department of Transportation
Attn.: Name, District Local Assistance Engineer
Street or P.O. Box
City, CA Zip Code

Billing No: **1,2…., or Final**
Invoice No: **Local Agency's Invoice No**
Project Completion Date: **Final Date or "On-going" if not Final**
County: **County Name**
Expenditure Authorization No:

Reimbursement for Environmental Enhancement and Mitigation (EEM) funds is claimed pursuant to State Project No. _____, Applicant-State Agreement No. _____, Agreement Date_____.

Description of work covered by this Invoice: _____
_____
_____

	Preliminary Engineering	Construction Engineering	Acquisition and Incidentals	Construction Contract
Total Costs to Date**	_____	_____	_____	_____
Less: Nonparticipating Costs to Date	_____	_____	_____	_____
Total State Participating Costs to Date	_____	_____	_____	_____
Reimbursement Ratio	_____	_____	_____	_____
Subtotal of EEM Funding to Date	_____	_____	_____	_____
Less: Amount Claimed on previous invoice	_____	_____	_____	_____
Total Amount This Invoice				

*** Note: The State will make the payment(s) on a reimbursement basis of its proportionate share of actual costs incurred to date after expenses and debts have been paid by the applicant. Timesheets, mileage logs, invoices, receipts, cancelled warrants, and other documents as applicable are required by the State as supporting documentation prior to each reimbursement.*

Distribution: Local agency send to the location stated above, as appropriate.

*(*APPLICANT*: Complete the section below for EEM projects involving acquisition of real property rights, or rights thereto, if you request that State funds be deposited directly into an Escrow Account. This invoice with the required documents must be submitted 60 days prior to the close of escrow. For the list of required documents, see Exhibit H (Invoice Payment Request Letter) of EEM Guidelines at website:* http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm
Caltrans will transfer funds to escrow account 30 days prior to escrow close.)

Pursuant to Attachment E (Remarks & Covenants) of above referenced Applicant-State Agreement,
_____ *(Name of Applicant)*
requests and authorizes that the Environmental Enhancement and Mitigation (EEM) fund warrants be made out in the name of the _____ Title Company and mailed to (*Title/ CompanyAddress*)_____, Attention: _____
Escrow No. _____, Title Company Tax I.D. No. is:_____, Escrow Close Date:_____

I certify that the work covered by this Invoice has been completed in accordance with approved plans and Specifications, the costs shown in this Invoice are true and correct, and the amount claimed is due and payable within the terms of the Agreement. I will remit to the State any interest accrued on EEM funds depositing into an escrow, or other, account.

I further certify, if applicable, that acquisition of real property, or rights thereto, (has been) (will be) acquired in accordance with applicable state laws and regulations.

I further certify, if property or a conservation easement was or is being acquired, that acquisition of real property or rights thereto, has been acquired in accordance with applicable state laws and regulations, AND

- attached is a signed, notarized Agreement Declaring Restrictive Covenant (ADRC) including the Legal Description of Property and the Original EEM program application; and
- immediately upon escrow closing the ADRC will be recorded and the original will be sent to the Caltrans address stated on the ADRC; or
- if escrow has closed, applicant will attach the signed, notarized and RECORDED ADRC, including the Legal Description of Property and the Original EEM program application here.

APPLICANT understands that failure to submit a RECORDED ADRC immediately upon escrow closing will put EEM project funding at risk.

_____
APPLICANT REPRESENTATIVE NAME & TITLE

Approved For Payment:

CALTRANS: (check appropriate line)

- Approved For Payment For Direct Deposit into Escrow: (Invoice can only be approved if Applicant has provided a signed and notarized ADRC, including a Legal Description AND the Original Application). ☐
- Approved for Reimbursement: (Invoice can only be approved if the RECORDED ADRC with Legal Description and original invoice is attached.) ☐

_____
DISTRICT RIGHT-OF-WAY DIVISION CHIEF *(if applicable)*

REMARKS AND COVENANTS

*(APPLICANT; If your **EEM** projects involve acquisition of real property, or rights thereto, and you request EEM funds be deposited directly into an escrow account, you **MUST** complete the following paragraph below when you sign the Applicant-State Agreement. It is required to ensure timely payment.)**

Pursuant to the terms of Applicant-State Agreement No. _____, dated _____

and effective immediately, the _____
(Name of Applicant)
requests and authorizes that the EEM fund warrants be made out in the name of the

_____ and mailed to
(*Name of Title Company*)
_____
(*Address of Title Company*)

Phone No. _____ Attention: _____
(*Name of Escrow Agent*)
For Escrow No. _____ Title Company Tax I.D. #_____

Escrow Close Date: _____

*APPLICANT will remit to the STATE interest accrued on this account immediately upon close of escrow.

Distribution: Local agency submits together with the Applicant-State Agreement to DLA HQ.

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Recording requested by and
when recorded mail to:

(*Name*), Local Assistance Engineer
State of California
Department of Transportation, District **(*District No*.)**
Office of Local Assistance
(***Address***)
(*City*, *CA* *Zip*)

(Space above for Recorder's use.)
Applicant Must Record ADRC Immediately Upon Close of Escrow and Send Original to Caltrans, or Risk Project Funds.

SAMPLE

AGREEMENT DECLARING RESTRICTIVE COVENANTS (ADRC)

State Project Number: EEM-_____
Agreement Number: _____

This Agreement Declaring Restrictive Covenants, hereinafter referred to as "ADRC", is entered into effective this _____ day of _____, 2xxx, by and between the _____, hereinafter referred to as "APPLICANT," and the California Department of Transportation, hereinafter referred to as the "CALTRANS."

A. WHEREAS, APPLICANT acquires the real property described in Attachment A of Exhibit 20-E ADRC, attached hereto and incorporated herein by this reference, hereinafter referred to as "REAL PROPERTY," in fee simple; and

B. WHEREAS, the REAL PROPERTY possesses wildlife and habitat values, hereinafter referred to collectively as CONSERVATION VALUES, of great importance to the CALTRANS, APPLICANT and the People of the State of California; and

C. WHEREAS, APPLICANT is authorized to hold property in fee simple for these purposes pursuant to Governing Body Resolution, and other California Law; and

D. WHEREAS, the REAL PROPERTY is intended to provide mitigation of certain direct and/or indirect impacts of the transportation project described in Attachment B, "Original EEM Application" of Exhibit 20-E ADRC, attached and hereto incorporated herein by this reference; and

E. WHEREAS, the APPLICANT is intend to use the REAL PROPERTY only as detailed in Attachment B of Exhibit 20-E ADRC, and for no purpose that are inconsistent with Attachment A, attached hereto and incorporated herein by this reference, hereinafter referred to as "ENHANCEMENT AND MITIGATION REQUIREMENTS"; and

F. WHEREAS, CALTRANS will provide funds allocated by the California Transportation Commission to Applicant to purchase REAL PROPERTY to satisfy said ENHANCEMENT AND MITIGATION REQUIREMENTS; and

G. WHEREAS, both CALTRANS and APPLICANT desire and intend permanently restrict the REAL PROPERTY uses to preserve, protect, enhance, monitor and restore in perpetuity the CONSERVATION VALUES of the REAL PROPERTY so that the State of California shall be benefited and each successive APPLICANT of all or part of said REAL PROPERTY shall be benefited by the preservation of the species and habitat preserved and protected on the REAL PROPERTY in accordance with the MITIGATION REQUIREMENTS, hereinafter referred to as the "CONSERVATION PURPOSES."

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenantors and covenantees, and expressly for the substantial benefits to be derived therefrom, and to bind their successors in interest, the said parties agree as follows:

Management and Maintenance of Property

1. Only the detailed uses described in Attachment A of Exhibit 20-E ADRC, attached hereto and incorporated herein by this reference, shall be made of the REAL PROPERTY. Any uses inconsistent with the uses explicitly stated in Attachment A of Exhibit 20-E ADRC, are not allowed.

2. Applicant will own, use, manage and maintain now and in the future, the REAL PROPERTY pursuant to this ADRC and consistent with the CONSERVATION PURPOSES, the MITIGATION REQUIREMENTS and the ADRC. If Applicant or Applicant's successors or assignees fail to use, manage and maintain the REAL PROPERTY consistent with the terms of the CONSERVATION PURPOSES, the MITIGATION REQUIRMENTS and this ADRC, Applicant or Applicant's successors or assignees will be required to cure said noticed violation within forty-five (45) calendar days of becoming aware of that violation. If Applicant or Applicant's successors or assignees fail to cure the violation within forty-five (45) calendar days of becoming aware or where the violation cannot reasonably be cured within forty-five (45) calendar days, fails to begin curing such violation within that forty-five (45) calendar day period, or fails to continue diligently to cure such violation until finally cured, such failure will be deemed as a default of this ADRC. If default occurs, the CONSERVATION PURPOSES will have deemed violated and Applicant or Applicant's successors or assignees must comply with the requirements set forth in Section 4 below.

3. All the REAL PROPERTY acquired to satisfy the MITIGATION REQUIREMENTS shall be subject to this ADRC. If REAL PROPERTY is sold, transferred, traded, or taken by an exercise of the power of eminent domain, in whole or in part, Applicant or Applicant's successors or assignees, shall notify CALTRANS of the proposed sale, transfer, trade or taking by sending written notice to: State of California, Department of Transportation, Legal Division - MS 57, 1120 N Street, Sacramento, CA 95814.

4. In the event of a default, sale, transfer, trade or taking, Applicant or Applicant's successors or assignees shall reimburse an amount either equal to CALTRANS' funding participation of $_____ for the purchase and/or improvements of the REAL PROPERTY (determined to be _____%) subsequent fair market value, including improvements at the time of default sale, trade, transfer or taking, whichever is higher. Applicant or Applicant's successors or assignees shall not be obligated to repay the CALTRANS if the CALTRANS agrees in writing that Applicant or Applicant's successors or assignees may utilize those proceeds for the preservation of real property for equivalent environmental value conforming to the CONSERVATION PURPOSES when protected by similar conditions to the extent applicable.

5. With CALTRANS's prior written approval, Applicant or Applicant's successors or assignees may modify or transfer the Application, use, management and maintenance responsibilities established by the REAL PROPERTY restrictive covenants.

Term

6. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the Amendment and Revocation provisions of this ADRC.

Assignment

7. Without the prior written consent of CALTRANS, this ADRC is not assignable in whole or in part by Applicant or Applicant's successors or assignees.

Amendment and Revocation

8. Conditional upon CALTRANS receiving full fair market value return in the event of any reduction in the restrictions placed on the use of this REAL PROPERTY, unless the DEPARTMENT agrees in writing that Applicant or Applicant's successors or assignees may utilize the value received for the preservation of real property for equivalent environmental value conforming to the CONSERVATION PURPOSES when protected by similar conditions to the extent applicable, this ADRC and any amendments to it may be amended in any respect by the execution by the DEPARTMENT and Applicant or Applicant's successors or assignees of any written instrument amending or revoking this ADRC. The amending or revoking instrument shall make appropriate reference to this ADRC, and its amendments and shall be signed by both parties thereto, acknowledged and recorded in the Office of County Recorder of the counties in which the property is located.

Enforcement

9. Enforcement shall be by proceedings at law or in equity against any person or persons or party or parties violating or attempting to violate any covenant either restraining violation or to recovery of damages.

Indemnification

10. Neither the DEPARTMENT nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT or Applicant's successors or assignees under or in connection with any work, authority or jurisdiction delegated to APPLICANT or Applicant's successors or assignees under this ADRC. It is understood and agreed that pursuant to Government Code Section 895.4, APPLICANT or Applicant's successors or assignees shall fully defend, indemnify and save harmless the DEPARTMENT and all of its officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code 810.8) occurring by reason of anything done or omitted to be done by Applicant or Applicant's successors or assignees under or in connection with any work, authority or jurisdiction delegated to Applicant or Applicant's successors or assignees under this ADRC. The DEPARTMENT reserves the right to represent itself in any litigation in which DEPARTMENT's interests are at stake.

Purpose of ADRC

11. This ADRC is solely for the purpose of protecting and maintaining the present and future restricted use of all the REAL PROPERTY solely for the MITIGATION REQUIRMENTS and these enhancements tied to the preservation of the CONSERVATION PURPOSE.

Severability

12. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this ADRC by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Signature certifies ADRC-Attachments A and B are attached and ADRC has been signed and notarized by the Applicant.

By: ___
(Signature)

_____
(Name), District Right-of-Way Division Chief

APPLICANT'S NAME

Signature certifies ADRC-Attachments A and B are attached and the entire document will be recorded with the original and returned to Caltrans.

By: _____
(Applicant's Representative Signature)

_____
(*Name and Title*)

_____
(*Agency*)

_____
(*City, State, Zip*)

_____
(*Phone no.*)

(Space below for Notary Public or acknowledgement)

COUNTY OF _____

On_____, before me, _____, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF_____)

On_____, before me, _____, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

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LEGAL DESCRIPTION OF REAL PROPERTY

(Insert the legal description of the property to be purchased by Applicant *to satisfy the* **MITIGATION REQUIRMENTS**.*)*

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ORIGINAL EEM APPLICATION

(*Attach a clean copy of the original application sent to the Resource Agency for this project.*)

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RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO: _____ District ___ Local Assistance Engineer State of California Department of Transportation Division of Local Assistance *Address* *City*, CA, *ZIP*	SPACE BELOW FOR RECORDER'S USE Applicant Must Record RCACE Immediately upon Close of Escrow and send Original to Caltrans, or Risk Project Funds.

ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROGRAM RESTRICTIVE COVENANTS AGREEMENT FOR CONSERVATION EASEMENT (RCACE)

State Project Number: _____
Agreement Number: _____

This Restrictive Covenants Agreement for Conservation Easement, hereinafter referred to as "RCACE", is entered into as of this ____ day of _____, 20xx, by and between the State of California, acting by and through the California Department of Transportation, hereinafter referred to as "STATE", and _____, hereinafter referred to as "APPLICANT".

Recitals

WHEREAS, APPLICANT acquires the Conservation Easement described in Attachment A, "Legal Description of Conservation Easement," of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference hereinafter referred to as "EASEMENT," for the public purpose of undertaking EASEMENT as an EEM Program project;"

WHEREAS, APPLICANT will be the owner of the EASEMENT to be acquired which is described in Attachment A of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference;

WHEREAS, the EASEMENT to be acquired, developed, rehabilitated or restored pursuant to the Applicant-State Agreement No. _____ by the APPLICANT, will be operated, managed, and maintained into the future consistent with the description in Attachment B, "EEM Original Application" of Exhibit 20-E1 RCACE, attached hereto and incorporated herein by this reference;

WHEREAS, STATE has allocated funds to APPLICANT for EASEMENT as provided in section 164.56 of the Streets and Highways Code; and

WHEREAS, both APPLICANT and STATE desire and intend to restrict the EASEMENT uses to environmental enhancement and mitigation purposes and each successive owner of said EASEMENT shall be benefited by the preservation of EASEMENT for environmental enhancement and mitigation purposes.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, each to the other as covenantors and covenantees, and expressly for the substantial benefits to be derived there from, and to bind their successors in interest, the said parties agree as follows:

Condemnation Grid

If the EASEMENT described in Attachment A of Exhibit 20-E1 RCACE, of this Agreement, is taken, in whole or in part, by exercise of the power of eminent domain by any public, corporate, or other authority, the STATE shall make the determination if such a taking creates a loss of use as described in Attachment B of Exhibit 20-E1 RCACE, due to an unsustainable environmental habitat resulting from the material loss of water, access, ground water flows, etc., so as to annul the purposes intended to be achieved by the Conservation Easement. If the STATE determines there is such a loss, the Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Grantee's and Grantor's interests at the time of this grant, it being expressly agreed that the Conservation Easement constitutes a compensable property right. Grantee shall be entitled to compensation in accordance with applicable law for the value of the EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken. The ratio of the value of the easement to the value of the underlying Fee is _____%, such amount having been determined at the time of the grant of this EASEMENT by that certain real property appraisal prepared by _____, dated _____, on file with the Grantee.

The EEM grant made to the Grantee is for the purpose of acquiring an EASEMENT in the amount of $_____ (the "EEM Grant"). The EEM Grant represents _____% (the "EEM Share") of the total cost of the Easement. If the EASEMENT is proposed to be taken in whole or in part, by exercise of the power of eminent domain, the condemning authority shall notify STATE of the proposed taking by sending written notice to: State of California, Department of Transportation, Attn: Legal Department, 1120 "N" Street - MS 57, Sacramento, California 95814, and the State Highway Account shall be reimbursed as follows: Grantee shall pay STATE the EEM Share, _____%, of net proceeds received by Grantee from any taking of the EASEMENT (after Grantee deducts costs incurred by Grantee from the gross proceeds received by Grantee in connection with the condemnation) to reimburse STATE for the EEM Grant.

Grantee shall not be obligated to pay STATE as set forth above if STATE approves in writing Grantee's use of those proceeds for the protection of equivalent environmental resources protected by similar conditions to the extent applicable.

If the EEM Share, _____%, of the net proceeds received by Grantee is less than the EEM Grant, $_____, then Grantee shall pay STATE, from the balance of the net proceeds received by Grantee (i.e., the remaining _____% of the net proceeds which shall be referred to herein as the "Remainder Proceeds"), an amount sufficient that STATE is reimbursed a total of the EEM Grant, $_____, or as close thereto as the Remainder Proceeds will allow. Grantee shall not be obligated to pay STATE any portion of the Remainder Proceeds, if the Remainder Proceeds are contractually required to be paid to any other source who provided funds for the acquisition of the Easement, or if STATE approves in writing Grantee's use of the Remainder Proceeds for the protection of alternative environmental resources subject to the protection of STATE's interests in those resources with similar conditions to the extent applicable.

Term

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the Amendment and Revocation provisions of this Agreement.

Assignment

Without the written consent of STATE, this Agreement is not assignable in whole or in part by APPLICANT.

Enforcement

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Indemnification

Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLICANT shall fully defend, indemnify and save harmless the State of California, all officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Gov. Code #8108) occurring by reason of anything done or omitted to be done by APPLICANT under or in connection with any work, authority or jurisdiction delegated to APPLICANT under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.

Purpose of Agreement

This Agreement is solely for recording purposes and shall not be construed to alter, modify, amend, or supplement the Environmental Enhancement and Mitigation (EEM) Program Applicant-State Agreement No. _____, or the application for funds as prepared by APPLICANT.

Severability

Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this Agreement by their duly authorized officers as of the date set forth above and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
(Signature)

_____
(Name), District Right-of-Way Division Chief

APPLICANT

By: _____
(*Applicant Representative Signature*)

_____
(Name and Title)

_____
(Agency)

_____
(City, CA, *Zip)*

(Space below for Notary Public or acknowledgment)

COUNTY OF _____

On _____, before me, _____, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____ (Seal)

LEGAL DESCRIPTION OF CONSERVATION EASMENT

(*For this EEM project, insert the legal description of the conservation easement to be purchased by the applicant consistent with the project application, or as approved by CTC or State*.)

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EEM ORIGINAL APPLICATION

(*Insert the original EEM application that was submitted to the Resources Agency.*)

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CHANGE OF EEM APPLICANT STATUS REQUEST LETTER: PRE-ALLOCATION VOTE

(*On original applicant's letterhead*)

(*Name)*, Local Assistance Engineer Date:

Department of Transportation, District ___

Office of Local Assistance
(*Address*)

(*City*), CA (*ZIP*)

Dear M_____:

We hereby request to be placed on the next California Transportation Commission (CTC) agenda for approval to change applicant status from the (*original applicant agency)* to the (*new applicant agency*) for the Environmental Enhancement and Mitigation (EEM) Program (*project name*), Project No.__. Attached is a completed and signed Resources Agency EEM Program Application cover page, along with signed Assurances from the same application for the (*new applicant agency*). Also enclosed is an adopting Resolution by their governing board certifying willingness to carry out the project, and a 501(c)(3) *(if applicable)*. The (*new applicant agency*) also agrees to execute an EEM Program Applicant-State Agreement in their name, along with providing tax identification information to the Caltrans Local Program Accounting Office in order to do business with Caltrans.

We also hereby request to be placed on the CTC agenda for an allocation vote along with the change of applicant status request. If the CTC approves the transfer of applicant status, the allocation vote will be in the name of the (*new applicant agency*). It is hereby mutually agreed by the signatures below that all rights, duties, obligations, responsibilities, benefits, payments, maintenance, and title of APPLICANT for this project be transferred from the (*original applicant agency*) to the (*new applicant agency*).

Please have documentation prepared with the (*new applicant agency*) as the sole responsible applicant.

_____	_____
(*Signature*)	(*Signature*)
*(*Name and title)	*(*Name and title*)*
*(*Old applicant agency*)*	(New applicant agency*)*
*(*Address*)*	*(*Address*)*
(*City*), CA (*ZIP*)	(*City*), CA (*ZIP*)
	E-mail address:

CTC and CALTRANS APPROVED/DISAPPROVED:

_____

CALTRANS EEM PROGRAM MANAGER

Department of Transportation,
1120 "N" Street - MS 1
Sacramento, CA 95814

Attachments

Distribution: Local agency sends to the location stated above.

CHANGE OF EEM APPLICANT STATUS REQUEST LETTER: POST-ALLOCATION VOTE

(*On original applicant's Letterhead*)

(*Name*), Local Assistance Engineer Date:

Department of Transportation, District ____
Office of Local Assistance
(*Address*)
(*City*), CA (*ZIP*)

Dear M_____:

We hereby request approval from the California Transportation Commission (CTC) to transfer the applicant status from the (*original applicant agency*) to the (*new applicant agency)* for the Environmental Enhancement and Mitigation (EEM) Program project (*project name and number*). We also request to be placed on the next CTC agenda for their approval.

Attached is a completed and signed EEM Program Application cover page and signed Assurances for the same application from the (*new applicant agency*). Also attached is an adopting resolution by their governing board certifying willingness to carry out the project, and their classification as nonprofit organization under section 501(c)(3) of the IRS code (if applicable). The (*new applicant agency*) agrees to execute an EEM Program Applicant-State Agreement, along with providing tax identification information to the Caltrans Local Program Accounting Office in order to do business with Caltrans**.**

It is understood the CTC's approval is conditioned upon receipt of a signed Assignment and Assumption Agreement (AAA) by (*original applicant agency)* and (*new applicant agency*). The AAA will include as attachments the previously executed Applicant-State agreement and the original application.

Please have all necessary documentation prepared with the (*new applicant agency*) listed as the sole responsible applicant.

_____	_____
(Signature)	(Signature)
(*Name and Title*)	**(***Name and Title*)
(*Original Applicant Agency*)	(*New Applicant Agency)*
(*Address*), (*City*), CA (*ZIP*)	(*Address*), (*City*), CA (*ZIP*)
	E-mail Address_____

CTC and CALTRANS APPROVED/DISAPPROVED:

_____

CALTRANS EEM PROGRAM MANAGER
Department of Transportation,
1120 "N" Street - MS 1
Sacramento, CA 95814

Distribution: Local Agency sends to the location stated above.

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INVOICE PAYMENT REQUEST MEMO FOR PROJECTS INVOLVING ACQUISITION OF REAL PROPERTY OR A CONSERVATION EASEMENT

(*Prepared by applicant on applicant's letterhead. Invoices with requests for direct deposit of EEM funds into an escrow account MUST be submitted to the District Local Assistance Engineer 60 days before the close of escrow date.*)

To: District ___ Local Assistance Engineer (DLAE) **Date**: _____
California Department of Transportation
Office of Local Assistance
(*Address*)_____

From: (*Applicant Name and Address*)

Subject: (*EEM Project Name, County*)

(Applicant: Select A or B, depending on action needed, and attached appropriate documents.)

A. Please remit EEM funds into Escrow Account as previously directed in the Applicant-Status Agreement, Attachment E, "Remarks and Covenants." Please find the following required documents attached.

1. One original unrecorded EEM Agreement Declaring Restrictive Covenants or EEM Restrictive Covenants Agreement for Conservation Easements, with notarized signatures (with completed Exhibits), or other State-approved restrictive rights covenants agreement.

2. One original and two copies of the signed Invoice. (*On applicant's letterhead*)

3. Copy of escrow instructions.

4. Copy of current appraisal.

5. Copy of Preliminary Title Report, with legal description of property or easement.

6. Close of escrow date_____(must show date).

At close of escrow we will record the ADRC or RCACE and send you the original with other documents shown below.

B. We have closed escrow. Attached are the documents to close out the project.

1. Certified copy of recorded Grant Deed or Deed of Conservation Easement (CE).
2. Copy of closing escrow statement.
3. One original signed Final Project Expenditure Report* (*On applicant's letterhead*).
4. One original recorded ADRC.

(*Applicant's Representative Signature*)

_____

(*Name and Title*)

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INVOICE PAYMENT REQUEST MEMO FOR PROJECTS INVOLVING ACQUISITION OF REAL PROPERTY OR CONSERVATION EASEMENT

(*Prepared by District*. *Do not submit to Local Program Accounting until 60 days prior to close of escrow*.)

To: Local Program Accounting
Accounting Office - MS 33
California Department of Transportation

Date:

Cc. HQ EEM Program Coordinator
Local Assistance Division - MS 1

From: District___, Local Assistance Engineer: _____

Subject: (*EEM Project Name, County*)

(*District: Circle A or B, depending on action needed, and attach appropriate documents.*)

A. Attached are the documents needed to release funds to escrow account. I understand that Caltrans cannot remit the EEM funds until 30 days prior to escrow close date as shown below.

1. One original signed Invoice* and two copies (*on applicant's letterhead*).
2. Copy of escrow instructions.
3. Signed original and two copies of the Final Project Expenditure Report (*prepared by applicant on applicant's letterhead*).
4. Copy of current appraisal.
5. Copy of Preliminary Title Report, with legal description of property or easement.
6. Close of escrow date_____(must show date).

B. Escrow has closed. Attached are documents to close out the project.

1. Certified copy of recorded Grant Deed or Deed of Conservation Easement (CE)
2. Copy of closing escrow statement
3. One original signed Final Project Expenditure Report* (on Applicant's letterhead)
4. Final Invoice

(District: Send the original recorded EEM Agreement Declaring Restrictive Covenants or EEM Restrictive Covenants Agreement for Conservation Easements with notarized signatures (with completed Exhibits) to EEM Coordinator HQ.

District Local Assistance Engineer

c: EEM Program Coordinator (with copies of attachments)

PROCEDURES FOR EEM PROJECTS INVOLVING ACQUISITION OF REAL PROPERTY OR CONSERVATION EASEMENT

1. CTC adopts the annual EEM Program.

2. Applicant requests CTC funding allocation for the specific EEM project.

3. HQ EEM Program Coordinator prepares and forwards the following materials to the Applicant:

   - One (1) copy of the CTC-Stamped Resolution allocating funds to the project (when available).
   - One (1) original copy of the Applicant-State Agreement (Exhibit 20-D).
   - One (1) original copy of the Agreement Declaring Restrictive Covenants (ADRC) (Exhibit 20-E) or EEM Restrictive Covenants Agreement for Conservation Easement (Exhibit 20-E1).

   One (1) cover letter which gives website location for: *California Transportation Commission Guidelines for Allocating, Monitoring, and Auditing of Funds for Local Assistance Projects and EEM Guidelines* at http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm under Policies and Procedures, and Resources Agency's *EEM Program Procedures and Criteria* at: http://resources.ca.gov/.

   Preparation of the **Applicant-State Agreement** by the HQ EEM Program Coordinator (except where noted) includes:

   - Providing an Applicant-State Agreement Number.
   - Providing a Project Number (application number).
   - Providing the Expenditure Authorization (EA) Number.
   - Stating the effective date of the Agreement.
   - Stating the Applicant's name (must be consistent with CTC Resolution adopting EEM Program, if not, a "Change of EEM Applicant Status Request Letter" form must be completed).
   - Completing Attachment A "Project Description and Financing" of Exhibit A, including project location, establishing EEM funding and local contributions along with percentages.
   - Defining specific roles and responsibilities for all entities involved in performing the work on the project including management and maintenance of property, records retention, and audits.
   - If Applicant wishes that State EEM funds to be deposited directly into an escrow account, Attachment E "Remarks and Covenants" of Exhibit D, must be completed by Applicant as follows:

     "Pursuant to the terms of Applicant-State Agreement No._____, dated_____ and effective immediately, the *(Name of Applicant)*_____ requests and authorizes the EEM fund warrants warrants be made out in the name of the _____(Escrow company) and mailed to _____ _____ (Escrow Address) Attention:_*Name of Escrow Agent)* for Escrow No. _____ Phone #_____, Close of Escrow Date_____, Title Company Tax I.D.# _____."

   Preparation by the HQ EEM Program Coordinator of the Agreement Declaring Restrictive Covenants (ADRC) for projects involving acquisition of property in fee title or the Restrictive Covenants Agreement for Conservation Easement (RCACE) for acquisition of a conservation easement includes:

   - Providing the Project Number (application number), Applicant-State Agreement Number and Name,

- Effective date of the ADRC or Restrictive Covenants Agreement (to be completed by applicant),
- Including Exhibit 20-E (Attachment A "Legal Description of Real Property"), (Attachment B "Original EEM Application) to the ADRC or Exhibit 20 - E1 (Attachment A "Legal Description of Conservation Easement") and (Attachment B "Original Application") to RCACE, and
  For the acquisition of a conservation easement, the Applicant may, in lieu of executing the Restrictive Covenants Agreement, may include the following State-approved "condemnation" language in the Deed of Conservation Easement":

CONDEMNATION: The Conservation Easement ("EASEMENT"), described in Attachment A, Exhibit 20-E1___ *("Legal Description of Conservation Easement" consistent with EEM Grant Application)*, attached hereto and incorporated herein by this reference, to be acquired, developed, rehabilitated or restored pursuant to the Applicant-State Agreement No. _____ by the APPLICANT, will be operated, managed, and maintained into the future consistent with Attachment B, Exhibit 20-E ("*Original EEM Grant Application*"), attached hereto and incorporated herein by this reference. If the EASEMENT is taken by the exercise of the power of eminent domain by any public, corporate, or other authority, the State of California, Department of Transportation ("STATE") shall make the determination if such a taking creates a loss of use, as described in Attachment B, Exhibit 20-E ("*Original EEM Grant Application*"), due to an unsustainable environmental habitat resulting from the material loss of water, access, ground water flows, etc., so as to annul the purposes intended to be achieved by this EASEMENT.

If the STATE determines there is such a loss, the Grantee shall be entitled to compensation in accordance with applicable law for the value of the Conservation EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken.

The Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of Grantee's and Grantor's interests at the time of this grant, it being expressly agreed that this EASEMENT constitutes a compensable property right. All expenses incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds.

Grantee shall be entitled to compensation in accordance with applicable law for the value of the EASEMENT taken and Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying Fee taken. The ratio of the value of the EASEMENT to the value of the underlying Fee is _____%, such amount having been determined at the time of the grant of this EASEMENT by that certain real property appraisal prepared by _____, dated _____, on file with the Grantee.

The EEM grant made to the Grantee is for the purpose of acquiring the EASEMENT in the amount of $_____. The EEM Grant represents _____% (the "EEM Share") of the total cost of the Easement. If the EASEMENT is proposed to be taken in whole or in part by exercise of the power of eminent domain, the condemning authority shall notify STATE of the proposed taking by sending written notice to: State of California, Department of Transportation, Attn: Legal Department - MS 57, 1120 N Street, Sacramento, California 95814, and the State Highway Account shall be reimbursed as follows: Grantee shall pay STATE the EEM Share, _____%, of net proceeds received by Grantee from any taking of the EASEMENT (after Grantee deducts costs incurred by Grantee from the gross proceeds received by Grantee in connection with the condemnation) to reimburse STATE for the EEM Grant.

Grantee shall not be obligated to pay STATE as set forth above if STATE approves in writing Grantee's use of those proceeds for the protection of equivalent environmental resources protected by similar conditions to the extent applicable.

If the EEM Share, _____%, of the net proceeds received by Grantee is less than the EEM Grant, $_____, then Grantee shall pay STATE, from the balance of the net proceeds received by Grantee (i.e., the remaining _____% of the net proceeds which shall be referred to herein as the "Remainder Proceeds"), an amount sufficient that STATE is reimbursed a total of the EEM Grant, $_____, or as close thereto as the Remainder Proceeds will allow. Grantee shall not be obligated to pay STATE any portion of the Remainder Proceeds if the Remainder Proceeds are contractually required to be paid to any other source who provided funds for the acquisition of the EASEMENT, or if STATE approves in writing Grantee's use of the Remainder Proceeds for the protection of alternative environmental resources subject to the protection of STATE's interests in those resources with similar conditions to the extent applicable.

4. Applicant:

- Reviews the Applicant-State Agreement for accuracy and completeness.
- Forwards two (2) original signed Applicant-State Agreement to HQ EEM Program Coordinator for immediate processing, and sends one copy of the Applicant-State Agreement to the DLAE.
- Signs each original agreement discussed under Step 3. Signatures must be notarized to be approved.
- Prepares Invoice (See Attachment D of Exhibit 20-D, Applicant-State Agreement) only for applicants requesting direct deposit of EEM funds into an escrow account and includes Title Company information (for applicants seeking reimbursement of EEM funds after the close of escrow, see Section 20.8, Item 10 of this chapter for preparation of invoice).
- Obtains copy of Preliminary Title Report (covering subject acquisition) with legal description of property or easement.
- Obtains a copy of the Deed of Conservation Easement.
- Compiles draft escrow instructions.
- Obtains copy of current appraisal (supporting the purchase price agreed to between the seller and the applicant).
- If the warrant is to be picked up by Applicant's courier, compiles information with name of courier and Applicant's account number.
- Compiles all above required acquisition documents and sends entire package to DLAE along with the Invoice Payment Request Memo (Exhibit 20-H).

5. Caltrans HQ EEM Program Coordinator:

- Assigns project Expenditure Authorization (EA) number to Agreement.
- Forwards two (2) original Applicant-State Agreements to LPA.

6. Local Program Accounting:

- Encumbers project funds and certifies Agreements.
- Returns the Agreements to HQ EEM Program Coordinator to be conformed.

7. HQ EEM Program Manager:

- Returns one (1) original of the Applicant-State Agreement to Applicant.
- Conforms the original retained Applicant-State Agreement and forwards one copy each to the DLAE, LPA and EEM files.

8. District Local Assistance Engineer:

- Forwards acquisition documents to the District Right-of-Way Division Chief along with a copy of the

original EEM Grant Application and copy of the Applicant-State Agreement for Right-of-Way review and approval of acquisition.

9. District Right-of-Way Division Chief:

- Assures that the real property or conservation easement acquired is a part of the approved project (see Exhibit 20-D, "Applicant-State Agreement," Attachment A, "Project Description and Financing").
- Reviews the preliminary title report and assures it adequately covers the property or conservation easement for which the EEM funds have been allocated. Also assures the title for the property or conservation easement is sufficient for the proposed use and no adverse conditions affect title (see Exhibit 20-E, "Agreement Declaring Restrictive Covenants," Attachment A "Legal Description of Real Property" or Exhibit 20-E1, "EEM Restrictive Covenants Agreement for Conservation Easement", Attachment A "Legal Description of Conservation Easement").
- Assures the management and maintenance of the real property or conservation easement (see Exhibit 20-E, "Agreement Declaring Restrictive Covenants," Attachment B "Original EEM Application" or Exhibit 20-E1, "EEM Restrictive Covenants Agreement for Conservation Easement," Attachment B " EEM Original Application) is consistent with the original Grant Application and the "Applicant-State Agreement.
- Drafts further instructions to escrow agent by providing additional Caltrans instructions to the Title Company escrow instructions. If EEM funds are to be direct deposited into an escrow account, the instructions should included how the funds are to be used (i.e., for the purchase of the subject real property or conservation easement when escrow requirements have been met); requests that the ADRC or EEM Restrictive Covenants Agreement for Conservation Easements is recorded; a certified copy of the recorded Grant Deed, or Deed of Conservation Easement; and Closing Escrow Statement are forwarded to the District EEM Coordinator upon close of escrow.
- Assures that the "Condemnation" language is included in the Deed of Conservation Easement, if there is no Restrictive Covenants Agreement.
- Reviews the appraisal to assure the settlement price for the acquisition or conservation easement does not unreasonably exceed or fall below the fair market value for the property or easement. For most projects, this can be accomplished with a "desk review."
- Reviews the Deed of Conservation Easement or EEM Restrictive Covenants Agreement for Conservation Easements to ensure it contains adequate language to protect the State's investment if the easement is ever taken by the power of eminent domain.
- Approves the Invoice for payment, at this time, only for projects with direct deposit of EEM funds to an escrow account.
- Signs and notarize the ADRC or EEM Restrictive Covenants Agreement.
- Returns the documents to the DLAE.

10. District EEM Coordinator:

- Makes a copy of the signed, notarized ADRC or Restrictive Covenants Agreement and escrow instructions, then sends original ADRC, or Restrictive Covenants Agreement and escrow instructions to the title company.
- Forwards one original and two copies of the Invoice at this time only for projects with direct deposit of EEM funds to an escrow account along with Exhibit 20-H, "Invoice Payment Request Memo," to HQ Local Program Accounting (LPA) for processing not more than 60 days prior to the close of escrow (for reimbursement of EEM funds after the close of escrow see Section 20-8, Item 10, "Invoice and Reimbursement Process" and Final Project Expenditure Report to close out of the project).

11. LPA:

- Ensures Title Company has a tax ID number on file with State, if not, LPA will contact applicant for necessary tax information to pay out EEM funds.
- Process the invoice for payment of EEM funds at this time only for direct deposit of EEM funds to escrow account, and forwards to Accounts Payable.

12. Accounts Payable:

- Processes request and forwards to State Controllers Office.

13. State Controller's Office:

- Sends check to Title Company.

14. Title Company:

- Records the grant deed and Agreement Declaring Restrictive Covenants or Restrictive Covenants Agreement with the county where property is purchased.
- Recorded ADRC or Restrictive Covenants Agreement is returned to District EEM Coordinator by county where property is purchased.
- Sends a copy of recorded grant deed or Deed of Conservation Easement and copy of closing escrow statement to District EEM Coordinator.

15. District Local Assistance:

- Forwards original recorded ADRC or Restrictive Covenants Agreement, copy of recorded grant deed or Deed of Conservation Easement, and closing escrow statement along with completed final report (see Chapter 20, Exhibit 20-M) to the Caltrans HQ EEM Program Coordinator.
- Forwards copy of closing escrow statement to LPA to close out project, along with Final Report.
- For Applicants with acquisition projects requesting reimbursement of EEM funds after the close of escrow, see Section 20-8, Item 10, "Invoice and Reimbursement Process" for processing the final invoice and Final Project Expenditure Report to close out of the project.

16. HQ EEM Coordinator

- Forwards copies of the recorded grant deed and ADRC or Restrictive Covenants Agreement to the Headquarters Office of Right-of-Way Engineering and Operations Research.
- Conforms original recorded ADRC or Restrictive Covenants Agreement and sends copies to applicant and District EEM Coordinator, and files original in DLA archives.

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CALIFORNIA TRANSPORTATION COMMISSION

Guidelines for Allocating, Monitoring, and

Auditing of Funds for Local Assistance Projects

Resolution G-99-25

Amending Resolution G-99-05

1.1 WHEREAS, Government Code 14529.1, requires the Commission to establish Guidelines for Allocating, Monitoring, and Auditing of Funds for Local Assistance Projects, and

1.2 WHEREAS, on October 28, 1998, the Commission requested Caltrans to develop Guidelines for Allocating, Monitoring, and Auditing of Funds for Local Assistance Projects and submit them to the Commission in January 1999, and

1.3 WHEREAS, the Caltrans proposed Guidelines for Allocating, Monitoring, and Auditing of Local Assistance Projects were presented and discussed at the January 14, 1999, Commission meeting, and

1.4 WHEREAS, the Commission adopted such Guidelines by Resolution G-99-05 on February 17, 1999, and

1.5 WHEREAS, the Commission conducted a public hearing on July 15, 1999, to consider proposed amendments to the Guidelines to more clearly address Environmental Enhancement and Mitigation (EEM) projects, and

1.6 WHEREAS, subsequent to July 15, 1999, two technical adjustments were proposed making the Guidelines consistent with the proposed STIP Guidelines relative to transfer of funds to Federal Transit Administration and clarifying the Guidelines relative to statutes related to Proposition 116 Bond Funds.

2.1 NOW THEREFORE BE IT RESOLVED, the Commission hereby adopts the amended Guidelines for Allocating, Monitoring, and Auditing of Funds For Local Assistance projects thereby replacing the Guidelines adopted by Resolution G-99-05, and

2.2 BE IT FURTHER RESOLVED, the Commission requests Caltrans in cooperation with the Commission staff, to distribute copies of the Guidelines to each regional agency, each county transportation commission and representatives of local agencies and transit agencies.

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CALIFORNIA TRANSPORTATION COMMISSION GUIDELINES FOR ALLOCATING, MONITORING, AND AUDITING OF FUNDS FOR LOCAL ASSISTANCE PROJECTS

Resolution G-99-25
Amending Resolution G-99-05

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CALIFORNIA TRANSPORTATION COMMISSION

GUIDELINES FOR ALLOCATING, MONITORING, AND AUDITING OF FUNDS FOR LOCAL ASSISTANCE PROJECTS

Resolution G-99-25
Amending Resolution G-99-05

I Authority and Purpose

The Commission is required by Section 14529.1 of the Government Code, as amended by Chapter 622, 1997 statutes (SB 45), to establish guidelines for Commission allocation of funds for local entity projects. The statutory intent of the guidelines is to protect the State's funds and to verify funds are used in a timely manner. The statutes provide the Commission the authority to establish guidelines to verify an entity receiving funds has the resources and capability to implement projects on a timely schedule, to establish a process for monitoring progress in implementing projects and expending funds and to require audits of allocated funds and project expenditures if necessary.

These guidelines become effective when adopted by the Commission. The Commission may revise these guidelines at any time after first giving notice of proposed amendments and conducting at least one public hearing.

II Scope Of Allocation Guidelines

These guidelines shall apply to all funds allocated by the Commission for all projects programmed in the STIP that are implemented by entities other than Caltrans. Funds allocated by the Commission for projects funded under the Environmental Enhancement and Mitigation (EEM) Demonstration Program shall be administered consistent with Section IX of these guidelines. For purposes of these guidelines, the term "local entity" includes regional agencies, local agencies, transit agencies, and for EEM projects, nonprofit agencies. The guidelines are intended to provide policy guidance and direction for actions as well as activity processes and procedures related to allocations for local grant projects (projects not implemented by Caltrans). Specific activities governed by these guidelines include requests for Commission allocations, Caltrans review of allocation requests, allocation of funds, expenditure of funds, reimbursements, monitoring and reporting and audits.

The statutes stress that the allocation guidelines shall be kept to a minimum needed to protect State funds and to provide for timely use of funds. In keeping with this statutory intent and with the Commission's objective that the STIP be implemented stressing, accountability, flexibility and simplicity, it is the Commission's intent that these allocation guidelines provide the basic policy guidance for allocation and expenditure of funds. The Commission further intends that Caltrans, in consultation with local entities and Commission staff, develop and maintain detailed procedures for administering the allocation and expenditure of funds for local entity grant projects. The procedures shall include but not be limited to instructions for initiating requests for fund allocation, for authorization to proceed with work, for submittal of invoices, for reimbursement of costs, for project closeouts and for audits. The procedures shall be consistent with the Commission's STIP Guidelines and with federal and State funding and accounting requirements.

III Local Entity Resources And Capability

The Commission will allocate funds for a local project only after the Commission is assured the responsible local entity has the resources and capability to implement the project as programmed, and to complete expenditure of funds in compliance with the timely use of funds requirements as specified in section V of these guidelines.

For streets and highway projects, an entity's resources and capabilities will be judged acceptable by the Commission with the approval of a Master Agreement between Caltrans and the entity. Master Agreement shall be amended to include new projects by approval of a Program Supplement to the Master Agreement. Caltrans will continue to assess local entity compliance with federal-aid and state local assistance statutes, regulations and procedures through the Caltrans Process Review Program.

For rail transit guideway projects, an entity's resources and capabilities shall be judged acceptable by the Commission upon Caltrans' approval of the Senate Bill (SB) 580 review required by Sections 14085 - 14088 of the Government Code. SB 580 requires a two-part review. The first part is focused on the entity and is generally a one-time review unless there are significant changes in the management, accounting, and reporting procedures of the entity. The second part of the review is focused on the proposed funding and schedule for the project.

For projects other than streets and highways and rail transit guideways, an entity's resources and capabilities will be judged acceptable by the Commission upon Caltrans' review and approval of the overall project description, scope of work, and financial plan submitted by the entity as part of the allocation request package.

IV Allocation Of Funds

The Commission will consider allocation of funds for a project or project component when it receives an allocation request and recommendation from Caltrans. All allocation requests shall be rounded to the nearest $1,000. The request will include a determination of the availability of funding and a recommendation on the source of funding. The recommendation on the source of funding shall include the amounts by fund account i.e., State Highway Account or Public Transportation Account as well as the fund type within the account including type of federal funds. Caltrans' recommendation to the Commission for State, only funding of a project will be made in accordance with Caltrans current policy for exceptions to federal funding. The final determination of fund type available for a project will be made in the Commission's allocation of funds to the project. The Commission will approve the allocation only if the funds are available and are necessary to implement the project as programmed in the STIP. Allocations for right-of-way acquisition or construction will be made only after documentation of the required environmental clearance for the project. In compliance with Section 21150 of the Public Resources Code, Commission allocations to local agencies for project costs, other than for environmental studies and permits, will be made only after documentation of environmental clearance under the California Environmental Quality Act. All funds allocated are subject to the timely use of funds provision as described in Section V of these guidelines.

All allocations shall be rounded to the nearest $1,000. The Commission will consider making an allocation which exceeds the amount programmed in the STIP, if a region or the interregional program have adequate reserves in the STIP, or if the Commission finds it can approve an advance to the county share or to the interregional share from STIP reserves. Unallocated amounts are available for allocation until the end of the fiscal year in which they are programmed in the STIP. Funds not allocated are subject to the timely use of funds provision described in Section V of these guidelines.

If a project or project component is ready for implementation earlier than the fiscal year that it is programmed in the STIP, the implementing agency may request an allocation in advance of the programmed year. The Commission will consider making advanced allocations based on making a finding that the allocation will not delay availability of funding for other projects programmed in earlier years than the project to be advanced and with the approval of the responsible regional agency if county share funds are to be advanced.

When a local entity is ready to implement a project or project component, the entity will submit a request to Caltrans. Caltrans will review the request, prepare appropriate agreements with the entity and recommend the request to the Commission for action. The typical time required after receipt of the application to complete Caltrans review and recommendation and Commission allocation is 60 days. The specific details and instructions for the allocation, transfer and liquidation of funds allocated to local entities are included in the Procedures For Administering Local Grant Projects In The STIP in consultation with the Commission, regional agencies, local agencies and transit agencies.

The US Department of Transportation regulations require that transit projects using federal funds be transferred from Caltrans to the Federal Transit Administration (FTA) for the administration of the federal funds. The transfer requires FTA approval of a Grant Application from the responsible entity. In order to facilitate the transfer and assure timely use of funds, the Commission encourages all entities to submit a Grant Application to FTA soon after the project is programmed in the STIP to avoid delays in Commission allocation of funds for the project.

The Commission may delegate authority to Caltrans for making some fund allocations to local entities. If the Commission delegates such authority, Caltrans shall apply the conditions and standards in these guidelines to protect State funds and maintain local entity accountability for the project.

V Timely Use of Funds

Funds allocated for local entity project development or right-of-way costs must be expended by the end of the second fiscal year following the fiscal year in which the funds were allocated. For local grant projects, the local agency must invoice Caltrans for these costs no later than 180 days after the fiscal year in which the final expenditure occurred.

Funds allocated for construction, or for purchase of rail/transit equipment must be encumbered by the award of a contract within twelve months of the date of the allocation of funds. After the award of the contract, the local entity has up to 36 months to complete (accept) the contract. At the time of fund allocation, the Commission may extend the deadline for completion of work and liquidation of funds if necessary to accommodate the proposed expenditure plan for the project. Federal funds, which are transferred to FTA after Commission allocation, as discussed in Section IV of these guidelines, will be considered encumbered and expended. The local entity has 180 days after contract acceptance to make the final payment to the contractor or vendor, prepare the final Report of Expenditure, and submit the final invoice to Caltrans for reimbursement.

The Commission may extend the deadlines for allocation of funds, for award of a contract, for transfer to FTA, for expenditures for project development or right-of-way, or for contract completion no more than one time, and only if it finds that an unforeseen and extraordinary circumstance beyond the control of the responsible agency has occurred that justifies the extension. The extension will not exceed the period of delay directly attributed to the extraordinary circumstance, and will in no event be for more than 20 months.

Whenever allocated funds are not encumbered by the award of a contract or transferred to FTA, or expended within the deadlines specified above, all unencumbered or unexpended funds from the allocation will be rescinded except for Proposition 116 funds, in accordance with section 99612 of the Public Utilities Code. The Commission will not adjust the county or interregional share for any unencumbered balance of the allocation.

VI Monitoring And Reporting

Caltrans shall monitor funds allocated for project construction and purchase of equipment and provide monthly reports to the Commission of all projects for which a contract has not been awarded within six-months of the Commission's allocation.

Caltrans shall provide the Commission status reports on all fund allocations that are made by Caltrans in accordance with Commission delegation, which may have been made as specified in Section IV of these guidelines.

It is the Commission's intent that Caltrans, in consultation with regional agencies, develop and implement a process and mechanism to monitor and track local entity projects from the allocation of funds through project completion. The process should facilitate regional agency accountability, and provide for reporting to the Commission on the status of projects, expenditures, and reimbursements.

VII Authorization To Proceed And Reimbursements

Generally, the earliest date for which work will be reimbursed is the date of the fund allocation by the Commission. If federal funds are included in the allocation, the date of the allocation or date of approval of the Federal Authorization to Proceed (E-76), whichever is latest, establishes the earliest date for which work will be reimbursed.

All reimbursements for expenditures and costs are subject to the allocated funds being appropriated in the State budget approved by the Governor and execution of a Program Supplement, or a Fund Transfer Agreement. In no case shall reimbursements exceed the amount of funds allocated by the Commission. Reimbursements shall not be allowed for work, which is not included in the approved agreements with Caltrans. All reimbursed costs must be supported by an invoice documenting expenditures and costs.

VIII Project Completion And Audits

Local entities shall be responsible for establishing and maintaining records of project allocations, costs, expenditures and reimbursements. Upon completion of a project, the responsible entity shall be responsible for preparing a final project expenditure report documenting all project expenditures and reimbursements for submittal to Caltrans. Caltrans shall document and report on all allocated funds that were not expended.

Local entities receiving federal funds are subject to audit requirements of the Federal Office of Management and Budget's Circular A-133. A single audit is required if an entity receives more then $300,000 in federal funds from all sources. Local entity expenditures for all local assistance programs are subject to financial and compliance audits by the State Controller's Office and by Caltrans' Office of External Audits. Normally, project audits are not necessary if expenditures for a project are covered by a single audit report accepted by the appropriate federal agency.

IX EEM Program

General. The EEM Program is an annual program of projects separate from the STIP. The EEM Program is funded with State Gas Tax Revenues from the State Highway Account. EEM projects must be consistent with the requirements of Article XIX of the State Constitution. The EEM Program shall be administered consistent with Section IX of these guidelines as well as the Environmental Enhancement and Mitigation Program Procedures and Criteria developed by the State Resources Agency, and the Applicant-State Agreement, Environmental Enhancement and Mitigation Program developed by Caltrans.

Eligible Costs. Generally, except as noted herein, all direct costs attributable to an EEM project are eligible for EEM funding. Eligible costs include: project development costs, ***real property*** acquisition costs, acquisition support costs, construction costs, and construction engineering costs. Ineligible costs include: general program administration and overhead costs, and costs incurred prior to Commission allocation of project funding, financial costs associated with borrowing funds to implement the project, costs of audits, and costs incurred after the end of the second fiscal year following the year in which the funds were allocated by the Commission.

Project Funding and Timely Use of Funds. When an entity is ready to implement a project, the entity will submit an allocation vote request to the appropriate Caltrans District. Caltrans will review the request, prepare appropriate agreements and recommend the request to the Commission for allocation action. The entity should allow up to sixty-days from the date of submittal until Commission action. The entity will advise Caltrans of changes in funding amounts and fund sources, and if the project will be re-advertised if bids are too high. Caltrans will approve minor changes in project scope, cost and shifting of funding between project elements. Commission approval is required on substantive changes in project scope. Cost increases must be covered with the applicant's own sources of funding.

Projects that cannot be made ready for Commission funding allocation during the State fiscal year, the program adopted will be dropped from the EEM program. Funding from the dropped project will be assigned to projects further down on the EEM program priority list, or elsewhere in the program. A project dropped from the program may compete for the EEM program in the following years.

The Commission will allocate funds for a project only during the fiscal year in which the project is programmed. The entity must complete the contract and receive reimbursement no later than the end of the second fiscal year following the year in which the funds were allocated. Allocated funds not expended by this deadline will be rescinded.

Reimbursements and Audits. The earliest date for which work will be reimbursed is the date of the fund allocation by the Commission. All reimbursements are subject to the allocated funds being appropriated in an adopted State budget. All expenditures will be subject to financial and compliance audits by the State Controller's Office and by Caltrans' Office of External Audits.

All reimbursements will be limited to the State's pro rata share of the project costs as stated in the Commission's fund allocation and in the Applicant-State Agreement.

Payments of EEM funds by the State to local entities will normally be made on a reimbursement basis after costs are incurred by the local entity. The local entity may requests progress payments on a monthly or quarterly basis. At the request of an entity and Caltrans, the Commission may consider approving a one-time cash advance of funds if it can be demonstrated that such cash advance is necessary to ensure timely completion of the project**.**

This document is under "Policies and Procedures at website:
http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm

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ASSIGNMENT AND ASSUMPTION AGREEMENT (PRIVATE)

RECORDING REQUESTED BY AND
WHEN RECORDED, PLEASE MAIL TO:

Department of Transportation
Environmental Enhancement and Mitigation Program
Attn: Susan Harrington, Coordinator
1120 N Street (95814)
P. O. Box 942874 - MS 1
Sacramento, CA 94274-0001

Recorder stamp:
Applicant must record or funds are at risk.

ASSIGNMENT AND ASSUMPTION AGREEMENT (PRIVATE)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (AAA) is entered into, effective this _____ day of _____, 2003, by and between the _____ ("Assignor"), the STATE OF CALIFORNIA, ACTING BY AND THROUGH THE DEPARTMENT OF TRANSPORTATION ("Department") and the _____ ("Assignee").

RECITALS

A. Assignor executed an Environmental Enhancement and Mitigation Agreement _____, dated _____, to acquire certain portions of real property located _____ County, California, more particularly described on Exhibit AAA-A (the "Property"), attached hereto and incorporated herein by this reference. Assignor, as the applicant for conservation land funds through the Environmental Enhancement and Mitigation Program administered by Department, has received or will receive funding which will allow Assignor to acquire the Property, and subsequently, convey the Property to Assignees. The Property is the total land _____ acquired by Assignor with funds from the Environmental Enhancement and Mitigation Program (the "Overall Project"). However, Assignor will convey property title as follows:

B. As set forth in the Environmental Enhancement and Mitigation Program. Application submitted by Assignor, as "Applicant", (the "Application") attached hereto together with Exhibit of the Application, as Exhibit B, incorporated herein by reference, the purposes for acquiring the Property are broad. Furthermore, it is understood by Assignee that all uses, operations and maintenance of the Property will be to ensure in perpetuity the preservation, enhancement and protection of these stated Purposes.

C. As a condition to Assignor's receipt of funds from the Environmental Enhancement and Mitigation Program for Overall Project, Assignor entered into an Applicant-State Agreement No. _____ Environmental Enhancement and Mitigation (EEM) Program, executed n _____, with Department, hereinafter referred to as "EEM Agreement". That EEM Agreement set forth provisions for the fund transfers and cost sharing of Applicant for the Overall Project, as described by Assignor, in the Application. As specified in Article XII, Paragraph 14 of the EEM Agreement, certain

provisions survive beyond the EEM Agreement termination date, and as such, Assignee will assume such obligations and responsibilities upon assignment thereof relative to the Property acquired by Assignee. Those provisions are set forth in Exhibit AAA-C, attached hereto and incorporated herein by this reference. If any reimbursement is required pursuant to Article VI of Exhibit AAA-C, said reimbursement amount shall be calculated at the same proportional rate as the ratio between the Property and the Overall Project.

D. As another condition to Assignor's receipt of such funds from Department, Assignor executed an Agreement Declaring Restrictive Covenants (ADRC) dated _____, with Department. The ADRC provides among other things, that any owner of the Property will enter into covenant and agree to operate and maintain the Property pursuant to conditions and obligations described therein, and as set forth in the Application and EEM Agreement. The ADRC shall be recorded concurrently, with Assignor's acquisition of the Property as an encumbrance on the Property. After its acquisition, Assignor will convey the Property to Assignees, subject to the terms and conditions of the ADRC, and therefore, wishes to assign the obligations contained in the ADRC Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above, to Assignees upon Assignees' acquisition of the fee interest in the Property.

E. The ADRC provides that Assignor may assign the ADRC, its rights and obligations thereunder to Assignees, subject to the written consent of Department. Assignor desires hereby to assign the ADRC, the Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above, and its rights and obligations thereunder to Assignees, and Assignees' desires to assume Assignor's rights and obligations under the ADRC, the Application and surviving provisions in the EEM Agreement as set forth in Exhibit AAA-C and Paragraph C above.

F. All capitalized terms used in this AAA and not otherwise defined herein shall have the meanings attributed to them in the ADRC.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereunder and the mutual agreements set forth herein, the parties hereby agree as follows:

1. Assignor hereby assigns, transfers and conveys to Assignees all of Assignor's rights, title and interest as "Applicant" in and to the ADRC, the Application and EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above. Assignees hereby assumes and agrees to completely and timely perform, comply with and discharge, each and every obligation, covenant, representation, warranty, indemnification, duty and liability of Assignor under the ADRC, the Application and the EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above, in order to preserve, enhance and protect in perpetuity those Purposes stated above and identified in the EEM Application.

2. Department hereby consents to the assignment by Assignor and assumption by Assignee of Assignor's rights and obligations under the ADRC, the Application and EEM Agreement, specifically, those provisions of the EEM Agreement set forth in Exhibit AAA-C and Paragraph C above.

3. This AAA shall be recorded immediately following the recordation of the ADRC, which shall be recorded prior to the Grant Deed executed by MAS conveying the Property to Assignee being recorded.

4. If any party commences an action against another party arising out of, or in connection with this AAA, the prevailing party shall be entitled to recover from the losing party or parties its court costs and attorneys' fees and costs.

5. This AAA shall be governed by and construed in accordance with the laws of the State of California. Time is of the essence of this AAA. This AAA shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. This AAA constitutes the entire agreement of the parties hereto on the matters covered. The invalidity or unenforceability of any provision(s) of this AAA shall not render any other provision(s) invalid or unenforceable.

6. This AAA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one agreement.

IN WITNESS of the foregoing provisions the parties have signed this AAA as of the date set forth below.

ASSIGNOR
_____

By:_____

Title:_____

Date:_____

ASSIGNEE:
_____

By:_____

Title:_____

Date:_____

CONSENTED AND AGREED TO:

STATE OF CALIFORNIA, DEPARTMENT
OF TRANSPORTATION

By:_____

Title:_____

Date:_____

Notary Acknowledgments

LEGAL DESCRIPTION OF THE PROPERTY

(See attached)

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ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM ORIGINAL APPLICATION

(See attached)

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FINAL PROJECT EXPENDITURE REPORT

(AGENCY LETTER HEAD) **Date**:

Name, District Director
Department of Transportation
Street or **P.O. Box**
City, CA ***Zip Code***
Attention: ***Name,*** District Local Assistance Engineer

Final Project Expenditure Report

Description/Location of Work:
Project Completion Date:
Expenditure Authorization State Project Number:
State-Local Entity Agreement Number:

State Funds Allocated:
Expenditures Incurred: Total $

A. Payment to Contractor (Attach final pay estimate)
B. Other Project Costs:
   Preliminary Engineering
   Construction Engineering
   Any Additional Construction
   Right-of-Way (Capital and Support)
C. Liquidation Damages
D. Outstanding Contractors Claims
E. Property Acquisition (for land acquisition projects only)
F. Others (specify)

Sources and Amounts of Additional Funds used:

State Funds Allocated but not used:

CERTIFICATION

I CERTIFY THAT: to the best of my knowledge and belief, the information in this report is a true and an accurate record of project costs. The work was performed in accordance with the CTC approved scope and State funding for the project.

_____
Signature, Title and Unit of Local Agency Representative

PROJECT VERIFICATION: This verification of completion also constitutes approval to pay costs shown in the Final Invoice included in the Report of Expenditures. I have reviewed the job site and found the project completed in accordance with the scope and description of the project authorization document.

SIGNATURE:_____ **Date:**_____
District Local Assistance Engineer

SIGNATURE: _____ **Date:** _____
District Landscape Architect (if applicable)

This document is under "Policies and Procedures" at website:
http://www.dot.ca.gov/hq/LocalPrograms/EEM/homepage.htm

SCOPE CHANGE REQUEST
(USE Local Agency Letterhead)

Date:

TO District Local Assistance Engineer**:** _____
Attention: *EEM Coordinator:* _____
Address of District Office: _____

RE: Request to Amend Project Scope for project *# EEM 20xx(XXX)*

Dear _____:

The (*Local Agency)* requests that the Department of Transportation approve proposal to amend the project scope for the above-captioned project to permit (*explain request and attach a chart comparing the original project commitments—what the money was going to purchase—and what the new proposal is*). The new project scope will still fulfill the commitments, goals, intentions made in project scope as stated in the (*Applicant-State Agreement #) and the application for project EEM 20xx (XXX). (Attach a map if the request includes change of location from original location approved.)*

Please refer to the attached supporting documentation for additional information and a comparison of the original proposal to the new proposal. The proposed funding is

Original CTC Request	New CTC Request
$	$

Status of Project:

Environmental:

- CEQA – Categorical Exemption Section 15313, Class 13. To be filed upon approval of scope change.
- NEPA – NEPA is not required for this project.

Engineering:

- The PS&E development is not applicable to this project.
- Construction: Is not applicable to this project.

The project was adopted in the 20xx/20xx Environmental Enhancement and Mitigation program.
Please advise us as soon as Caltrans has made a determination regarding this scope change. You may direct any questions to (*Name*) at (*phone*) and (e-mail).

Sincerely,

Name and Title Signature

Attachments

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- Participating Cost Previously Claimed
- Subtotal - Change in Participating Posts
- Reimbursement Ratio
- Amount of this Claim
- Invoice Total

Progress payment invoices shall be mailed directly to the Accounting Service Center in Sacramento at the address given in the example. No district review will be required for progress payments however, final payment invoices shall be submitted directly to the DLAE as part of the Final Report of Expenditures and will be reviewed by the district prior to payment. A final detail estimate is not required for right-of- way only projects, since the final report of expenditures document provides the information required.

- **Force Account Projects -** Projects with Force Account work also require a Report of Expenditures. These projects are usually emergency relief type and include emergency repair work. Other federal-aid projects may incorporate all or a part of the project to be built using the force account method. A completed example of a Report of Expenditures for a project including Force Account Work is included as Exhibit 17-L. For more information on force account procedures, see Chapter 12, "PS&E," under "Method of Construction."

The DLAE shall perform a review of these documents for correct format and obvious errors and/or omissions. Upon verification that the Report of Expenditures is complete, the DLAE shall forward it to Local Programs Accounting, for processing.

STATE FUNDED PROJECTS

For State funded projects, in State transportation programs such as the Traffic Systems Management (TSM), Flexible Congestion Relief (FCR), and Environmental Enhancement and Mitigation (EEM) Program, the local agency shall complete the "Final Project Expenditure Report" (Exhibit 17-M). The report with the final invoice attached will be submitted to the DLAE.

Note: These programs were intended under the blueprint legislation as State only funded projects. However due to varying circumstances of the State budget each year, and the variations of the State Highway Account, Caltrans at times may require projects in these programs to utilize federal-aid funds. When this occurs the Federal Report of Expenditures shall be completed as described under federal-aid projects above.

The DLAE will verify project completion as described for exempt federal-aid projects, sign the report and, except for EEM projects, forward the original plus two copies to the Division of Local Assistance, HQ.

For EEM projects, the DLAE will forward the original plus two copies of "Final Project Expenditure Report," to the of Local Programs Accounting, with a copy to the EEM Program Manager in the Division of Local Assistance, HQ. Use "Final Report of Right-of-Way Expenditures" (Exhibit 17-N) for Projects involving the acquisition of real property or rights thereto with funds direct deposited into an escrow account. In this case, the DLAE will not verify project completion until the close of escrow is completed and the recordation of both the grant deed and the Agreement Declaring Restrictive Covenants (ADRC). A copy of the recorded grant deed(s) and the original ADRC will be attached to the final report of right-of-way expenditures.

Projects funded from the State/Local Transportation Partnership Program are not required to follow the procedures in this chapter for project completion. Project completion for Partnership projects are described in Chapter 15 of the *Local Assistance Program Guidelines*.

17.6 CONSEQUENCES FOR NON-COMPLIANCE

Sanctions may be imposed by Caltrans on agencies that are found in noncompliance with the reporting requirements listed above in Section 17.5. The type of sanctions are further discussed in Chapter 19, "Process Reviews."

If there is a discrepancy between the Final Invoice and Final Detail Estimate, the agency is notified by phone that a discrepancy exists and their payment will be delayed until it is resolved. If the problem cannot be resolved within (180) days, Local Program Accounting shall bill the agency for all expenditures made on this project. If the local agency does not pay the accounts receivable bill within thirty (30) days, Local Program Accounting shall initiate action with the State Controller to offset funds due the local agency.

If the local agency has previously included in their billing, items not reimbursable by the FHWA or over-billed progress payments that exceed the Final Estimates, the local agency shall be billed for the overpayment. The local agency shall pay the State's accounts receivable bill within thirty days or Local Program Accounting shall initiate action with the State Controller to offset funds due the local agency. The same policy shall apply to those recommendations from Process Review Reports on applicable findings or the improper utilization of Disadvantaged Business Enterprises.

17.7 REFERENCES

23 CFR 635 subpart D
23 CFR 637 subpart B
23 CFR 640.113
23 CFR 635.126 and Section VI of FHWA From-1273
Caltrans *Construction Manual*, Chapter III, Section 3-00, "Project Records and Reports"
Caltrans *Construction Manual*, Chapter VIII, Section 8-01,8-02, and 8-03, "Sampling and Testing"
United States Code, Title 23 Chapter 1, Section 121, "Payment for States Construction"

- In the absence of prior approval documentation, the use of publicly owned equipment, mandatory use of borrow/disposal site, use of patented/proprietary materials, use of warranty/guaranties, and use of agency-furnished materials, shall make all or part of the construction phase ineligible for reimbursement with federal funds (see Chapter 12, "PS&E," in this manual).

- Failure to submit a "Material Certificate" shall result in loss of funding for the construction phase. Failure to adequately document and address all exceptions to the certification will result in all or partial loss of reimbursement. Failure to implement an approved materials and testing program for the project will result in the loss of federal funds for the project (see Chapter 16, "Administer Construction Project," and Chapter 17, "Project Completion," in this manual).

- Failure to enforce the Contract DBE provisions with regard to utilization, substitution, or good faith determination and documentation will make all or part of the construction phase ineligible for reimbursement with federal funds (see Chapter 9, "DBE," in this manual).

- Failure to maintain the completed project (roadway and appurtenances constructed with federal funds and/or mitigation sites) or portions of the project shall result in repayment of all or a portion of the federal reimbursement. (see Chapter 18, "Maintenance," in this manual).

Examples of some of most common (found by Caltrans) Major Project Deficiencies (State) are:

- RTPAs that use Exchange funds for non-Article XIX purposes or for other than projects will have to return the funds given to them (see Chapter 18, "Optional Federal Exchange and State Match Programs," in the *Local Assistance Program Guidelines*).

- Counties that use Exchange funds for other the non-Article XIX purposes will have to return the funds given to them (see Chapter 18, "Optional Federal Exchange and State Match Programs," in the *Local Assistance Program Guidelines*).

UNRECOVERABLE PROJECT DEFICIENCY

An Unrecoverable Project Deficiency is defined as "a deficiency of such magnitude as to create doubt that the policies and objectives of Title 23 of the USC (or other applicable Federal codes) will be accomplished by the project," (quote from "PS&E Certification") and the project has proceeded to the point that the deficiency cannot be corrected. <u>This level of deficiency shall result in the withdrawal of all or a portion of the federal and/or State funds from the project</u>.

Examples of some of the most common (found by Caltrans and FHWA) Unrecoverable Project Deficiencies (Federal) are:

- Projects that are not on a approved FTIP/FSTIP are not eligible for reimbursement with federal funds for any project activities prior to approval of the FTIP/FSTIP and project authorization (see Chapter 2, "Financing the Federal-Aid Highway Program," in the *Local Assistance Program Guidelines*.)

- Any preliminary engineering, right of way and construction activities done prior to authorization are not eligible for reimbursement (see Chapter 3, "Authorization," in this manual).

- Violation(s) of permit requirements or conditions obtained as a requirement of the environmental process or failure to secure required permits and environmental approvals will result in a loss of all or part of the federal project funding (see Chapter 6, "Environmental Procedures," in this manual).

- No pre-award audit for consultant contracts over $250,000.

- Consultant contract awarded, but not through competitive negotiations, when a noncompetitive negotiated contract is not warranted.

- Design work (over and above what is required for the environmental document) prior to environmental clearance is not eligible for reimbursement with federal funds (see Chapter 3, "Authorization," Chapter 6, "Environmental Procedures," and Chapter 12, "PS&E," in this manual).

- Failure to include required contract provisions, Form FHWA-1273 and other contract provisions - certifications, in the bid documents shall make the construction phase of the project ineligible for federal reimbursement (see Chapter 12, "PS&E," in this manual).

- Right-of-Way Acquisition prior to environmental clearance (except for hardship and protection with FHWA prior approval) is not eligible for federal reimbursement (see Chapter 3, "Authorization," Chapter 6, "Environmental Procedures," and Chapter 13, "Right of Way," in this manual).

- Additional costs resulting from incorrect statements on right-of-way certification are not eligible for federal reimbursement (see Chapter 13, "Right-of-Way," in this manual).

- Failure to open the bids publicly, failure to read the bids aloud or failure to discuss reason(s) for not reading bid(s) aloud shall make the construction phase ineligible (see Chapter 15, "Advertise and Award Project," in this manual).

- Award of the construction contract to other than the lowest, responsive bidder for bids based on competition shall make the construction phase ineligible for reimbursement with federal funds (see Chapter 15, "Advertise and Award Project," in this manual).

- Failure to evaluate good faith efforts for award of contract (see Chapter 9, "Civil Rights and DBE," in this manual).

- Negotiations with bidder(s) prior to award, except for force account projects, shall make the construction phase ineligible for reimbursement with federal funds (see Chapter 12, "PS&E," and Chapter 15, "Advertise and Award Project," in this manual).