

SPECIAL MEETING

SACRAMENTO CITY COUNCIL

MONDAY, JANUARY 11, 1988

3:00 P.M.

I HEREBY CALL a Special Meeting of the Sacramento City Council to meet jointly with the Sacramento County Board of Supervisors and the Sacramento Regional Transit District, at the Board of Supervisors Chambers, County Administration Building, 700 H Street, Sacramento, California, for the following purposes:

Discussion and action associated with formation of a Transportation Authority to submit to the voters a proposal to increase the sales tax to fund road and other public transportation costs, including but not limited to the following issues:

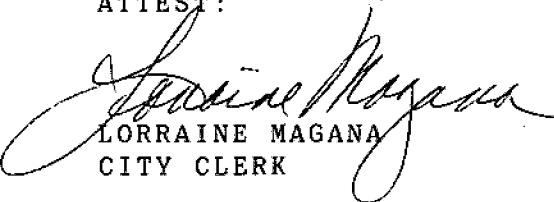
- (a) Sales tax increase revenue allocation to Regional Transit and for other transportation purposes;
- (b) Composition of the governing body of the Transportation Authority;
- (c) Type of Transportation Expenditure Plan to be developed.
- (d) Timing and procedure for formation of the Authority, planning, and submission of the sales tax increase measure to the voters.

ISSUED: This 7th day of January, 1988.



ANNE RUDIN
MAYOR

ATTEST:



LORRAINE MAGANA
CITY CLERK

CITIZENS
FOR TRAFFIC
RELIEF

431
J Street
Fourth
Floor

Sacto.,
CA 95814
916.447.
8868

Bev
(dist to Bd
members
1/8/88)

SACRAMENTO COUNTY BOARD OF SUPERVISORS

'88 JAN -8 P2:05

January 8, 1988

TO: Sacramento County Board of Supervisors
Sacramento City Council
Sacramento Regional Transit Board of Directors

FROM: Executive Committee
Citizens for Traffic Relief

RE: Sales Tax Revenue Split
(Special meeting January 11, 1988, at 3:00 p.m.)

The Executive Committee of the Citizens for Traffic Relief has voted to support Alternative 2 of the County Executive and City Manager's January 7, 1988, recommendations to the Sacramento County Board of Supervisors, Sacramento City Council, and Sacramento Regional Transit District Board of Directors.

We are requesting that Alternative 2 be modified slightly to allow some flexibility while guaranteeing that the basic components agreed to by all parties will be maintained throughout the 20 year term of the sales tax.

Specifically, we are requesting that the ballot language clearly states that sales tax revenues will be allocated as follows: (i) exactly 1% for air quality mitigation; (ii) not more than 1% for administrative purposes; (iii) situs allocation to Folsom, Isleton and Galt; (iv) the remaining revenues be split 65% for road improvement projects, 33.33% for Regional Transit, and 1.67% for E.H.T.

To provide flexibility to the Transportation Authority we are asking that a methodology be developed and language inserted in the ballot language to allow for a fluctuating split on an annual basis. Compliance with the above mentioned split would be maintained on a tri-annual basis.

In addition, ballot language should state that all jurisdictions participating in the Transportation Authority maintain or adopt a reasonable developer fee prior to the distribution of the sales tax revenues.

While this alternative does not contain all the agreements written into AB 89, it does satisfy the broad-based coalition of groups represented on the Executive Committee.

This alternative provides the Transportation Authority with necessary flexibility to operate in an efficient manner. It will also assist voters in understanding the major elements of the plan.

Sincerely,


Arliss Pollock
Chairman

AP:ss

Enclosure

cc: R. D. Reynolds
Brian Richter
Walter Slipe
David Boggs
Lee Elam

CITIZENS FOR TRAFFIC RELIEF

EXECUTIVE COMMITTEE

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454-2281 or 444-3300

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Citizens for Traffic Relief - Executive Board (continued)

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BOB BELL
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BILL MAZZA
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361-0284

BILL DURANT
Executive Director
Paratransit
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454-4191

COUNTY OF SACRAMENTO
CALIFORNIA

January 7, 1988

To: Sacramento County Board of Supervisors
Sacramento City Council
Sacramento Regional Transit District Board of Directors

From: County Executive and
City Manager

Subject: **TRANSPORTATION AUTHORITY - (Report for
Special Meeting January 11, 1988, at 3:00 p.m.)**

Exploding population growth within the unincorporated area of the County of Sacramento and the cities within the County is creating an immediate and urgent need for extraordinary revenue with which to finance the construction of street and highway improvements, public transit services, and elderly and handicapped services, and for coordination in the expenditure of those revenues in a manner conducive to the creation of an integrated traffic circulation system within incorporated and unincorporated areas for the purpose of achieving efficient and safe vehicular traffic movement at the lowest capital and environmental cost.

As a result of this identified need, local government and appropriate citizen groups (Sacramento Sales Tax Task Force), interacting over a period of some 18 months, drafted AB 89 which was introduced by Assemblyman Lloyd Connelly. AB 89 was fashioned to serve the particular characteristics of Sacramento, especially its large unincorporated area population, lack of contiguous cities and existence of R.T. operating as the transit operator for Sacramento. AB 89 passed through the Assembly and Senate only to be vetoed by the Governor with a statement that SB 142, a generic sales tax for transportation bill, would provide for the same outcome to local jurisdictions. The Governor signed SB 142 into law in September, 1987.

While both SB 142 and AB 89 provided a mechanism by which Sacramento voters could approve a sales tax increase for transportation purposes, there are significant differences between the two measures -- differences which could affect agreements between parties supporting the measure. Those differences which must be resolved prior to the finalizing of agreements and the drafting of ballot language by March 9, 1988 include:

1. Split of revenues applicable to roads, transit, and elderly and handicapped transportation (hereinafter E.H.T.)
2. Make up of the Authority and CEQA - see attached report from Lee Elam.

AB 89, as vetoed, did not specify a split of revenues between road and transit. However, it did provide that if the Local Transportation Authority agreed to a split prior to a vote by the electorate, that split would remain intact throughout the term of the sales tax. In this respect, the Sales Tax Task Force had agreed that the split would be 65% roads, 33.33% R.T. and 1.67% for E.H.T. The basis for computing the split was, for calculation purposes, the total of sales tax proceeds and developer fees or taxes (i.e., the City of Sacramento Major Street Construction Tax) which were to be imposed or maintained by the County and City as a condition of receiving sales tax revenues. Under this agreement, the entire allocation to R.T. and for E.H.T. would have come from sales tax proceeds.

SB 142 does not expressly provide any language relative to a split of the transaction tax revenues. Such a division is, however, permissible upon agreement of the affected parties. The Sacramento Sales Tax Task Force recognized this fact and agreed to honor the split that had been agreed to in connection with AB 89.

A tentative draft of the transportation expenditure agreement between all the involved jurisdictions provides that the transaction tax will be split: 65% roads, 33.33% transit and 1.67% E.H.T. Additionally, those jurisdictions being serviced by R.T. would be required to contribute 33.33% and 1.67% respectively to R.T. and E.H.T. directly from their developer fee or tax. With the above methodology in mind, it was anticipated that the split of the sales tax would be noted in the ballot language in order to provide voter approval of the split.

The City of Sacramento noted by letter on December 11, 1987, that they could not sign the tentative agreement in its present form because enacting language imposing their Major Street Construction Tax does not allow those revenues to be expended for transit projects or operations. The City asked that the original plan to make all allocations to R.T. and to E.H.T. from sales tax revenues be maintained.

The Sales Tax Task Force has developed two alternative solutions to be considered by the governing bodies relative to the split of revenues.

1. Rely on the AB 89 language in an agreement signed by all jurisdictions involved and the Authority. The agreement will specify that the revenues to be split will include the adopted sales tax generated monies plus an amount not to exceed 8/10 of 1% of the new construction value for the respective year. The revenue for the latter distribution will be derived from the County's developer fees and the City's Major Street Construction Tax. The allocation to R.T. and to E.H.T. will be exclusively from sales tax revenues. The agreement will also provide for situs allocation to the cities of Folsom, Isleton and Galt contingent upon their adoption of a developer fee or tax. Those cities will not be obligated to a transit split until they are serviced by R.T.

The split would not be included in the ballot language. Rather, this alternative envisions an explanation of the revenue sources and proposed division in the ballot pamphlet, avoiding a lengthy and potentially confusing ballot measure.

2. Place language on the ballot calling for a sales tax revenue split of 65% roads, 33.33% R.T. and 1.67% E.H.T. This language would result in only the sales tax revenue being distributed as per the identified split while still allowing for situs allocation to Folsom, Isleton and Galt. In this situation, transit interests would need to solicit funds from developer fees or taxes directly from the respective City Council or the Board of Supervisors. Because the City cannot distribute funds to transit from its Major Street Construction Tax revenues, there is a potential that the County may agree to transit allocations from developer fees while the City contributes nothing from its tax. However, it should be noted that the County and City have agreed to maintain their current E.H.T. funding in the amounts of \$66,000 and \$650,000, respectively.

In reviewing the two alternatives, we note the following:

ALTERNATIVE 1

1. Provides that the total transportation fund, consisting of the proposed sales tax and developer fees collected by the City and County, would be split 65% for roads, 33.33% for R.T., and 1.67% for E.H.T. by an agreement among the parties and the Authority.
2. Honors the original agreements on the sales tax-developer fee split made among the agencies when negotiating the provisions of AB 89.
3. Leaves the split off the ballot measure which would allow for a change in the split in some future year, but only by agreement among all of the parties.
4. Guarantees by agreement that R.T. and E.H.T. will receive their respective percentage shares of the total fund.

ALTERNATIVE 2

1. Provides that the split of the sales tax only of 65% for roads, 33.33% for R.T., and 1.67% for E.H.T. is included on the ballot.
2. Provides no guarantee that R.T. or E.H.T. would receive any funds from developer fees collected by the City or County.

3. Prevents the City developer fee from being considered even for calculation purposes in determining the funds to be distributed to R.T. and E.H.T.
4. Would create the situation where the County may be contributing a portion of its developer fee directly for transit and the City would not.

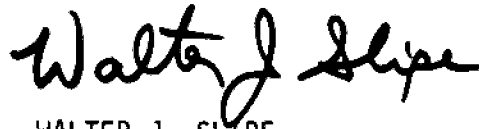
Based upon the foregoing comparison of alternatives and prior agreements among the parties, we feel obligated to recommend Alternative 1. Alternative 1 provides the greatest degree of flexibility and satisfies all previous agreements. Alternative 2 is, however, workable, and in the context of the total transportation funding program it would probably yield approximately the same result over the long term. Alternative 2, however, will probably result in less total proceeds going to transit.

We recognize that the Board's and Council's deliberation on this matter must include many factors, not the least of which is the possibility of success at the polls. Our objectives should be to select the alternative with the broadest possible support and, therefore, the greatest possibility for success.

Respectfully submitted,



BRIAN H. RICHTER
County Executive



WALTER J. SLIPE
City Manager

RDR:gp

Attach.

cc: Lee Elam, County Counsel
R. Dee Reynolds, Assistant to the County Executive
Doug Fraleigh, Public Works Director
Baxter Culver, Legislative Advocate
Al Freitas, Environmental Coordinator
Diane Balter, Sacramento Deputy City Attorney
Philip Mering, Legal Counsel, Folsom & Isleton
John Stovall, Legal Counsel, Galt
John Ketelsen, Legal Counsel, Regional Transit
David Boggs, Regional Transit
Bill Durant, Paratransit
Larry McConnell, Citizens for Traffic Relief

COUNTY OF SACRAMENTO

Inter-Department Correspondence

January 6, 1988

To: Chairperson and Members
Board of Supervisors

Mayor and Members
Sacramento City Council

From: L. B. Elam
County Counsel

Subject: Transportation Sales Tax Increase Issues - Schedule
Special Joint Meeting - January 11, 1988

This memorandum is a companion to one issued by the County Executive and City Manager relating to the policy issue of how the sales tax increase will be allocated to various transportation functions. The subject matter of this memorandum consists of a discussion of other outstanding issues associated with implementation of the program.

1. Time Schedule

S.B. 142 establishing the statutory authorization for the transportation sales tax increase, became effective January 1, 1988. The charge has been to establish the Transportation Authority and take the other actions necessary to place the sales tax measure on the June, 1988 ballot. Subject to the constraints of the CEQA requirements discussed below, the following schedule is suggested:

1. January 11, 1988 -- joint session of governing bodies to formulate basic policy decisions.

2. January 19, 1988 -- adoption by Board of Supervisors of Resolution establishing the Transportation Authority, attached to which is the proposed agreement between the County, the Cities and Regional Transit providing for the revenue allocations and other matters.

3. January 19 through January 30, 1988 -- ratification by Sacramento, Folsom, Galt, and Isleton of the Resolution adopted by the Board of Supervisors on January 19.

4. January 31 through February 9, 1988 -- appointment by the Board of Supervisors and Sacramento City Council of the members of the governing body of the Authority. The governing body will consist of 11 members: 5 County representatives, 4 Sacramento representatives, and 2 at-large representatives who must reside within the unincorporated area.

A minimum qualification for any member of the governing body of the Transportation Authority is that he or she be an elected official of a local governmental entity within or partly within the County. (Pub.Util.C., Sec. 180051). There will need to be appointments of at least two elected officials of local governmental entities who are not either members of the Board of Supervisors or of the Sacramento City Council. If one or more Supervisors or Councilpersons elect not to serve, the number of independent appointments will be increased accordingly. (See the discussion below).

5. February 10 through 28, 1988 -- one or more meetings of the governing body of the Transportation Authority to organize itself, conduct public hearings on the Transportation Expenditure Plan, and adopt the Transportation Expenditure Plan.

6. March 1 through 10, 1988 -- formal approval by the County, the Cities and Regional Transit of the regulatory agreement, and adoption by the governing body of the Transportation Authority of the ordinance submitting the sales tax increase to the electorate on the June, 1988 ballot.

In addition to the foregoing actions, there may be administrative actions required by the Board of Supervisors and the City Councils associated with program implementation which are recommended by the Chief Executive Officers of those agencies.

2. Composition of Governing Body

In an opinion by this Office dated December 10, 1987, (copy enclosed) which was considered by the Board of Supervisors on December 15, 1987, it is concluded that the voting disqualification limitations contained in Section 84308 of the Government Code will potentially apply to specified actions by elected officials as members of the governing body of the Transportation Authority. In general, Section 84308 prohibits an elected official from voting on a matter in which there is interest by a campaign contributor who has lobbied the vote and has contributed \$250 or more to the official's campaign during the preceding 12 months.

In light of the foregoing, the Board of Supervisors directed this Office to return on January 5, 1988, with an appropriate revision of the regulations governing composition of the governing body. The matter has been continued to the joint session on January 11.

The following is a revision of Paragraphs 3-a and 4 of the November 17, 1987 draft resolution by which the Transportation Authority would be formed.

"3. Composition of Governing Body. The composition of the governing body of the Authority shall be as follows:

a. Except as hereinafter provided, the governing body shall consist of:

(1) Five Supervisors or other elected officials of local governmental entities, who shall be appointed by and serve during their terms of office at the pleasure of the Board of Supervisors of Sacramento County;

(2) Four Council persons or other elected officials of local governmental entities, who shall be appointed by and serve during their terms at the pleasure of the City Council of the City of Sacramento; and

(3) Two at-large elected officials of local governmental entities who, until their seats are filled in the manner prescribed by Subparagraphs "b", "c" or "d", below, shall be residents of the unincorporated area of Sacramento County. The at-large members shall be appointed by the members of the governing body of the Authority, and shall be subject to removal from office during their terms solely for cause. The appointment of such members shall be by the affirmative votes of not less than six members of the governing body of the Authority."

"4. Terms of Office. The term of office of each member of the governing body of the Authority shall be coextensive with the term of the elective office which the member holds.

In the event a particular member of the governing body of the Authority announces that he or she will refrain from

voting on a particular action pending before that governing body on grounds of a conflict of interest disqualification from voting, the appointing authority for that member may appoint a substitute elected official of a local governmental entity to serve on the governing body for the limited purpose of participating in the determination and casting the vote upon the matter to which the disqualification relates."

The current provision of the November 17, 1987 draft resolution ordain that the five Supervisors and four Sacramento City Councilpersons sit on the governing body of the Authority, and that the term of office of each member of that governing body is coextensive with the underlying term of elective office. The above-quoted revisions would permit either individual Supervisors and Councilpersons or other local elected officials to serve on the governing body. Alternatively, each appointing authority would be permitted to appoint a substitute representative if an existing member of the governing body announces in advance a particular conflict of interest voting disqualification on a matter pending before the Authority. The foregoing revisions would allow each Supervisor, Councilperson or other elected official to decide whether he or she desires to serve at all on the governing body, and provide the flexibility in the event of a decision to serve for appointment of a substitute should a particular conflict of interest disqualification occur.

The above-quoted provisions would not, however, relieve an official who has elected to serve on the governing body of one of the less emphasized inhibitions of Section 84308. Under Section 84308(b) an official is prohibited from receiving a campaign contribution of \$250 or more from an interested party at any time while a particular matter is pending, and for a period of three months following final action on the matter. An elected official is not relieved of this inhibition simply because he or she disqualifies himself or herself from voting on the matter. That is -- an official is prohibited from receiving contributions of \$250 or more from a party interested in the proceeding for a period of 90 days following final action in the proceeding, whether or not the official has cast a vote in the proceeding.

Accordingly, an elected official serving on the governing body of the Authority could, to the extent Section 84308 is applicable to a particular proceeding, be prohibited from receiving \$250 or more from a party interested in a proceeding and for 90 days thereafter, even if the official disqualifies himself or herself from voting in the proceeding. Although an official should be permitted to resign from the governing body

Chairperson and Members
Board of Supervisors
Mayor and Members
Sacramento City Council

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before the vote in a proceeding is taken and not be subject to the inhibitions of the Section 84308(b) limitations; we express no opinion whether an official would be freed from such inhibitions if the sole purpose of the resignation is to preserve his or her ability to receive campaign contributions above the threshold amount while the proceeding is pending and for 90 days thereafter.

Therefore, the impact of Section 84308(b) should be carefully considered in any determination by an elected official to serve on the Authority, even with the suggested revisions quoted above.

3. CEQA Requirements

As the Board and Council are aware, S.B. 142 requires the new Transportation Authority to adopt a County Transportation Expenditure Plan preceding placement of the sales tax increase proposal on the ballot. The Plan is required to be mailed to registered voters. In Sacramento, it is also contemplated that the new Authority, County, Cities and Regional Transit will enter into a contract which, among other things, apportions revenues derived from the increase between public transit functions and road construction projects, and between road construction projects of a regional nature and those of a local nature.

We have concluded that both the Transportation Expenditure Plan and the Contract will constitute a "project" within the meaning of the California Environmental Quality Act, and must be subjected to an environmental analysis.

If a full Environmental Impact Report is required, it will not be possible for the sales tax increase to be placed on the ballot in the June, 1988 election. Such a Report would probably be necessary if the Transportation Expenditure Plan identifies specific road construction projects which are not currently contained in Traffic Circulation Elements of General Plans. If the Transportation Expenditure Plan calls for expenditure of the sales tax increase only for projects included within existing Traffic Circulation Elements, it is possible that a Negative Declaration would be appropriate. The scope of the environmental study will, obviously, turn in large part upon the views of the Environmental Coordinator.

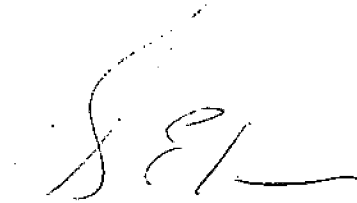
In light of the foregoing, the Transportation Expenditure Plan is being prepared in a manner which calls for expenditure of

Chairperson and Members
Board of Supervisors
Mayor and Members
Sacramento City Council

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January 6, 1988

the sales tax increase solely on projects currently included
within Traffic Circulation Elements.



L. B. ELAM
County Counsel

cc: Dee Reynolds, Admin. & Finance Agency
Doug Fraleigh, Dir., Public Works
Al Freitas, Environmental Coordinator
Diane Balter, Sacramento Deputy City Attorney
Philip Mering, Legal Counsel, Folsom & Isleton
John Stovall, Legal Counsel, Galt
John Ketelsen, Legal Counsel, Regional Transit

LBE:ph
m-bd/council



COUNTY OF SACRAMENTO

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Richard G. Llata	Steven Kaiser

L.B. Elam
County Counsel
Robert L. Pleines
Assistant County Counsel

December 10, 1987

Chairperson and Members
Board of Supervisors
County of Sacramento
700 "H" Street, Suite 2450
Sacramento, California 95814

Re: Application of Section 84308
to Transportation Authority
Agenda - December 15, 1987 - Item No. 85

Honorable Chairperson and members:

At its meeting on November 17, 1987, the Board of Supervisors inquired whether Section 84308 of the Political Reform Act applies to the actions of the governing body of a proposed Transportation Authority. And, if Section 84308 does have application, the Board inquired into the relationship between the 84308 restrictions and those adopted by the Board under its new Campaign Reform Ordinance.

During 1987, the Legislature enacted SB 142. That bill, to become effective January 1, 1988, authorizes a county to establish a new public entity known as a Transportation Authority. Once established, the Authority may propose to the voters up to a one-cent increase in the sales tax. If approved, the sales tax increase evolves to the Authority, who is empowered to expend the revenues for roads and other transportation programs.

The powers of the Authority include levying the sales tax increase, receiving the revenues, and allocating the revenues to particular road improvement projects. Usually, but not always, ones proposed by the County and cities within the County. The allocations would be made on an annual basis for specifically identified projects, accompanied by cost estimates, in specific amounts, and the duty to build the projects for which the

allocations are made would be established by contracts between the Authority and the County or cities.

Selection by the Authority of a particular funding project, or allocations or contracts in connection therewith, may very well create a special benefit or use for specific persons. That is, there may be a relationship between places where new roads are constructed, and locations or raw land thereby permitted to be developed. Moreover, there is the possibility that the County or cities could impose stringent zoning controls on new development, the release of which might be conditioned upon allocations for particular road projects.

Under the new law, members of the governing body of the Authority must be elected officials of local governmental agencies, and individual supervisors seated on the body must constitute less than a majority of the entire membership.

Opinion

Section 84308 of the Political Reform Act applies to all members of the Transportation Authority, including those members of the County Board of Supervisors who are members of the governing board of the Authority.

Section 84308 will disqualify a Supervisor from voting on a funding project as a member of the governing body of the Transportation Authority if:

- a) The funding project will materially influence the use or value of particular land in a manner which is not common to a large volume of properties;
- b) The Supervisor has, during the twelve months preceding action on the project, received campaign contributions of \$249 or more from a person possessing a financial interest in the particular property; and
- c) The campaign contributor or his agent has overtly encouraged favorable action on the funding project by lobbying the concerned Supervisor, other members of the governing body, or by appearing before the governing body of the Authority.

Section 84308 and the County's Campaign Reform Ordinance embody fundamentally different and contrasting regulatory approaches. With limited exceptions, Section 84308 does not restrict the amount of campaign contributions which a candidate

receives. Rather, it disqualifies the candidate from voting if contributions in excess of \$249 have been received during the past year from a person interested in the action, and certain other circumstances are present. The County ordinance establishes an absolute limit on the amount of campaign contributions which may be received by a candidate, but does not disqualify the candidate from voting on a matter, even if the contributor is interested in the matter and the contribution limit has been violated.

Under the County Ordinance, a member of the Board of Supervisors may properly receive \$1,000 from a contributor during an election year, and \$250 during off-election years. The Ordinance imposes these limits on individuals, without regard to potential aggregation of contributions by contributors mutually interested in particular properties. Therefore, compliance with the Ordinance may reduce the number of actions upon which a Section 84308 disqualification will be required. However, for a candidate who accepts contributions in the maximum amounts authorized by the Ordinance there would be a significant potential for disqualification from voting under Section 84308.

Because of the potential for aggregation or combination of campaign contributions, it is virtually impossible to develop a strategy regarding the receipt of campaign contributions that would insulate an individual member of the Board from a disqualification requirement in 84308 proceedings of the Transportation Authority. However, if it is known that there is a possibility that a particular person or individual will be interested in and actively advocate in relation to an entitlement for use proceeding before the Authority, limitation of the receipt of their contribution to \$249 or less would be a practical step in reducing the possibility of disqualification.

Where a person or entity is involved in an 84308 proceeding before the Authority, that person or entity will be prohibited from contributing more than \$249 to a member of the governing body during the pendency of the proceedings, regardless of whether the member disqualifies himself or herself from voting on the matter. Consequently, although the Campaign Reform Ordinance may permit contributions up to \$1,000 in an election year, the Political Reform Act will, in fact, limit contributions from contributors under the foregoing circumstances.

Analysis

I. SECTION 84308 APPLIES TO ALL MEMBERS OF THE TRANSPORTATION AUTHORITY

Section 84308 imposes contribution limitation, disclosure and disqualification requirements on members of appointed boards, commissions or authorities who make decisions involving licenses, permits or other entitlements for use.

Section 84308 deals specifically with campaign contributions and government decision-making by officials who serve on a specific type of public agency. The law applies to board members, commissioners or other individuals who serve on state or local government agencies defined in Section 84308(a)(3), and who make decisions in proceedings which involve licenses, permits or other entitlements for use.

Section 84308(a)(3) exempts from the definition of "agency": ". . . local governmental agencies whose members are directly elected by the voters . . ." Section 84308(a)(3) goes on to more narrowly refine the exemption by adding: "However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency."

Regulation 18438.1, promulgated by the Fair Political Practices Commission, further clarifies the local government bodies which are exempted from the definition of "agency" for purposes of Section 84308 by stating:

(a) The officers of an agency exempted by Government Code Section 84308(a)(3) are exempted only when:

(1) They are acting as members of the governing body of the agency, and the body is acting in its entirety as itself or as the ex officio governing body of any other agency . . . ; or

(2) They are acting as members of any committee or subgroup of the governing body of the agency which is composed solely of members of the governing body of the agency.

(b) The exemption for the officers of local governmental agencies who are directly elected by the voters applies only to agencies whose entire membership consists of officers directly elected by the voters to serve on that agency."

The members of the Sacramento County Board of Supervisors are directly elected by the voters. Thus, when the Board of Supervisors sits as a body, in its entirety, without additional members, the Supervisors are exempt from Section 84308.

When the Board of Supervisors is required to serve in its entirety with other individuals, to constitute a public agency, the Supervisors are subject to the requirements of Section 84308. In the advice letters of counsel for the Fair Political Practices Commission, the exemption for legislative bodies has been narrowly confined to the situation where a legislative body such as a board of supervisors is exercising its authority to act as a body or members of the board are acting as a committee of that body. Accordingly, they have advised on several occasions that a joint powers authority or special district whose board is comprised entirely of elected officials is not exempt from Section 84308 if those officials are from different legislative bodies, even if fewer than all five Supervisors are seated on the body. See, FPPC Advice Letter Nos. A-83-047 (Los Angeles County Transportation Commission); A-87-214 (Alameda County Transportation Authority).

When making entitlement for use decisions as a member of the governing board of the Transportation Authority, all members will be subject to Section 84308.

II. UNDER CERTAIN CIRCUMSTANCES, TRANSPORTATION AUTHORITY PROCEEDINGS FOR THE SELECTION OF FUNDING PROJECTS, OR ALLOCATIONS AND CONTRACTS IN CONNECTION THEREWITH, WILL BE 84308 PROCEEDINGS

A. Section 84308 applies to public agency action creating a special use or benefit for specific persons.

The restrictions and requirements of Section 84308 apply only to "proceedings involving a license, permit or other entitlement for use".

Under certain circumstances, the selection by the Transportation Authority of particular funding projects, or allocations and contracts in connection therewith, will constitute an "entitlement for use". See FPPC Advice Letters Nos. A-83-043, A-83-015.

Counsel for the Fair Political Practices Commission has acknowledged that the term "entitlement for use" does not have a set legal meaning. See FPPC Advice Letter No. A-85-050. However, said counsel has described the intent of Section 84308 as follows:

"The overall scheme and purpose of Section 84308 suggests that the types of proceedings which should be covered are those in which specific, identifiable persons are directly affected or in which there is a direct substantial financial impact upon the participants . . ."

"In those situations where a [public agency decision] involves the creation of a special use or benefit to [specific] persons . . . the proceedings . . . are proceedings which involve an "entitlement for use" covered by Section 84308."

(See FPPC Advice Letters Nos. A-85-050, at pp. 2, 4)

"The law is intended to apply decisions which have a direct and significant effect upon specific parties."

(See FPPC Advice Letter No. A-87-220)

In view of the foregoing intent, it is apparent that Section 84308 would have application to any Transportation Authority proceeding involving the funding of a road project where such funding enables the development of specific property or otherwise creates a special use or benefit for specific parties.

B. Section 84308 only applies where final discretionary acts of the Authority are necessary steps in obtaining a special use or benefit for specific persons.

In order to constitute an entitlement for use, the decision of the public agency must in fact entitle a private party to a special benefit or use. That is, only final discretionary acts will be considered entitlements for use. See People v. County of Kern (1974) 39 Cal.App.3d 830, 840 (A tentative tract approval was not deemed to be an entitlement for use where it was conditional upon the rezoning of the property.); and Friends of Lake Arrowhead v. Board of Supervisors (1974) (38 Cal.App.3d 497, 509, A tentative tract map and site development were deemed to be an entitlement for use where they were consistent with the applicable general plan and zoning for the property and were therefore the final discretionary acts of the public agency.)

The foregoing notwithstanding, the final action of a particular agency will be deemed to be an "entitlement for use", even though action of a second agency is required before the actual use of the entitlement. In Bozung v. Local Agency Formation Commission (1975) 13 Cal.3d 263, 278-279, the California Supreme Court held that a local formation commission's approval of annexation of territory to a city was an "irrevocable step" as far as that particular agency was concerned, and thus involved the issuance of an entitlement for use. The Court concluded that although an individual may not actually obtain an entitlement because of the subsequent failure of the city to approve the annexation, the final discretionary act of the

commission would be deemed to be an entitlement for use, for it was a necessary step to such entitlement. See also People ex rel. Younger v. Local Agency Formation Commission (1978) 81 Cal.App.3d 464, 476.

If the action of a public agency is not a necessary step or precondition to a special benefit or use by a private person, said action does not constitute an "entitlement for use". In Simi Valley Recreation and Park District v. Local Agency Formation Commission (1975) 51 Cal.App.3d 648, 663-666, the court determined that detachment proceedings before a local agency formation commission did not constitute an "entitlement for use" since, under the particular circumstances, the detachment did not make any change whatever in the uses to which the land might be put.

Any particular road project approved by the Transportation Authority, or any funding or allocation decision in connection therewith, would be a final decision within the meaning of Section 84308. However, it would not constitute an entitlement for use with respect to an owner of land unless it changed the uses to which the land might be put.

C. Section 84308 does not apply to proceedings where general policy decisions or rules are made or where the interests are many and diverse.

Proceedings where general policy decisions or rules are made or where the interests affected are many and diverse, are not deemed to be "entitlements for use" and are not covered by Section 84308. Citing Curtis v. Board of Supervisors (1972) 7 Cal.3d 942, counsel for the Fair Political Practices Commission has concluded that proceedings, such as incorporation proceedings, which are varied and diverse, and where the issues directly affect all of the people, businesses and property within the proposed incorporation boundaries, are not entitlements for use within the meaning of Section 84308. See FPPC Advice Letter A-85-050.

Under certain circumstances, therefore, a particular road project may involve interests that are so varied and diverse and affecting such a large population of people, businesses and properties, that such a project would not constitute a "entitlement for use" within the meaning of Section 84308. However, the risks of being charged by the FPPC with a violation of Section 84308 is so great, that this exception should be narrowly construed in practice.

D. Any potential for the disqualification of a member of the Authority would generally be limited to situations where a person with a financial interest in a project, or his agent, lobbies or testifies in order to influence the funding decision.

Most, if not all, of the applicants to the Transportation Authority for funds are public entities, which do not make campaign contributions. However, the fact that applicants for funds are public agencies does not change the fact that decisions of the Transportation Authority may indirectly affect private financial interests. Consequently, while there may be no private applicants for the funds, there may be persons with a financial interest who seek to influence the funding decision of the governing board of the Transportation Authority.

Where there are no private applicants, the situations in which disqualification of a member of the Authority might be required are reduced to those where a private party who has contributed to a member has a financial interest in the decision of the Authority, and actively supports or opposes the application by lobbying in person, testifying in person, or otherwise acting to influence the member in the making of the funding decision. See FPPC Advice Letters Nos. A-083-015, A-083-047. However, the "active support" by a contributor may manifest itself in an appearance before the Authority, a private appointment in the office of the member of the governing board, or even a casual (or not so casual) informal conversation while passing on the street or at a social event. It has been the experience of this Office in dealing with such issues, that all of the Supervisors individually tend to discuss so many governmental issues with so many different persons, under such diverse circumstances in both their public and personal lives, that they are frequently unable to recall with sufficient certainty to make a disqualification determination whether or not they have discussed a particular issue with a particular individual or group of individuals.

III. DISQUALIFICATION ISSUES IN AN 84308 PROCEEDING

A. Contributions requiring disqualification.

Disqualification issues arise where certain persons or entities make campaign contributions to a member of the Authority in an amount greater than \$249 within 12 months of a decision on an entitlement for use. Additionally, such a contribution must be disclosed on the record of the proceeding. A member of the Authority may extricate himself or herself from the disqualification requirement if he or she returns that amount in

excess of \$249 within 30 days of when he or she learns of both the contribution and the Section 84308 proceeding. If the excess of \$249 is returned prior to the hearing, then there is no disclosure requirement. If the excess is returned after the hearing, then the member of the Authority should disclose and announce his or her intent to return that amount of the contribution. See Section 84308.

B. Relevant time frame with respect to a disqualification.

A member of the Authority need be concerned only with campaign contributions received within 12 months of the date of the Authority's decision on the entitlement for use. If no contributions are received within the 12-month period prior to the date of decision, then no disqualification issue will arise.

C. Relevant contributors in an 84308 proceeding.

There are four kinds of contributors which will be of concern to the members of the Authority:

- 1) An applicant;
- 2) Agents who represent the applicant in connection with the application (i.e., appear before the Authority or privately lobby members of the Authority on behalf of the applicant);
- 3) Those persons who have a financial interest in the granting or denial of the application and who appear before the authority or privately lobby members of the Authority; and
- 4) Agents who represent persons with a financial interest in connection with the 84308 proceeding on the application (i.e., appear before the Authority or privately lobby members of the Authority on behalf of such financially interested persons).

As noted above, any contributors appearing before the Authority or lobbying the members of the Authority would generally not be applicants or their agents but only those with a financial interest and their agents.

D. Contributions of an individual and entity or two or more entities will be treated as a single contribution where one has a controlling interest in the other.

The contributions of an individual and entity or two entities will be treated as a single contribution where an entity (such as a corporation or partnership) or an individual has a controlling interest in another entity (e.g., a parent corporation and its subsidiary; an individual and a closely held corporation in which he is a majority shareholder; corporations or general partnerships with the same controlling owner an individual and a general partnership in which he is the general partner, or one of two general partners). See 2 Cal.Admin.Code §18236; Lumsdon, 2 FPPC Ops. 140; Kahn, 2 FPPC Ops. 151; Nord, 8 FPPC Ops. 6; FPPC Advice Letter No. A-84-206;

E. When determining the amount of a contribution for purposes of disqualification, contributions of an applicant and his agent, or a participant and his agent, will be combined.

An agent is a person who appears before the Authority, or privately lobbies members of the Authority on behalf of an Applicant or a participant (A financially interested person or entity) in connection with an entitlement for use. See 2 Cal. Admin. Code Section 18438.3(a).

The contributions of the applicant and his agent or of a participant and his agent will be combined or aggregated if the member of the Authority is aware that they shared that agency relationship at the time they made the contributions aggregating more than \$249. See 2 Cal.Admin.Code §18438.3(b).

F. Contributions of an agent firm and its individual representative will be combined with that of the individual or firm they represent.

When persons or entities seek a special use or benefit, such as a land use, from a public agency, they generally employ firms or entities with a certain expertise to represent them (i.e., a law, architectural, engineering or consulting firm, or a similar entity or corporation). The actual representation is, of course, performed by employees or members of those firms or entities.

In recognition of this identity of the employee, or member, and his firm in the representational responsibility, the Fair Political Practices Commission has determined that both shall be deemed agents of the applicant or participant in a 84308 proceeding. See 2 Cal.Admin. Code Section 18438.3(a). As a consequence, for purposes of determining a disqualification, the campaign contributions of the representative firm or entity, and the employee or member who actually performs the representational service, will be combined with the contributions of the applicant or participant they represent in the 84308 proceeding.

G. Campaign contribution limitations of the County Campaign Reform Ordinance.

The Campaign Reform Ordinance (Chapter 2.115 of the Sacramento County Code) imposes absolute contribution restrictions upon campaigns for County elective office. Section 2.115.300 prohibits donation and receipt of campaign contributions totaling more than \$250 in any off-election year or \$500 during each of the following periods during an election year: the primary election, the general election, and the special runoff election. Consequently, in an election year, a candidate for County elective office may properly receive \$1,000 from individual campaign contributors (\$500 during a primary or special election and \$500 more during a general or special runoff election). Section 2.115.310 of the Sacramento County Code imposes the same contribution limitations upon organizations (i.e., partnerships, corporations, etc.).

Certain additional restrictions are imposed upon contributors only. Where an individual is a general partner in a general partnership or owns a controlling interest in a corporation, the individual and the entity is treated as a single contributor. See SCC Section 2.115.300(d). Where an organization shares a majority of members of the governing board, or shares two or more officers or is owned or controlled by the same majority shareholder, or are in a parent-subsidiary relationship, they are treated as a single contributor. See SCC Section 2.115.300(c). In this respect, the Campaign Reform Ordinance is similar to Section 84308 of the Political Reform Act in that the contributions of individuals or entities are cumulated or combined with the contributions of entities in which they have a controlling interest.

The Campaign Reform Ordinance differs from Section 84308 in that it imposes no disqualification requirements. Therefore, the Ordinance is of no concern to board members when addressing disqualification issues in an 84308 proceeding of the Transportation Authority.

Because the Campaign Reform Ordinance permits individual contributions up to \$1,000 in an election year, and because contributions of individual contributors may be combined, compliance with the restrictions of the Ordinance will not insulate board members from disqualification issues when making decisions in an 84308 proceeding of the Transportation Authority.

On a practical basis, a member of the Authority would be able to reduce the potential for disqualification if he or she limited

Chairperson and Members
Board of Supervisors

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December 10, 1987

receipt of individual contributions to \$249 when there is a substantial potential that the contributor will be involved in an 84308 proceeding before the Authority.

Finally, it should be noted that, the provisions of the Ordinance notwithstanding, individuals or entities involved in a pending 84308 proceeding before an official cannot contribute more than \$249 to that official's campaign.

Very truly yours,

L. B. ELAM
County Counsel

By
MELVYN W. PRICE
Supervising Deputy

MWP:st

op-trans author

SUMMARY

Comparison of Estimated Funds
Available to Transit
Under Various Scenarios

	<u>1/2 ¢</u>	<u>1¢</u>
<u>1st Alternative:</u>		
Sales Tax, Development Fee, and City Major Street Tax all added together and 35% Distributed to RT & CTSA; paid from sales tax proceeds	\$391 million	\$728 million
<u>2nd Alternative:</u>		
35% of Sales Tax only Distributed to Transit	339 million	676 million
- Nothing from City	0 million	0 million
- Proposed County Transit Development Fee	<u>22 million</u>	<u>22 million</u>
(Results in a loss of \$30 million)	\$361 million	\$698 million
<u>3rd Alternative:</u>		
35% of Sales Tax only Distributed to Transit	\$338 million	\$676 million
- Nothing from City or County		
(Results in a loss of \$52 million)		

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF SACRAMENTO

Charity Kenyon, President

January 11, 1988

Before the joint meeting of the Board of Supervisors, City Council of Sacramento and the Regional Transit District Board regarding a proposed sales tax ballot proposition

Historically the League of Women Voters of Sacramento, and the statewide organization, have strongly supported adequate funding for transit service and open government with full public participation in local policymaking. Our testimony today presents these recommendations once again.

Increased funding for transit service is required to achieve a balanced, environmentally sound transportation system. For over 20 years, the League of Women Voters has worked for equitable transportation financing so that safe, convenient transit service can be available in urban areas. Between 1969 and 1974, the League devoted its efforts to a constitutional amendment to permit the gas tax to be spent on transit capital costs and air pollution cleanup. That constitutional change was made in 1974, and voters in Sacramento City and County authorized local government to spend on transit development the portion of the gas tax returned to local government. Yet neither the City nor the County of Sacramento has allocated gas tax funds toward transit costs including light rail facilities and purchasing buses.

This issue is relevant today as the City, County and Regional Transit District appear to be ready to determine the future balance of funding for transportation in Sacramento, including critical funding for transit services and facilities to permit the Transit District to serve our growing population adequately and to contribute to clean air goals.

We would like to see a high priority placed on allocating sales tax funds to countywide air quality programs and to transit, especially because of the contribution it can make to air quality. A substantial part of the gas tax should also be devoted to transit capital costs. This would permit a greater portion of the sales tax revenue to be spent on transit operations. We also support the use of developer fees for transit, as required by AB 89 and the Air Quality Plan of 1982. The air quality impacts of development are as important as the transportation impacts.

These are among the issues that we think deserve more public debate before you act.

Our second concern today is process.

Open government with full public participation in local policy-making is a principle of democracy that is not dispensible. The meeting today borders on violation, if it does not violate, that principle. Word-of-mouth notice is not sufficient notice about the procedures and substance of public hearings. The staff reports which are being reviewed today should have been widely circulated to community groups so that the public could have commented on the policy options proposed with full knowledge of the issues, arguments and proposed action, if any, before the boards.

In order for the public to support the recommendations of local government at the ballot box, it must have confidence in the process. Unless your recommendations are developed and debated in public, you cannot expect to achieve that confidence. To date, we are unaware of any public participation or notice adequate to support your taking action at this meeting. We suggest that meeting deadlines for a June 1988 ballot deadline rather than a November 1988 or June 1989 deadline, is less important than full public resolution of the issues we have raised today.



REGIONAL TRANSIT MEMO

DATE: January 20, 1988
TO: Emily E. Vasquez, RT Boardmember
FROM: John T. Ketelsen, Chief Legal Counsel *JK*
RE: Sales Tax and Development Fee Revenues for Transit

The purpose of this memo is to clarify the legal issues underlying the ability of the City of Sacramento and the County of Sacramento to abide by the AB89 formula for distribution of sales tax and developer fee revenues for transit.

City Developer Fee

Under AB89, the City's major street construction tax revenues of approximately \$64 million over 20 years would have been included for purposes of calculating RT's share of sales tax and developer fees. Thirty-five percent of the City's developer fee would have generated approximately \$22 million for transit over 20 years, or approximately \$1.1 million per year. The City would have annually paid RT and Paratransit this amount using its sales tax dollars.

With the decision to place the sales tax road and transit percentages on the ballot (i.e., 65% - 35%), it was feared that the City could not legally transfer its sales tax dollars to RT and Paratransit because transit's share of sales tax revenues would have exceeded 35%.

The City is also prohibited from directly transferring a portion of its major street construction tax revenues because these funds are restricted to roadway improvements. Since this tax was adopted prior to Proposition 13, the City could be subject to a two-thirds voter requirement if it wanted to modify the restriction on use of these funds.

In discussing the various options to preserve the City's developer fee contribution to transit, it was suggested that the City consider a new transit fee to be imposed on new development similar to the County's proposed transit fee. Such a fee would probably be limited to developing areas in the City where transit service is minimal or nonexistent, such as South and North Natomas, and the South Sacramento/Laguna Creek areas. City staff indicated that given the City's proposal to adopt a Housing Trust Fund fee and to strengthen its TSM ordinance, the City Council would not be receptive to a new fee proposal.

Memo to: Emily E. Vasquez
January 20, 1988
Page 2

RT staff then suggested that the City allocate a portion of its gas tax revenues to transit, given that the City would be receiving \$22 million more in sales tax revenues than what was agreed to under the AB89 formula. According to the City Finance Department, the City receives about \$4.6 million in gas tax revenues annually. RT's proposed allocation would be \$1.1 million per year or slightly less than 25% of the City's gas tax revenues. Section 2101 of the Streets and Highways code allows expenditure of gas tax funds for planning for light rail capital costs if the voters approve such use of these revenues pursuant to Section 4 of Article XIX of the State Constitution. Sacramento County voters have already approved such a measure. RT staff indicated that RT could accept this restriction on the use of such funds. However, the City's position was that all of its gas tax funds are needed for street improvements and it would have to use other general fund revenues to meet its prior AB89 commitment to transit. Since various City services, such as police and fire, are dependent on general fund revenues, this funding source was also off limits. As a result of the City's decision not to meet its AB89 commitment, the City will receive a \$22 million windfall in sales tax revenues and transit will lose between 3% and 6% of its planned 20-year revenue from the sales tax and developer fee proceeds. This loss represents approximately 10% of RT's proposed LRT extension budget (capital costs).

One of the issues raised at the joint City Council and County Board of Supervisor's meeting on January 11, 1988, was that the City already contributes approximately \$500,000 out of its general fund for transit. However, this contribution is solely for Paratransit and under AB89 the City would have been required to maintain this level of funding in order to receive sales tax funds. This was true under the proposed seven-party contract with the Sacramento Transportation Authority as well.

County Developer Fee

Unlike the City, the County of Sacramento does not currently charge a road fee for new developments. As a result, it is proposing to abide by its AB89 commitment by adoption of a new fee rather than apportionment of existing revenues. The County is proposing to adopt separate road and transit fees. RT's share of this fee is \$22.5 million over 8 years. When compared against the County's proposed \$85 million road fee, transit would receive 21% of the combined total of these two fees. If this fee is extended over a 20-year time frame, transit's share could be much greater. Even though the City has decided not to contribute any developer fees to transit at this time, County staff is still committed to submitting the transit fee to the Board of Supervisors.

Sacramento Transportation Coalition

January 22, 1988

Before the joint meeting of the Board of Supervisors, City Council of Sacramento and the Regional Transit District regarding the proposed SALES TAX ballot proposition

I'm Linda Turnquist from the Transportation Coalition and I am very honored to speak to such an august body-the elected representatives for the people of the Sacramento area. The issue that faces us today is the single most important decision for the next 20 years. We are charting our course to the future, what mode we will take and how we are going to pay for it.

Are we going backward to the future and taking the same old answer--S.O.D. FIRST, (Single Occupancy Driver)FIRST? Or are we going forward to the future and take T.S.M. FIRST (Transportation Systems Management) FIRST?

What will be the balance? We all know that a clogged road system provides poor service to transit--BUT a well functioning transit system WILL make a road system function better. Both must support the other.

WHAT ARE THE CONSEQUENCES OF THE STATUS QUO / BUSINESS AS USUAL / S.O.D. FIRST POLICIES? THEREIN LIES DISASTER. Every E.I.R you read plentifully documents how bad its is going to be. Our road systems are so overwhelmed, they have become our growth control mechanism. Developers will have difficulty selling their projects due to declining quality of life. EPA will enforcing a growth moratorium because we have the dubious distinction of being the seventh most air polluted region in the nation. Up and down California frustrated citizens are taking to ballot box planning--growth moratoriums because of traffic congestion. The people of Sacramento will not support a sales tax which is a thinly disguised development subsidy. Even CALTRANS admits that they cannot build us out of this congestion nightmare--as much as they would love to. The Transportation Coalition shares the concerns expressed by the League of Women Voter to this body on Jan. 11. No body is thrilled about this future.

So lets look at the new answer--T.S.M. FIRST, TRANSIT FIRST, RIDESHARE FIRST, BICYCLES FIRST, & AIR QUALITY FIRST. If we renew and expand our commitment to T.S.M. alternatives--we could improve our transportation system at an affordable cost. The sales tax should finance the operation of this new improved and safer transportation system. The Salt Lake City region voted in a 1cent sales tax for transit only in 1974. This is a good model to emulate. Our first rate transit system should carry 50% of the peak hour trips. This would vastly improve road congestion and air quality and still allow for high quality growth in the region. The resource balance from the sale tax to strive for with this alternative future is 35% roads (for maintenance, safety and T.S.M. improvements only) and 65% for T.S.M. (for transit, rideshare, elderly & handicapped, bikes and other air quality improvement measures). But this cannot operate in isolation. Land use is intimately entwined with the solution. Don't close options. Each development situation should be analyzed and the best mix of mitigations selected. The key is to have an optimum mix of improvements for transportation. These should include development transportation improvement fees, density increases and T.S.M. design features. Development should strive for a 50% non-S.O.D. goal.

Lets give up on the tired old answer of S.O.D. First. Lets provide leadership to other and explain why it is necessary to change--to survive and thrive.

We can still make a difference--if we chose now to go with the better alternative. Take the train to freedom:

- freedom from a road system that has become our population control mechanism
- freedom from the hassles of congestion
- economic freedom--a transportation system we can all afford
- free to breathe clean air

Existing transit commitments must be honored and new commitments made to achieve a livable community tomorrow--one our children will thank us for.

T RANSPORTATION

F UTURE

SEEKING THE BALANCE

WE CANNOT BUILD OUR WAY OUT WITH HIGHWAYS

ADDITIONAL CHANGES

- accept lower levels of service
- accept alternative modes of transport

MORE SUPPORT FOR TRANSIT

SOCIAL

- must become the "YUPPIE" thing to do

ECONOMIC

- transit passes as employee benefit
- developer contributions \$\$\$\$
- transit validations rather than "free" parking by commercial business

MORE SUPPORT FOR TRANSIT

- higher densities
- transit incorporated into the design of development

CHANGE IN LAND USE DEVELOPMENT

MORE SUPPORT FOR OTHER ALTERNATIVES

- park & ride
- high occupancy vehicle lanes
- rideshare support & encouragement
- bikes
- pedestrians
- jobs & housing balance
- increased densities

LESS RELIANT ON THE SINGLE OCCUPANCY DRIVER (SOD)

REMOVE HIDDEN SUBSIDIES OF AUTOS

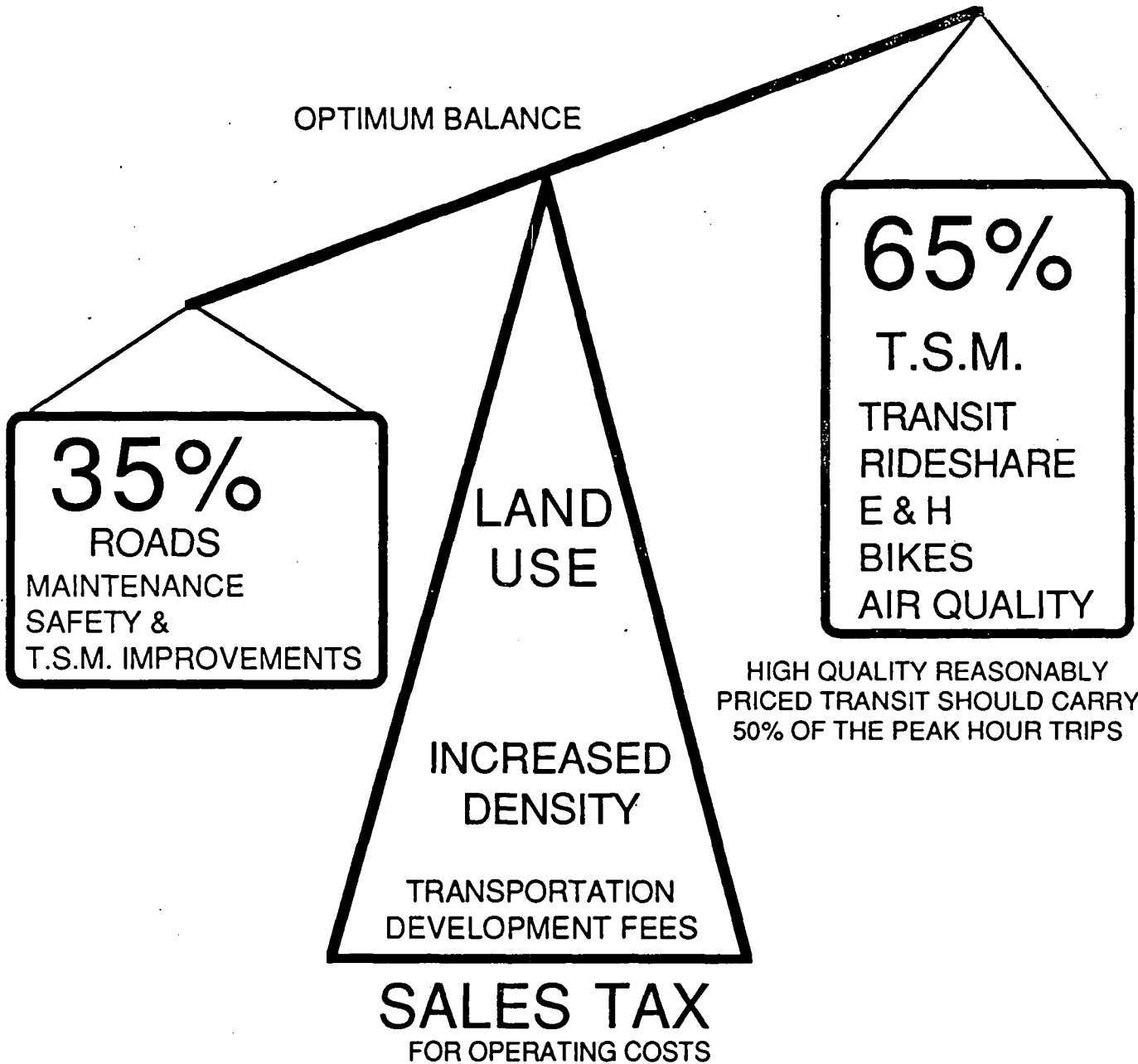
DEVELOPERS RECOGNISE THEIR STAKE IN WORKABLE SOLUTIONS

T RANSPORTATION

FUTURE

SEEKING THE BALANCE

OPTIMUM BALANCE



COUNTY OF SACRAMENTO

Inter-Department Correspondence

January 20, 1988

To: Board of Supervisors
County of Sacramento

City Council
City of Sacramento

From: L. B. Elam
County Counsel

Subject: Sacramento Transportation Authority -
Powers and Duties
Joint Session - January 22, 1988

Enclosed herewith and prepared in accordance with directions by the Board and Council during their joint sessions on January 11 and 12, 1988, are a resolution by which the Sacramento Transportation Authority would be created and attached contract regulating the rights and duties of the parties, both dated as January 15, 1988 Drafts. The purposes of this memorandum are to explain the changes reflected in the enclosed January 15 Drafts from those in the Drafts dated November 17, 1987, and to identify what will hopefully be a final schedule for formation of the Authority and taking of the other actions required in order to place the sales tax increase measure on the June, 1988 ballot.

a. Resolution and Contract Changes

1. The enclosed Resolution provides for the five Board of Supervisors representatives and four Sacramento City Council representatives on the governing body of the Transportation Authority to be either individual Supervisors and Councilpersons or other elected officials who are appointed by the Board and Council. (Para. 3-a). Paragraph 4 of the Resolution has been modified to permit the appointment of substitute officials when an elected appointee has announced that he or she is disqualified from voting on a particular matter.

2. The final Resolution clause on Page 4 of the Resolution has been modified to provide that the Transportation Authority will dissolve unless voters approve a sales tax increase during

the June, 1988 Primary Election. This term constitutes a recommendation by this Office and does not result from a directive by the Board or Council.

A coalition of community interests have produced a relatively complex process of allocating any sales tax increase and defining the various goals of the governmental entities interested in the proceeds of the increase. The detailed programmatic format which has evolved is considered to be an integrated package which is desired to be presented for voter approval, either in express terms or by way of proponent arguments in the election campaign. The various components of the program are inherent in the very structure and existence of the Authority to be created. Regional Transit and other community interests advocating fixed allocations for Public Transit threaten only campaign opposition to the tax increase measure. However, the "situs" allocation of the increase to Folsom, Isleton, and Galt has been exacted as a condition precedent to approval by those Cities of the composition of the Governing Body of the Authority, a consent which is statutorily required. Furthermore, the County Transportation Expenditure Plan, required as a condition precedent to submission of the increase measure to the voters, will contain the totality of the allocation formula. Approval of the Plan by the County and respective Cities, in addition to the Transportation Authority, is required by statute.

Should the voters disapprove the sales tax increase proposal in June, there will very likely be proposals for changes in the programmatic elements before another measure is offered. The flexibility to modify those program elements ought not to be encumbered by a preexisting contract developed for the primary purpose of marketing an earlier program to the voters which has resulted in voter disapproval. Since the small Cities will have approved composition of the Governing Body of the Authority pursuant to an important element of the program, provision for dissolution of the Authority in addition to the rescission of the contract both ensure that rights of interested entities are not prejudiced and that there will be future flexibility to tailor new proposals for voter approval.

3. Paragraph 8 (renumbered from No. 9) of the Contract has been revised to authorize the Transportation Authority to either select public road improvement projects which have not been recommended by the County or Cities and/or build such projects only by a super-majority vote of eight. The instruction by Councilperson Shore was that the super majority vote be structured to require an affirmative vote by at least one Sacramento representative before the Authority should exercise such an extraordinary prerogative.

4. Paragraphs 11 and 12 have been added to the Contract for the purpose of defining in relatively precise terms what the parties mean by the "situs" allocation to Folsom, Isleton and Galt. In general, these two paragraphs state that the allocation is to consist of all tax increases charged within the Cities, plus sales tax increases charged by auto dealers outside of Sacramento County for purchases by citizens of the three Cities of motor vehicles. The costs of the accounting required in order to ascertain the "situs" amounts, is to be borne by the three Cities.

The percentage of the "situs" allocation is to vary according to whether one or more of the three Cities is served by Regional Transit. Paragraph 12 makes it clear that for purposes of the percentage allocation, only service with consent of the City Council will be relevant, not simply service in fact.

5. As per a direction by the Board and Council pursuant to a recommendation by the election committee in support of the tax measure, Paragraph 13-b of the Contract has been modified to permit the 33.33% allocation to Regional Transit to be subject to a three-year average. The average would relate to specified allocations and would apply to revenue estimates each year, not total revenues during the three-year period. The three-year periods would be years 1 through 3, 4 through 6, 7 through 9, 10 through 12, 13 through 15, and 16 through 18. The following example illustrates how the averaging standard would operate.

Assume that in Year 1, estimated revenues subject to allocation are \$70.0 million, and that Regional Transit receives \$7.0 million, a 10% allocation. In Year 2, the revenues are \$75.0 million, and Regional Transit receives \$25.0 million, a 33% allocation. In Year 3, estimated revenues are \$80.0 million. Regional Transit must receive \$45,600,000, a 57% allocation. In Year 4, the estimated revenues are \$85.0 million, and Regional Transit receives \$28,050,000, a 33% allocation. In Year 5, the estimated revenues are also \$85.0 million, and Regional Transit receives \$42,500,000, a 50% allocation. In Year 6, estimated revenues decline to \$70.0 million. Regional Transit must receive \$11,900,000, a 17% allocation.

6. Paragraphs 16, 17, 18, 19, 20, 21, and 23 have been modified in a generally nonsubstantive fashion to permit greater flexibility in the guidelines and other procedural requirements associated with annual requests by recipient entities for allocations, and to make it clear that contracts by which allocations guarantee expenditures for specific purposes may be for terms longer than one year, in order to facilitate debt financing and other financial demands of multi-year projects.

7. Paragraph 22-d of the Contract has been amended to incorporate the Council's desire that the Governing Body of the Authority be forbidden from extracting zoning and other land use requirements as a condition of financial allocations.

8. A new Paragraph 28 has been added to the Contract which would regulate the term of any sales tax increase which is approved by the voters. Under that provision, the approved sales tax increase would terminate the earlier of either 20 years following its implementation, or the date on which a Court finally determines that the requirement that 35% of the increase be allocated to public vehicular transportation is either unlawful or unenforceable. Since under the Act, the Authority is permitted to impose the tax increase for either 20 years or any shorter term, this Office believes that an abbreviated term related to the illegality of a particular element of the program would constitute a legally effective enforcement mechanism.

Thus, even if the County, all of the Cities, and Regional Transit were to decide in the future that the public interest dictates revision of the 35% mandated allocation for whatever reason, that allocation should still be legally enforceable at the instance of a taxpayer who insists that the promise be fulfilled. Should the Court in such a lawsuit find that the mandated allocation constitutes an invalid restriction of governmental authority or is illegal for other reasons, authority to levy the sales tax would ipso facto terminate because the term of the tax increase is coextensive with the period during which the allocation has not been declared unlawful.

The foregoing constitutes the best enforcement mechanism this Office has been able to conceive for the purpose of fulfilling the desired promise to the electorate, given the constraints of the enabling Act.

9. Paragraph 29 has been modified to reflect the allocation language requested by the election committee in support of the ballot measure, as per a direction by the Board and Council. In accordance with the County Executive's qualification, the language relating to the "situs" allocation has been skewed in order to avoid a direct representation that there will be any such allocation.

A third paragraph has been added to the ballot measure which explains to the voters that the sales tax increase authorization will terminate should a Court refuse to enforce the mandated 35% allocation to public vehicular transportation. This term does not extend to either the "situs" allocation

requirement, or to the 1% allocation for motor vehicle emission impact studies. In connection with the latter, it is intended that the allocation be expended pursuant to expenditure requests by interested entities filed on an annual basis. It would be difficult to ensure that exactly 1% be expended during any given year, despite the fact that the word "exactly" is used. the disparity between the word "exactly" and the method by which the allocation would be expended constitutes a flaw in the internal integrity of the format.

10. Paragraph 30 has been added to the Contract for the purpose of regulating how long the agreement will remain in effect. Under Subparagraph "a" of that provision, the agreement would terminate upon dissolution of the Authority. As discussed above, the Authority would terminate in the event of voter disapproval of the sales tax increase on the June, 1988 ballot. The reasons are discussed above.

b. Formation Schedule

Various procedural requirements associated with formation of the Transportation Authority have been resolved. It has been determined that the Authority will constitute a "District" within the meaning of the Cortese-Knox Local Governmental Reorganization Act of 1985, and that LAFCO action in connection with the establishment of the Authority will be required. Under the California Environmental Quality Act, an environmental analysis will be required in connection with the formation of the Authority, the contract defining its powers and duties, and the County Transportation Expenditure Plan required as a condition precedent to voter action. These procedural limitations, coupled with the difficulties of coordinating development of the Transportation Expenditure Plan among the interested jurisdictions, and the deliberations in progress concerning the programmatic elements for purposes of contractual formalization, have produced the following revised schedule.

1. January 19, 1988 -- Adoption by Board of Supervisors of Resolution requesting LAFCO to initiate proceedings for formation of Authority. (Completed)
2. January 22, 1988 -- The third of three joint sessions between the Sacramento City Council and Board of Supervisors deliberating programmatic elements.
3. January 25, 1988 -- Completion of County Transportation Expenditure Plan.

4. January 29, 1988 -- Issuance of Initial Study under CEQA by the County Environmental Section.
5. February 11, 1988 -- Hearing by LAFCO relating to formation of the Transportation Authority.
6. February 16 or 23, 1988 -- Hearing by Board of Supervisors as Conducting Authority to receive protests, and failing protests, to approve formation of Authority.
7. February 28, 1988 -- Expiration of 30-day public comment period on Initial Study under CEQA.
8. March 1, 1988 -- Adoption by Board of Supervisors of Resolution forming Authority.
9. March 1 through 7, 1988 -- Approval by Sacramento, Folsom, Isleton and Galt of Resolution forming the Authority; execution by the County, Sacramento, Folsom, Isleton, Galt and Regional Transit of the Contract; and approval by the County, Sacramento, Folsom, Isleton and Galt of the County Transportation Expenditure Plan.
10. March 8 through 11, 1988 -- Approval by the Governing Body of the Transportation Authority of the Contract and County Transportation Expenditure Plan, and enactment of the Ordinance submitting the sales tax increase measure to the electorate on the June 7, 1988 ballot.

The foregoing schedule does not contemplate public hearings by the Transportation Authority on the County Transportation Expenditure Plan. An attempt by the Authority to hear and approve the Plan during the period March 7 through 11, 1988, could produce requests for a delay and criticisms of inadequate opportunity for public comment.

For these reasons, even though the Authority would not be formed until March, the Board and Council should decide whether

Board of Supervisors
City Council

-7-

January 20, 1988

they desire to convene in joint session during the month of February in order to conduct public hearings on the Plan.



L. B. ELAM
County Counsel

cc: Brian Richter, County Executive
Dee Reynolds, Adm. & Finance Agency
Doug Fraleigh, Dir., Public Works
Al Freitas, Environmental Coordinator
John O'Farrell, Exec. Director, LAFCO
Diane Balter, Deputy City Attorney
John Ketelsen, Legal Counsel
Regional Transit
Phil Mering, City Attorney
Folsom and Isleton

LBE:ph

m-board/city

EXHIBIT 1

Sacramento County Counsel
January 15, 1988

D R A F T

RESOLUTION NO. _____

A RESOLUTION ESTABLISHING THE SACRAMENTO
TRANSPORTATION AUTHORITY

WHEREAS, this Resolution is adopted pursuant to the provisions of the Local Transportation Authority and Improvement Act contained in Division 19 of the Public Utilities Code, commencing at Section 180000, as added by Statutes 1986, Chapter 786; and

WHEREAS, the Cities of Folsom, Galt and Isleton plan to enter into the attached contract for the allocation of the retail transactions and use tax increase authorized by the Act to those Cities on a "situs" basis; and in connection with such a "situs" allocation those Cities irrevocably and permanently decline representation on the Governing Body of the Authority established hereunder;

BE IT RESOLVED by the Board of Supervisors of the County of Sacramento, a political subdivision of the State of California, as follows:

1. Establishment of Authority. Pursuant to the provisions of Sections 180050 and 180051 of the Public Utilities Code, there is hereby created, to become operative March 1, 1988, a new public entity which shall be known as the Sacramento Transportation Authority, whose boundary shall be coextensive with those of Sacramento County and include all incorporated and unincorporated territory within the County.

2. Size of Governing Body. The Governing Body of the Authority shall consist of eleven members whose qualifications shall be as prescribed by Section 180051 and also as prescribed by Paragraph 3 of this Resolution.

3. Composition of Governing Body. The composition of the governing body of the Authority shall be as follows:

a. Except as hereinafter provided, the governing body shall consist of:

(1) Five Supervisors or other elected officials of local governmental entities, who shall be appointed by and serve during their terms of office at the pleasure of the Board of Supervisors of Sacramento County;

(2) Four Council persons or other elected officials of local governmental entities, who shall be appointed by and serve during their terms of office at the pleasure of the City Council of the City of Sacramento; and

(3) Two at-large elected officials of local governmental entities who, until their seats are filled in the manner prescribed by Subparagraphs "b", "c" or "d", below, shall be residents of the unincorporated area of Sacramento County. The at-large members shall be appointed by the members of the governing body of the Authority, and shall be subject to removal from office during their terms solely for cause. The appointment of such members shall be by the affirmative votes of not less than six members of the governing body of the Authority.

b. Not later than thirty calendar days following the effective date of incorporation of any city within Sacramento County which is created after February 1, 1988, the office of one of the at-large members of the Governing Body of the Authority shall terminate. The identity of the member whose office becomes vacant shall be determined by chance selection between the two at-large members. The vacancy shall be filled by appointment by the City Council of the newly incorporated City, and the appointee shall serve during his or her term at the pleasure of the City Council of the newly incorporated City. Except as hereinafter provided, all subsequent vacancies in that office shall be filled by the concurrent appointment of the City Council of each City which is incorporated after February 1, 1988, and the appointees shall serve at the pleasure of such City Councils.

c. The office of the second at-large member of the Governing Body shall terminate on that first day of January following the year during which population estimates transmitted by the State of California Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code show that the total population of any City or

Cities which have been incorporated after February 1, 1988, equals or exceeds 100,000. The vacancy in the second at-large office shall be filled by the concurrent appointment of the City Council of each City which has incorporated after February 1, 1988, and the appointee shall serve during his or her term at the concurrent pleasure of each such City Council. All subsequent vacancies in that office shall be filled by the concurrent appointment of the City Council of each City which has incorporated after February 1, 1988, whose appointees shall serve at the concurrent pleasure of such City Councils.

d. The Office of one of the four members appointed by the City Council of the City of Sacramento shall terminate on that first day of January following the year during which the population estimates transmitted by the State of California Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code show that the total population of any City or Cities which have been incorporated after February 1, 1988, equal or exceed 300,000. The identity of the Councilperson whose office becomes vacant shall be determined by chance selection between the four Councilpersons. The vacancy shall be filled by the concurrent appointment by the City Council of each City which has incorporated after February 1, 1988, and the appointee shall serve during his or her term at the concurrent pleasure of each such City Council. All subsequent vacancies in that office shall be filled by the concurrent appointment of the City Council of each City which has incorporated after February 1, 1988, whose appointees shall serve at the concurrent pleasure of each such City Council.

4. Terms of Office. The term of office of each member of the governing body of the Authority shall be coextensive with the term of the elective office which the member holds.

In the event a particular member of the governing body of the Authority announces that he or she will refrain from participating in a decision and casting a vote on a particular matter pending before that governing body on grounds of a conflict of interest disqualification from voting, the appointing authority for that member may appoint a substitute elected official of a local governmental entity to serve on the governing body for the limited purpose of participating in the determination and casting the vote upon the matter to which the disqualification relates.

BE IT FINALLY RESOLVED that this Resolution shall be deemed repealed and of no further force or effect and the Sacramento Transportation Authority shall be deemed dissolved:

a. March 10, 1988, if on or before that date Paragraph Nos. 2 through 4 hereof are not approved by concurring Resolutions adopted by the City of Sacramento and at least two of the following three Cities: Folsom, Galt, Isleton; and

b. March 10, 1988, if on or before that date a contract in a form substantially similar to that draft agreement entitled "Transportation Expenditure Agreement" attached hereto is not approved and executed in the names of the Authority, the County, the Sacramento Regional Transit District, the City of Sacramento, and at least two of the following three Cities: Folsom, Galt, Isleton, and

c. On June 30, 1988, unless during the election on June 7, 1988, the voters of Sacramento County approve an increase in the retail transactions and use tax proposed by ordinance enacted by the Governing Body of the Authority pursuant to the Local Transportation Authority and Improvement Act.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, at a regular meeting thereof, this ____ day of _____, 1987, by the following vote, to wit:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

Chairperson, Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk of the
Board of Supervisors

r-est gov body

Sacramento County Counsel
January 15, 1988

D R A F T

TRANSPORTATION EXPENDITURE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 1988, by and between the Sacramento Transportation Authority, a public entity formed under the provisions of Division 19, commencing with Section 180000, of the Public Utilities Code, hereinafter called "Authority"; the Sacramento Regional Transit District, a district formed for the local performance of governmental functions under the provisions of the Sacramento Regional Transit District Act, commencing at Section 102000 of the Public Utilities Code, hereinafter called "District"; the City of Sacramento, a chartered municipal corporation, hereinafter called "Sacramento", the Cities of Folsom, Galt and Isleton, general law municipal corporations, hereinafter called respectively, "Folsom", "Galt", and "Isleton"; and the County of Sacramento, a chartered county constituting a political subdivision of the State of California, hereinafter called "County".

W I T N E S S E T H

RECITALS

1. Definitions. Unless the context dictates a different common usage meaning, as used in this Agreement the following terms shall be ascribed the following meanings:

a. "Act" -- shall mean the provisions of the Local Transportation Authority and Improvement Act embodied in Division 19, commencing at Section 180000, of the Public Utilities Code, added by Statutes 1986, Chapter 786, as said enactment may be hereafter amended.

b. "Consolidated Transportation Services Agency" or "CTSA" -- shall mean that agency designated pursuant to subdivision (a) of Section 15975 of the Government Code providing service to the geographical area of Sacramento County.

c. "County Transportation Expenditure Plan" -- shall mean that Plan adopted by the Authority and approved

by Cities and County pursuant to Section 180206 of the Act, subject to amendment by the Authority under Section 180207 thereof.

d. "Elderly and Handicapped Transportation Functions" or "EHT Functions" -- mean all activities associated with operating, maintaining, and acquiring vehicles, real property, or other property and the construction of buildings or other improvements for, or reasonably associated with, specialized paratransit operations for the elderly and disabled.

e. "Entity" -- shall mean the County, Sacramento, Folsom, Galt, Isleton, Future Cities, the District, and the Consolidated Transportation Services Agency, either individually or collectively.

f. "Entity Annual Expenditure Plan" -- means those plans formulated and filed by the District, Sacramento, Folsom, Galt, Isleton, Future Cities, the County and the Consolidated Transportation Services Agency pursuant to Paragraphs 18 and 19, below.

g. "Future City" -- shall mean any municipal corporation which is established within Sacramento County following the date of this Agreement.

h. "Public Road Improvements" -- shall mean environmental review and mitigation, engineering, design and inspection for; acquisition of rights-of-way or other property interests for; transportation system management measures for; appurtenances and incidental facilities, such as traffic signs, traffic signals, bicycle lanes, medians, landscaping, curbs, gutters, sidewalks and bridges for; and all labor, paving and materials and supplies required for the construction of new public roads, streets, highways or freeways, or the addition of lanes to, or other expansion, upgrading, resurfacing, reconstruction, efficiency measures, major road surface maintenance, or other improvement of, existing public roads, streets, highways or freeways. Transportation System Management means all activities associated with the planning, design, implementation, and evaluation of measures to improve the efficiency and effectiveness of the transportation system.

i. "Public Transit Functions" -- means all activities authorized to be carried out by Chapter 5 (commencing with Section 102200) of Part 14, Division 10 of the Public Utilities Code, including operating, maintaining, and acquisition of vehicles, land, or other property, and the construction of buildings, fixed guideways, lightrail, or other improvements for, or reasonably associated with, public transit operations.

j. "Sales Tax" -- means that Retail Transactions and Use Tax increase imposed within incorporated and unincorporated areas of Sacramento County by the Authority following voter approval pursuant to the provisions of Chapter 5, Division 19, commencing with Section 180200, of the Act.

2. Purposes. Under Section 180001 of the Act, it is the legislative intent to permit implementation of local funding programs that go significantly beyond other available revenues for highway and transportation purposes; and to permit voters of the County to raise Sales Taxes to meet local transportation needs in a timely manner.

The primary purposes of this Agreement are: (i) to express the following objectives relating to transportation planning and revenue expenditures in the implementation thereof to govern allocation of the Sales Taxes during the entire twenty-year term thereof; and (ii) to inalterably prescribe the basic allocation apportionments as defined by Paragraphs 11 and 13, below, by which those objectives will be achieved during the twenty-year term.

These purposes are expressed by contract in order to offer for community consensus through voter approval of the Sales Tax an integrated program for transportation improvement and management during the entire twenty-year term. This Agreement is made in contemplation of the requirements imposed by Sections 1800051, 180206, 180201, and 180203(c) of the Act that City approval of the overall local program concept be given before the voters have an opportunity to approve or defeat the Sales Tax. The ultimate purposes of this Agreement are to:

a. Promote the safe, convenient and efficient utilization of State, County and City freeways, highways, roads and streets within Sacramento County; and

b. Improve air quality within the County.

c. To improve and expand Public Transit and EHT Functions within Sacramento County.

3. Objectives. The objectives of allocations and expenditures of Sales Tax revenues shall be to:

a. Assess, plan and finance necessary improvements in freeway, highway, road and street systems on a regional basis in a manner which maximizes Sales Tax expenditures for the greatest public benefit;

b. Encourage the utilization of public transportation conveyances by expanding public transportation services,

promoting convenient use by private citizens of public transportation resources, and underwriting operating deficit costs;

c. Acknowledge the desire of Folsom, Galt and Isleton not to be represented on the Governing Body of the Authority, and respect their desire to participate in the program by way of a guarantee of Sales Tax revenues generated within the territorial boundaries of each such City, to be expended for public road improvements which are primarily of local benefit; and

d. Maximize transportation improvement benefits from the Sales Tax revenue by: (i) insuring that the Authority does not hire professional or technical staff which wastefully duplicates staffing resources available within the County and Cities; and (ii) establishing procedures to ensure that allocated Sales Tax revenues are expended for purposes contemplated by the County Transportation Expenditure Plan and this Agreement; and (iii) to facilitate achievement of the mandate prescribed by Sections 180001(e) and 180200 of the Act that Sales Tax revenues be expended to supplement and not replace other local revenues available for transportation purposes.

AGREEMENT

FOR AND IN CONSIDERATION OF THE PROMISES, TERMS AND CONDITIONS SET FORTH HEREIN, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

4. Staffing. The Authority shall be authorized to expend Sales Tax revenues as follows:

a. Subject to the expenditure limitations imposed by Section 180109(b) of the Act and Paragraph 10-a, below, the Authority shall: (i) employ administrative and clerical staff to manage the governmental affairs of the Authority; (ii) appoint the County Treasurer, County Auditor-Controller, and Clerk of the County Board of Supervisors to serve, respectively, as ex officio Treasurer, Auditor-Controller and Clerk of the Authority, and shall reimburse the County for the direct and indirect costs of services rendered to the Authority by those officials; (iii) pay costs of space for its operations, for office equipment, and for office operations; and (iv) incur such other administrative expenses as the Governing Body deems appropriate;

b. The Authority shall be empowered to contract for the services of retained legal counsel;

5. Technical Services. The Authority shall be empowered to: (i) contract with the County or Sacramento for the delivery of expert consulting services necessary for the conduct and preparation of environmental analysis which are legally required to be undertaken by the Authority in connection with discretionary decision-making by the Authority; and (ii) contract with the County or Sacramento for engineering, traffic surveying, land use planning, and other similar expert services required by the Authority to assist it in the formulation of discretionary decisions concerning the prioritization for funding allocation purposes of Public Road Improvement projects which are regional in character. In the event County and Sacramento decline to contract with the Authority to deliver such services, the Authority may retain such services through contracts with private providers.

7. Allocation of Sales Taxes. Except as hereinafter provided by Paragraph 8, below, and subject to the limitations prescribed by Paragraphs 10 through 25, below, Sales Tax revenues and all Federal or State grants, funding and other revenues received by the Authority for transportation purposes, shall be expended for implementation of the purposes and objectives of the Act, the County Transportation Expenditure Plan, and this Agreement through annual allocations by the Authority to the County, District, Sacramento, Folsom, Galt, Isleton, Future Cities and the Consolidated Transportation Services Agency. The revenues shall be expended by the recipient Entities for specific purposes approved by the Authority. Expenditures by recipient Entities for purposes approved by the Authority shall be guaranteed by contracts between the Authority and each recipient Entity made pursuant to the provisions of Paragraphs 22 through 25, below. All expenditures of revenues for Public Road Improvements, Public Transit Functions, EHT Functions, and mitigation of air contaminant emissions or evaluation of the effectiveness of mitigation shall be made by the recipient Entities, including but not limited to, expenditures for environmental review, planning and design of projects, system operations, the purchase of equipment, materials, supplies and labor, acquisition of right-of-way and other property interests, and the letting and supervision of contracts for construction projects. Except as provided by Paragraph 8, below, the Authority shall not be empowered to make purchases of equipment, materials, supplies or labor; to acquire by eminent domain, negotiated acquisition or otherwise interests in real property; to engage in planning and design activities; or to let or supervise construction contracts.

8. Independent Project Selection and Implementation. By, in each instance, the affirmative votes of not less than eight of the members of the Governing Body of the Authority, the Authority shall be empowered to:

a. Select for funding with Sales Tax or other revenues Public Road Improvement Projects which have not been proposed by the County or any City pursuant to the procedures prescribed by Paragraphs 14 through 22, below, and allocate to the County or to any City within whose territorial jurisdiction the Project would be located funds with which to undertake and complete the Project pursuant to a contract let under Paragraphs 22 through 25, below; and

b. Acquire by eminent domain, negotiated purchase or otherwise rights-of-way or other property interests necessary for; purchase materials, supplies and labor for; and let contracts for and supervise the construction of Public Road Improvement Projects which are regional in character in circumstances under which the Authority has allocated Sales Tax or other revenues for the Project and the County or City within whose territorial jurisdiction the Project would be located has refused to execute a contract with the Authority to undertake and complete the Project pursuant to Paragraphs 22 through 25, below.

In connection with the selection or construction of any Public Road Improvement Project authorized by subparagraphs "a" or "b", above, the Authority shall be empowered to conduct environmental analyses therefor, planning and design, and otherwise empowered to make all expenditures necessary to accomplish the objects thereof.

10. Allocations for Administration, Air Quality and Local Projects. Subject to the terms, conditions and restrictions prescribed by Paragraphs 7 and 8, above, and Paragraphs 16 through 25, below, the Authority shall allocate estimated revenues from the Sales Tax for an initial period of eighteen calendar months and thereafter on a fiscal year basis, as follows:

a. Not to exceed 1% of gross estimated revenues for administrative purposes, as defined by Paragraph 4-a, above;

b. Exactly 1% of gross estimated revenues to implement mitigation of the regional impacts of motor vehicle emissions or to evaluate the effectiveness of mitigation, to be expended in accordance with criteria and standards contained in the County Transportation Expenditure Plan, expended for projects identified in Entity Annual Expenditure Plans, and accumulated from year-to-year for future expenditure if qualifying projects in Entity Annual Expenditure Plans filed for particular allocation periods do not consume the allocation;

c. For local Public Road Improvement Projects which are of benefit primarily to its citizens, exactly 98% of that portion of gross estimated revenues attributable to transactions and uses within its municipal boundaries to Folsom, Isleton and Galt for any allocation period during which Public Transit Functions are not performed within its municipal boundaries;

d. For local Public Road Improvement Projects which are of benefit primarily to its citizens, exactly 63% of that portion of estimated revenues attributable to transactions and uses within its municipal boundaries to Folsom, Isleton and Galt for any allocation period during which Public Transit Functions are performed within its municipal boundaries; and

e. A reasonable reserve for contingencies to cover litigation costs, monetary liability risks, and normal operating uncertainties, such as revenue overestimates.

It is currently estimated that the allocations to Folsom, Galt and Isleton constitute a relatively low percentage of the total revenues from the Sales Tax. However, the allocation provisions of Subparagraphs "c" and "d" shall be applicable regardless of how high a percentage of total revenues from the Sales Tax might be allocable to Folsom, Galt and Isleton during the term of this Agreement.

11. "Situs" Allocation Standards. As used in Subparagraphs "c" and "d" of Paragraph 10, the terms "attributable to transactions and uses within its municipal boundaries" shall be determined in accordance with the following standards.

The allocation to Folsom, Galt and Isleton to which the percentages prescribed by Subparagraphs "c" and "d" of Paragraph 10 are applied, shall consist of:

a. All Sales Taxes actually charged and reported to the State of California Franchise Tax Board by persons, firms and other commercial enterprises whose place of business is physically located within the municipality for products which are physically located within the municipality immediately preceding the sale or other transaction; regardless of where the product might be delivered pursuant to the sale or other transaction, the place of use of the product, the place of registration of the product, and the location or residence of the purchaser; plus

b. All Sales Taxes actually charged and reported to the State of California Franchise Tax Board on sales and

other transactions of those motor vehicles, aircraft and undocumented vessels described by Revenue and Taxation Code, Section 7261(a)(6) by dealers from locations outside of Sacramento County, which are charged pursuant to Revenue and Taxation Code, Section 7262 because the vehicle, aircraft or undocumented vessel is registered to an address or to be used within the municipality.

Any and all fees charged by the State of California Franchise Tax Board, independently incurred for accounting, auditing or other expenses, and any and all other costs whatsoever incurred in order to ascertain the Sales Tax allocation prescribed by Subparagraphs "c" and "d" of Paragraph 10, shall be paid by the Authority. The Authority shall be reimbursed for such costs by Folsom, Galt and Isleton by deducting them in equal amounts from the annual allocations otherwise prescribed by Subparagraphs "c" and "d"; provided that if the costs exceed the amount of the allocation to one or more of the Cities, the remaining uncompensated costs shall be deducted from the allocation which would otherwise be received by the City or Cities whose allocation is greater than the cost.

12. Public Transit Services. Within the meaning of subparagraphs "c" and "d" of Paragraph 10, above, the District shall not be deemed to "perform Public Transit Functions" within the municipal boundaries of either Folsom, Galt or Isleton, unless the City has adopted a resolution inviting the District to perform Public Transit Functions within the boundaries thereof, and the District actually performs Public Transit Functions within such boundaries.

For purposes of the allocations prescribed by subparagraphs "c" and "d" of Paragraph 10, above, Public Transit Functions shall not be deemed to be performed within the City until that fiscal year (commencing July 1st) following the fiscal year during which the last of the conditions prescribed by subparagraphs "a" or "b" for the particular City has been fulfilled.

13. Allocations for Transit and Regional Projects. The balance of estimated revenues from the Sales Tax remaining following application of the allocation priorities prescribed by Paragraph 10, above, shall, subject to the terms, conditions and restrictions prescribed by Paragraphs 7 and 8, above, and Paragraphs 16 through 25, below, be allocated by the Authority for an initial period of eighteen calendar months and thereafter on a fiscal year basis, as follows:

a. Exactly 1.67% of such remaining balance to the Consolidated Transportation Services Agency for EHT Functions;

b. Exactly 33.33% of such remaining balance to the District for Public Transit Functions; provided that the Authority may for particular allocation periods apportion more or less sales Tax Revenues than the 33.33% to the extent that during the following groups of three fiscal year periods the Sales Tax is in effect, the average allocation is exactly 33.33% of the remaining balance for each of those years: fiscal Years 1 through 3, 4 through 6, 7 through 9, 10 through 12, 13 through 15, and 16 through 18;

c. The remaining balance for Public Road Improvement Projects which are regional in character and of primary benefit to the metropolitan population of the County, whether situated within incorporated or unincorporated areas, including, but not limited to, allocations for expenditures by recipient entities required by Paragraph 7, above, and direct expenditures by the Authority authorized by Paragraphs 4, 5, and 8, above.

14. Objects of Allocations. The Authority shall allocate revenue derived from the levy of the Sales Tax and other revenues to the County, Cities, the District, and the CTSA for the cost of Public Road Improvements, Public Transit Functions, and EHT Functions in a manner which improves the vehicular traffic circulation system and mitigates the air quality and other regional environmental impacts of traffic within the County by:

a. Facilitating the efficient movement of vehicular traffic to, through, or around cities;

b. Facilitating the efficient movement of commuter vehicular traffic from residential areas to centers of employment;

c. Facilitating the efficient movement of shopper vehicular traffic from residential areas to centers of retail commerce;

d. Relieving congestion of roads, streets, and highways by promoting development, expansion, and utilization of public transit;

e. Providing for the known, unmet demand and the projected growth in demand for EHT Functions by the promotion, development, expansion, and utilization of specialized paratransit services.

15. Allocation Considerations. In selecting Public Road Improvement Projects, the Authority shall consider all of the following:

a. The objects of vehicular traffic circulation system improvement prescribed by Paragraph 14; and

b. The annual revenue derived by each City and the County from levy by that jurisdiction of the special tax or imposition of the fee for road improvement purposes described by Paragraph 16, below, and the Projects or other objects upon which such taxes or fees will be expended by that jurisdiction during each year the Authority selects Public Road Improvement Projects; and

c. The revenue available to each jurisdiction for road improvements from all other sources, including revenues derived from the Highway Users Tax Account in the Transportation Tax Fund pursuant to Chapter 3 (commencing with Section 2100) of Division 3 of the Streets and Highways Code.

The Authority shall select Public Road Improvement Projects in a manner which maximizes the efficient and effective expenditure of all revenues available to the Cities and the County for road improvement and ensures that each jurisdiction lawfully expends all revenues available to it for those purposes.

16. Minimum Qualifications -- Road Taxes or Fees.

Notwithstanding the provisions of Paragraphs 7 through 15, above, the Authority shall not allocate any Sales Tax revenues for expenditure by Folsom, Galt, or Isleton for the 1990-91 or following fiscal years unless the recipient Entity has, not later than January 1, 1990, and for the year for which the allocation is made, at a rate and in amounts which the Authority determines to be reasonable, either: (i) levied a special tax for road improvement purposes in connection with land development on a uniform basis throughout the entire jurisdiction; or (ii) imposed a fee for road improvement purposes in connection with land development within geographical zones throughout the entire jurisdiction established in order to relate fee revenue expenditures to traffic generated by the development for which the fee is imposed.

Notwithstanding the provisions of Paragraphs 7 through 15, above, the Authority shall not allocate any Sales Tax revenues for expenditure by the County, Sacramento, or any Future City unless the County and Sacramento has, for the year for which the allocation is made and the Future City has, not later than two years following its effective date of incorporation and thereafter, at a rate and in amounts which the Authority determines to be reasonable; either: (i) levied a special tax for road improvement purposes in connection with land development on a uniform basis throughout the entire jurisdiction; or (ii) imposed a fee for road improvement purposes in connection with

land development within geographical zones throughout the entire jurisdiction established in order to relate fee revenue expenditures to traffic generated by the development for which the fee is imposed.

17. Same - Financial Commitments. Notwithstanding the provisions of Paragraphs 7 through 15, above, the Authority shall not allocate any Sales Tax revenues for expenditure by the County or Sacramento unless each such recipient entity has, for the year for which the allocation is made, paid to the Consolidated Transportation Services Agency for EHT Functions an amount at least equal to that paid by the Entity for the 1986-87 fiscal year.

The County, Sacramento, Folsom, Galt, Isleton and Future Cities shall commit to the funding of Road Improvement projects all revenue for such purposes derived from the special tax or road improvement fees described above, and all revenue available to the Entity for road improvements from all other sources, including, but not limited to, revenues derived from the Highway Users Tax Account in the Transportation Tax Fund pursuant to Chapter 3 (commencing with Section 2100), Division 3 of the Streets and Highways Code. Any Sales Tax allocations for expenditure by the Entity for such purposes, shall be applied solely to Public Road Improvement projects for which such revenues are not sufficient.

18. Annual Allocations. Allocation of Sales Tax and other revenues received by the Authority shall be made by the Authority on a fiscal year basis, commencing each July 1 and ending the next succeeding June 30; provided that the first allocation shall be for an eighteen-month period commencing January 1, 1989 and ending June 30, 1990.

The gross amount of Sales Tax available for allocation for any particular allocation period shall equal the revenue estimates for that period made by the Executive Director of the Authority. Allocations shall be adjusted during the next succeeding allocation period to account for differences between actual revenue receipts and estimates during the immediately preceding allocation period.

Allocations shall be made to:

a. The CTSA for EHT Functions in accordance with Paragraph 13-a, above, pursuant to an Entity Annual Expenditure Plan filed by the CTSA;

b. The District for Public Transit Functions in accordance with Paragraph 13-b, above, pursuant to an Entity Annual Expenditure Plan filed by the District;

c. To Folsom, Isleton and Galt in accordance with subparagraphs "c" or "d" of Paragraph 10, above, pursuant to Entity Annual Expenditure Plans filed by those Cities;

d. To the County, Sacramento Folsom, Isleton, Galt and Future Cities in accordance with Paragraphs 10-b and 13-c, above, pursuant to Entity Annual Expenditure Plans filed by those Entities; and

e. To the Authority, pursuant and subject to the limitations contained in Paragraph 8, above.

The Governing Body of the Authority shall make for each allocation period those allocations prescribed by subparagraphs "c" and "d" of Paragraph 10, and subparagraphs "a" and "b" of Paragraph 13, above, if Entity Annual Expenditure Plans filed by the recipient Entities provide for the expenditure of the allocations for purposes authorized by the Act. The Governing Body of the Authority shall be vested with discretion not to allocate all estimated revenues for an allocation period available for purposes prescribed by Paragraphs 8, 10-b, and 13-c, above. Notwithstanding any provision to the contrary contained in Paragraphs 10 or 13, above, the Authority shall not be empowered to allocate any amount to the County, Sacramento, Folsom, Isleton, Galt, Future Cities, the District or CTSA which is not identified for expenditure by the recipient Entity in an Entity Annual Expenditure Plan filed by the recipient Entity, except pursuant to the provisions of Paragraph 8, above.

19. Procedural Regulations. Pursuant to the provisions of Section 180105(b) of the Act, the Governing Body of the Authority shall include within its administrative code procedural regulations which require and govern the following:

a. Publication and notice to the County, Sacramento, Folsom, Isleton, Galt, Future Cities, the District and CTSA by a prescribed date certain of the gross amount of revenues which the Executive Director estimates will be received by the Authority for the ensuing allocation period;

b. The date by which the County, Sacramento, Folsom, Isleton, Galt, Future Cities, the District and CTSA must file Entity Annual Expenditure Plans for an ensuing allocation period;

c. The types of information, data and other contents which each Entity Annual Expenditure Plan is required to include;

d. The preparation and issuance following filing of Entity Annual Expenditure Plans of a written analysis by the

Executive Director of the Authority containing his or her recommendations to the Governing Body of allocations for each ensuing allocation period, by recipient Entity, by Public Road Improvement Project, and for other purposes; and

e. Such other and further procedural regulations as the Governing Body, in its discretion, may deem appropriate.

20. Public Hearing. Not later than November 1, 1988, May 1, 1990, and the first day of May of each year thereafter, the Authority shall commence a public hearing on the respective Entity Annual Expenditure Plans filed by the Entities and with respect to the allocation of Sales Tax and other revenues for the ensuing period. Notice of the time, place and purpose of the hearing shall be published in a newspaper of general circulation within the County, and mailed to each filing Entity not later than ten calendar days preceding the date of commencement of the hearing.

Not later than ten calendar days in advance of the commencement of the hearing, the Executive Director of the Authority shall formulate and file as a public record his or her written recommendations concerning allocation of Sales Tax revenues and all other revenues available to the Authority for the applicable allocation period.

21. Allocation Determinations. Not later than December 31, 1988, June 30, 1990, and the 30th day of each June thereafter, the Authority shall allocate estimated Sales Tax revenues and all other revenues available to the Authority for the applicable period. The allocations shall be made in accordance with the percentage requirements prescribed by Paragraphs 10 and 13, above; provided that:

a. No allocation shall be made for expenditure by an Entity which has failed to fulfill any of the conditions prescribed by Paragraphs 16 and 17, above;

b. No allocation shall be made for an expenditure which would not be consistent with the County Transportation Expenditure Plan, as the same may be hereafter amended;

c. Except as authorized by Paragraph 8, above, no allocation shall be made to a recipient Entity for an expenditure which is not included within that Entity's Entity Annual Expenditure Plan; nor shall any allocation be made to an Entity which has not filed an Entity Annual Expenditure Plan in compliance with regulations adopted by the Authority; and

d. Allocations for expenditure by recipient Entities shall be made subject to such conditions, limitations, and affirmative obligations as may be prescribed by the Authority to ensure that the funds allocated be expended for the purposes, objects, projects, and services for which the allocations are made.

22. Contracts. All allocations for expenditure by recipient Entities shall be made pursuant to contracts between the Authority and each Entity. The contracts shall provide for all of the following:

a. Require the County and each City to undertake, construct and complete those Public Road Improvement projects for which the allocation is made within times certain;

b. Require the District to expend the allocation as specified in the allocation;

c. Require the Consolidated Transportation Services Agency to expend the allocation for EHT Functions within the boundaries of the Authority;

d. Embody any other conditions, limitations or affirmative obligations prescribed by the Authority; provided that the Authority shall not be empowered to impose conditions, limitations or affirmative obligations which in any manner limit the legislative discretion of an Entity to exercise its power to zone and otherwise regulate land use or enact and enforce access to public streets and roads and traffic regulations.

e. Provide for the dates of progress or other payments by the Authority to the recipient Entity of the annual allocations; and

f. Contain any other provisions determined by the Authority to be necessary to promote the purposes and objects of the Act, the County Transportation Expenditure Plan or this Agreement.

23. Contract Terms. Contracts between the Authority and recipient Entities shall be for the following terms and provide for fund disbursements in the following manners:

a. Contracts with Folsom, Isleton and Galt shall be for a term which is coextensive with the allocation period, and shall either provide for fund disbursements on a progress payment basis in relation to specific Public Road Improvement Projects or provide for fund disbursements on a quarterly

basis, the first disbursement being made at the beginning of the fourth month following commencement of the term of the contract, or provide for a combination of progress payments in relation to specific Projects and quarterly payments.

b. Contracts with the District and CSTA which fund operations shall be for a term which is coextensive with the allocation period, and shall provide for fund disbursements on a quarterly basis, the first disbursement being made at the beginning of the fourth month following the commencement of the contract term.

c. Contracts with the District and CSTA to fund capital acquisitions or capital improvements shall be for a term which is either coextensive with the period of the acquisition or improvement or with the period of the debt financing thereof, and shall provide for fund disbursements on either a progress payment basis or other basis related to obligations incurred by the Entity.

d. Contracts with the County, Sacramento, and Future Cities shall be for a term which is either coextensive with the period of the Public Road Improvement Project for which the allocation is made or coextensive with the term of the debt financing therefor, and fund disbursements shall be made on a progress payment basis or otherwise in relation to obligations incurred by the recipient Entity.

25. Refusal to Contract. If a recipient Entity is unwilling to enter into a contract offered by the Authority pursuant to Paragraph 23 or such contract is not executed by the recipient Entity within thirty days following the date upon which it is presented to the Entity by the Authority, the Authority may reallocate the funds for any other purpose authorized by this Agreement; provided that if the refusal of the recipient Entity to execute the contract pertains to a particular project for which the Authority has allocated funding, that project may, at the election of the Authority, be removed from the contract, the contract executed with the project omitted, and, pursuant to the provisions of Paragraph 8, above, the Authority may undertake and complete the project.

27. Amendment of Expenditure Plan. It is understood that the terms and conditions contained in this Agreement have constituted a material inducement to the County and City signators to this Agreement in approving the County Transportation Expenditure Plan pursuant to the provisions of Section 180206(b) of the Act. A breach by the Authority of the terms of this Agreement shall be deemed to vitiate the consent by the County and signator Cities of the Plan.

It is further understood that the Authority shall be empowered, from time to time, to amend the County Transportation Expenditure Plan for the reasons and in accordance with the procedures prescribed by Section 180207 of the Act; provided that it is understood and agreed that there is no unforeseen circumstance or other lawful reason permitting an amendment of the Plan which would be inconsistent with the purposes and objects of this Agreement prescribed by Paragraphs 2 and 3, above, or revision or alteration of the functional allocation percentages prescribed by Paragraphs 10 and 13, above; and no such amendment shall relieve the Authority from the obligation to allocate Sales Tax revenues in accordance with said percentages.

28. Sales Tax Term. The effectiveness of the first Sales Tax imposed following voter approval shall commence pursuant to Section 180204 of the Act on the first day of the first calendar quarter commencing more than 120 days after adoption of the Ordinance, and shall continue until and terminate on the earlier of the following two alternative dates:

a. The date twenty years following the one on which the Sales Tax became effective; or

b. The date on which a judgment by a Court of competent jurisdiction becomes final which either adjudicates the invalidity of subparagraph "a" or "b", or both, of Paragraph 13, above, or declines enforcement relief because of the invalidity thereof.

The Ordinance enacted by the Governing Body of the Authority pursuant to Section 180201 of the Act shall prescribe the period of effectiveness of the Sales Tax in accordance with the provisions of this Paragraph.

29. Ordinance and Ballot Measure. The Sales Tax Ordinance enacted by the Governing Body of the Authority pursuant to the provisions of Section 180201 of the Act and the ballot measure by which the proposition for the Sales Tax is submitted to the voters under Section 180203 of the Act shall, on any short form of ballot card, label or other device, regardless of the system of voting utilized, read substantially as follows:

"TRANSPORTATION -- SACRAMENTO TRANSPORTATION AUTHORITY. To authorize the Authority to levy (either a 1/2 of 1% or 1%) retail transactions and use tax for general governmental purposes of the Authority which consist of the funding of Public Road Improvement Projects within the incorporated and unincorporated areas of Sacramento County, Elderly and Handicapped Transportation Functions, and Public Transit Functions to issue bonds payable from the proceeds of that tax for capital outlay expenditures; and to establish the

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day, month and year first above written.

CITY OF SACRAMENTO

By _____
Title

CITY OF FOLSOM

By _____
Title

CITY OF GALT

By _____
Title

COUNTY OF SACRAMENTO

By _____
Title

CITY OF ISLETON

By _____
Title

SACRAMENTO REGIONAL
TRANSIT DISTRICT

By _____
Title

SACRAMENTO TRANSPORTATION AUTHORITY

By _____
Title

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