



Memorandum

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DATE: July 19, 2018

TO: Alameda County Transportation Commission

FROM: Tess Lengyel, Deputy Executive Director of Planning and Policy
Leslie Lara-Enriquez, Associate Program Analyst

SUBJECT: California Office of Traffic Safety (OTS) Pedestrian and Bicycle Safety Program Grant Funding Award

Recommendation

It is recommended the Commission approve Resolution No. 18-005, which authorizes the Executive Director, or his designee, to execute a grant agreement to receive \$200,000 in grant funding awarded by the California Office of Traffic Safety (OTS) for Alameda CTC to implement a Pedestrian and Bicyclist Rail Safety Education Program.

Summary

On June 20, 2018, the California OTS awarded Alameda CTC \$200,000 in grant funding under the OTS's Pedestrian and Bicycle Safety Program. The funding will allow staff to develop a Pedestrian and Bicyclist Rail Safety Education Program to raise awareness among Alameda County K-12 students about the dangers of distracted walking and bicycling on and near active rail routes, as well as trespassing on railroad rights-of way. The Pedestrian and Bicyclist Rail Safety Education Program will be fully integrated into the Alameda County Safe Routes to Schools Program.

Background

Alameda County is a cornerstone of the Bay Area and Northern California freight and passenger rail system. This extensive rail network located directly through the core of many local communities, including many local schools is a critical transportation link serving a unique role for both people and goods movement. The density of the rail network in Alameda County results in a large number of locations where roadways and the rail system cross each other at-grade. Alameda County has 277 at-grade rail-highway crossings 248 of these crossings are open to the public and 121 grade-separated crossings. The 248 at-grade public crossings are of most concern because these are locations that are used by trains, cars, trucks, bicyclists and pedestrians (many

of them students) with potential impacts on safety and the efficient movement of people and goods.

Addressing trespass collisions involving pedestrians along railroad rights-of-way are a high-priority for the Commission due to their frequency and high fatality rate. Since 2011, there have been 47 trespass collisions 33 (or 70 percent) of which have resulted in fatalities yielding an average of 7.8 trespass collisions and 5.5 fatalities per year. This is slightly higher than the 6.9 annual collisions that occur at actual rail-street crossings and the 3.1 fatalities that occur annually at rail-street crossings in the county. As such, trespass collisions require a different set of strategies to address compared to rail-street crossings collisions because specific rail-street crossing locations can be improved with standard safety treatments such as gates. However, to address trespassing and distracted walking and bicycling specifically, a combination of education and outreach must be advanced to address trespassing.

Trespass collisions and fatalities are concentrated in the unincorporated communities of San Lorenzo and the City of Hayward (see Attachment C and E). In this area, there are 54 schools located within one mile of three parallel active mainline rail tracks that are used for both passenger and freight rail operations, and approximately 61 percent of these schools are within one-half mile of the rail tracks (see Attachment D). Additionally, just over one-quarter of all of the trespass incidents in the county (12) occurred on this 4.9-mile stretch of track in San Lorenzo and Hayward and approximately one-third of the county's trespass fatalities (11) occurred on this corridor since 2011 (see Attachment E). Some of the fatalities involved students attending schools adjacent to this corridor. Combined, there are over 33,000 students enrolled in these schools who are exposed to the safety issues resulting from crossing active railroad tracks either by walking or biking. Also, nearly 30,000 residents live within one-quarter mile of this corridor. Attachment E shows trespass collisions and fatalities by Rail Corridors in Alameda County.

Funding Opportunity

The OTS is California's lead traffic safety organization and it is tasked with developing and implementing an annual Highway Safety Program (HSP) that addresses the behavioral factors that impact safety on the road. The goal of the HSP is to prevent serious injury and death resulting from collisions so that all roadway users arrive at their destination safely. Using Federal Highway Safety Administration (FHWA) program funds and housed within the California State Transportation Agency (CalSTA), the OTS works to address California's highway safety needs at the state, county and local level.

To develop the HSP, the OTS reviews local, county and state crash data to identify roadway users with a statistically higher crash risk. These data, combined with citation, licensing, vehicle miles traveled, and demographic information, are analyzed to help the OTS understand what is prompting crashes and the resulting injuries and fatalities on California's roadways. This information is then used to develop the annual HSP, which

details the extent of California's crash problem and how federal highway safety dollars will be distributed into priority behavioral safety programs during the following federal fiscal year (October 1 – September 30).

The distribution of federal highway safety dollars, which does not require a match from local agencies, is conducted via a competitive statewide grant award process that opens in late December with an application submittal deadline of January 30. For the FFY 2019, the OTS identified ten topic areas of concentration to address safety, one of which is pedestrian and bicycle safety with the goal of increasing "safety awareness among pedestrians, bicyclists and motorists through various approaches including education, enforcement and engineering." This is the focus of Alameda CTC's grant application submitted to OTS.

Staff identified the funding opportunity through the OTS grant program and submitted an application proposing to implement a Pedestrian and Bicyclist Rail Safety Education Program to teach and raise awareness among Alameda County K-12 students about the dangers of distracted walking and bicycling on and near active rail routes, as well as trespassing on railroad rights-of way. The \$200,000 awarded by OTS will allow Alameda CTC to develop the Pedestrian and Bicyclist Rail Safety Education Program and deliver in-classroom education and training to public school students and their families in Alameda County. The Rail Safety Education Program will be fully integrated into the Alameda County Safe Routes to Schools Program in order to maximize efficiencies in implementation and leverage the funding to reach more students.

Program Strategy

In spring 2018, the Alameda County Safe Routes to Schools Program staff reached out to Operation Lifesaver (OLI) the only nationally- and state-recognized provider of rail safety education throughout the U.S. and began working with their state coordinator for California to develop a partnership and strategy to implement and fully-integrate rail safety education into Alameda CTC's SR2S program. During the summer, OLI will train and certify all of the SR2S school site coordinators as official OLI instructors. This will allow the SR2S program to deliver training and education activities directly to Alameda County schools without having to rely solely on OLI's volunteer trainers. In addition, staff is currently working with OLI to develop an online toolkit that will include a wide range of resources (posters, handouts, videos, safety tip sheets, etc.) and will be accessible to the public via the Alameda County SR2S website at alamedacountysr2s.org. In September, the SR2S program will participate in OLI's Rail Safety Awareness campaign as a way to announce our partnership, launch the online toolkit and raise awareness of rail safety. When the OTS grant funding starts on October 1, SR2S school site coordinators will begin conducting outreach and delivering training to the schools identified as high-need in the OTS grant application. Staff will continue to pursue additional OTS grants each year in order to continue delivering rail safety education to additional schools in the county.

As such, it is recommended that the Commission approve and Adopt Resolution No. 18-005, which authorizes the Executive Director, or his designee, to execute a grant agreement to receive \$200,000 in grant funding awarded by the California OTS for the Alameda CTC to implement a Pedestrian and Bicyclist Rail Safety Education Program.

Fiscal Impact: There is no fiscal impact associated with the requested action.

Attachments:

- A. Alameda CTC Resolution No. 18-005
- B. California OTS Grant Assurances
- C. Rail Safety Education Target Schools Map
- D. Rail Safety Education Target Schools List
- E. Trespass Collisions and Fatalities by Rail Corridors in Alameda County



ALAMEDA COUNTY TRANSPORTATION COMMISSION

Resolution 18-005

Authorization for Execution of a Grant Agreement for the Pedestrian and Bicyclist Rail Safety Education Program (FFY2019)

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Commission Vice Chair
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Executive Director
Arthur L. Dao

WHEREAS, the mission of the California Office of Traffic Safety (OTS) is to effectively and efficiently administer traffic safety grant funds to reduce traffic deaths, injuries and economic losses; and

WHEREAS, the OTS is tasked with the development and implementation of an annual Highway Safety Program (HSP) that addresses the behavioral factors that impact safety on the road; and

WHEREAS, the HSP details the extent of California's crash problem and how federal highway safety dollars will be distributed into priority behavioral safety programs during the federal fiscal year (October 1–September 30); and

WHEREAS, the OTS administers such funds and awards such funds via a competitive statewide grant award process; and

WHEREAS, the Alameda County Transportation Commission ("Alameda CTC") is eligible to receive OTS funds; and

WHEREAS, the Alameda CTC was awarded \$200,000 in grant funding under the OTS's Pedestrian and Bicycle Safety Program; and

WHEREAS, Alameda CTC recognizes that it is responsible for compliance with all OTS grant assurances, and state and federal laws, including, but not limited to, laws governing the use of such funds; and

WHEREAS, Alameda CTC requires a Governing Body Resolution for the purposes of identifying agent(s) authorized to act on behalf of Alameda CTC to execute actions necessary to obtain OTS grant funds from OTS and ensure continued compliance with OTS assurances, and state and federal laws.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Alameda CTC that the Executive Director, and/or his Designee, is hereby authorized to execute for and on behalf of Alameda CTC, a public entity established

under the laws of the State of California, any actions necessary for the purpose of obtaining financial assistance provided by the California Office of Traffic Safety.

DULY PASSED AND ADOPTED by the Alameda County Transportation Commission at the regular meeting of the Board held on Thursday, July 26, 2018 in Oakland, California, by the following votes:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

ATTEST:

Richard Valle
Chair, Alameda CTC

Vanessa Lee
Clerk of the Commission

CERTIFICATIONS AND ASSURANCES**HIGHWAY SAFETY GRANTS****(23 U.S.C. CHAPTER 4 AND SEC. 1906, PUB. L. 109-59, AS AMENDED)**

Failure to comply with applicable Federal statutes, regulations, and directives may subject Grantee Agency officials to civil or criminal penalties and/or place the State in a high-risk grantee status in accordance with 49 CFR §18.12.

The officials named on the grant agreement, certify by way of signature on the grant agreement signature page, that the Grantee Agency complies with all applicable Federal statutes, regulations, and directives and State rules, guidelines, policies and laws in effect with respect to the periods for which it receives grant funding. Applicable provisions include, but are not limited to, the following:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR Part 1300—Uniform Procedures for State Highway Safety Grant Programs

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 et seq.), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 et seq.), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100)).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;
- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

“During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding

recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and

- To insert this clause, including paragraphs (a) through (e), in every subcontract and sub agreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

- (1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

LAW ENFORCEMENT AGENCIES

All subrecipient law enforcement agencies shall comply with California law regarding profiling. Penal Code section 13519.4, subdivision (e), defines “racial profiling” as the “practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.” Then, subdivision (f) of that section goes on to provide, “A law enforcement officer shall not engage in racial profiling.”

Appendix B

General Terms & Conditions State Certifications (As referenced in the grant agreement)

Terms and conditions, when applicable, are incorporated by reference and made a part of, but not necessarily limited to, the following documents: grant agreements, subgrants, contracts, subcontracts, interagency agreements, invitations for bid, and requests for proposal for goods or services for which OTS grant funding reimbursement is requested. It is understood and agreed by the subrecipient that grant funds received as a result of this grant agreement are subject to all applicable federal and state regulations, rules, guidelines, policies and laws and to the following applicable controls, terms and consideration expressed in the OTS Grant Program Manual.

1. **Amendment**. No amendment or variation of the terms of this agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the grant agreement is binding on any of the parties. (Reference: DGS Standard Agreement “General Terms and Conditions,” form GTC610). Grant agreement revisions are allowed in accordance with the guidelines detailed in the OTS GPM. All appropriate documentation required to request a grant revision must be submitted timely to Grantor.
2. **Antitrust Claims**. The subrecipient by signing this grant agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the subrecipient shall comply with the requirements of the Government Code sections set out below.
 - a. The Government Code chapter on antitrust claims contains the following definitions:
 - (1) “Public purchase” means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - (2) “Public purchasing body” means the state or the subdivision or agency making a public purchase. (Reference: GC § 4550)
 - b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC 15 [Title 15 Commerce and Trade, Chapter 1, Monopolies and Combinations in Restraint of Trade, Section 15, Suits by Persons Injured]) or under the Cartwright Act (Chapter 2) commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (Reference: GC §4552)

- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (Reference: GC §4553)
 - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. (Reference: GC §4554)
3. **Approval.** This grant agreement is of no force or effect until signed by both parties and approved by the Office of Traffic Safety. Subrecipient or contractor may not commence performance until such approval has been obtained. (Reference: California Department of General Services (DGS) Standard Agreement “General Terms and Conditions,” form GTC610)
 4. **Assignment.** This grant agreement is not assignable by the subrecipient, either in whole or in part, without the consent of the Office of Traffic Safety in the form of a formal written amendment. (Reference: DGS Standard Agreement “General Terms and Conditions,” form GTC610)
 5. **Audits and Access to Records.** Subrecipient agrees that the California Office of Traffic Safety, the National Highway Traffic Safety Administration, or their designated representative(s), shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this grant agreement. Subrecipient agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Suprecipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, subrecipient agrees to include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this agreement. (Reference: GC § 8546.7, Public Contract Code (PCC) 10115 et seq., California Code of Regulations (CCR) Title 2, §1896).

Availability of Funds. Reimbursement of approved grant expenditures is contingent upon the subrecipient complying with all **grant requirements** and the appropriation of sufficient funds by the federal government and the California Office of Traffic Safety. OTS does not represent or guarantee the availability of federal highway safety funds for initial or subsequent year funding. If during the term of the grant federal funds are reduced or eliminated, OTS may immediately terminate or reduce the grant award upon written notice to the subrecipient’s grant director.

Once a grant has been awarded and becomes effective, OTS reimburses the subrecipient for expenditures related to approved activities. Only costs incurred within the approved grant period and that do not exceed the federally obligated funds as indicated in the agreement are reimbursed. The

goals and objectives outlined in the grant should be accomplished during the grant period and within the approved budget.

OTS has the option to void the agreement under the thirty-day cancellation clause or to amend the contract to reflect any reduction in funds (Reference: SCM, Vol. I, 3.11.) Funds are awarded under Catalog of Federal Domestic Assistance (CFDA) Numbers. The specific funding source is identified on the grant budget.

6. **Byrd Anti-Lobbying Amendment (31 USC 1352)**. Subrecipients who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.
7. **Contracts**. Subrecipients may enter into contract(s) to perform applicable provisions of this grant agreement. The subrecipient is responsible for ensuring that all activities delegated to contractors are in support of this grant agreement.
 - (1) Consultants and/or contractors shall be selected in accordance with the subrecipient agency procurement policies and procedures in order to comply with the terms of this Agreement and in accordance with the OTS GPM.

The subrecipient consultant and/or contractor are subject to all applicable terms and conditions and are bound by the applicable certifications of the grant agreement and 2 CFR Part 200.

CA OTS is not obligated to make any payment under any agreement prior to final execution or outside the terms of the contract period. Contractor/subrecipient agency expenditures incurred prior to final contract execution are taken at the risk of that contractor/subrecipient agency and will be considered unallowable if that agreement/contract is not executed.

- (2) Nothing contained in this grant agreement shall create any contractual relation between the State and any contractors, and no contract shall relieve the subrecipient of its responsibilities and obligations hereunder. Subrecipient agrees to be as fully responsible to the State for the acts and omissions of its contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the subrecipient. The subrecipient's obligation to pay its contractors is an independent obligation from the State's obligation to make payments to the subrecipient. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any contractor.

8. **Child Support Compliance Act.** “For any grant agreement in excess of \$100,000, the subrecipient acknowledges in accordance with Public Contract Code (PCC) § 7110, that:
 - a. The subrecipient recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. The subrecipient, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.” (Reference: DGS Standard Agreement “General Terms and Conditions,” form GTC610)
9. **Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended.** Grants of amounts in excess of \$100,000 shall contain a provision that requires the subrecipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251 et seq.). Violations shall be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
10. **Compensation.** The consideration to be paid subrecipient, as provided herein, shall be in compensation for all of subrecipient’s expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided. (Reference: DGS Standard Agreement “General Terms and Conditions,” form GTC610)
11. **Loss Leader.** If this grantee agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code (PCC 10344(e)).
12. **Consultant/Contracts.**

Competition: No subrecipient shall draft, or cause to be drafted, any invitation to bid or request for proposal, in connection with the awarding of a consulting services contract, in such a manner as to limit the bidding directly to any one bidder. At least three competitive bids or proposals shall be secured for each consulting services contract. (Reference: PCC §§ 10372 and 10373)

Contractor: Contractor, and the agents and employees of contractor, in the performance of this grant agreement, shall act in an independent capacity and not as officers or employees or agents of the state. (Reference: DGS Standard Agreement “General Terms and Conditions,” form GTC610)

Progress schedule: Subrecipients entering into a contractual agreement for consultant services totaling five thousand dollars (\$5,000) or more shall include detailed criteria and a mandatory progress schedule. (Reference: PCC § 10371)

Progress payments: Subrecipients may provide for progress payments to consultants/contractors for work performed or costs incurred in the performance of the contract. Not less than ten percent of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. If the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task and an evaluation of the contractor's performance. (Reference: PCC § 10379)

13. **Contract Work Hours and Safety Standards Act (40 USC 327-333)**. Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation of transmission of intelligence.
14. **Convict/Forced Labor**. No foreign-made equipment, materials, or supplies furnished pursuant to this contract may be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. (Reference: PCC § 6108)
15. **Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 276c)**. All grants and contracts in excess of \$2,000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the federal awarding agency.
16. **Copyrights (41 CFR 105-71.134)**. The federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) The copyright in any work developed under a grant or contract; and (b) Any rights of copyright to which a subrecipient or a contractor purchases ownership with grant support.

17. **Davis-Bacon Act, as amended (40 USC 276a to a-7)**. When required by federal program legislation, all construction contracts awarded by the recipients and sub recipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the federal awarding agency.
18. **Disadvantaged Business Enterprise/Small Business Affirmative Steps**. Subrecipients and contractors will take all necessary affirmative steps to assure that disadvantaged business enterprises (DBE), as defined in 49 CFR Section 26.5, and labor surplus area firms are used when possible. Affirmative steps shall include:
- a. Placing qualified DBEs and small businesses on solicitation lists.
 - b. Assuring that DBEs and small businesses are solicited whenever they are potential sources.
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and DBEs.
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and DBEs.
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
 - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above. (Reference: 49 CFR 18)
19. **Disclosure Requirements**.
- a. Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the contract numbers and the dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report when the total cost for such work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be set forth in a separate section of each such document or written report.

- b. When multiple documents or written reports are the subject or product of the contract, the total contract amount is deemed to represent the compensation for those multiple documents or written reports. (Reference: GC § 7550)
20. **Disputes.** Contractor shall continue with the responsibilities under this grant agreement during any dispute. (Reference: DGS Standard Agreements “General Terms and Conditions,” form GTC610)
21. **Document Retention and Access.** The subrecipient certifies that it will comply with the retention and access requirements for records established by 49 CFR Part 18.42. The required records and documentation relating to the grant and/or sub-contract shall be retained for a minimum of three years after the starting date of the retention period as defined in Section 18.42. The OTS or their authorized representative shall have the right of access to any books, documents, papers, or other records of subrecipients or contractors which are pertinent to the grant and/or contract, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited by the required retention period and shall last as long as the records are retained.
22. **Equipment.** Equipment acquired under this grant agreement for use in highway safety program areas shall be used and kept in operation for highway safety purposes by the state; or the state, by formal agreement with appropriate officials of a political subdivision or state agency, shall cause such equipment to be used and kept in operation for highway safety purposes. (Reference: 23 CFR 1200.21)
23. **Equal employment Opportunity.** All grant agreements shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor.” (Reference: OMB Circular A-110, Appendix A reference applies to Clauses 31 through 37)
24. **Financial Management System.** The subrecipient or contractor, will comply with all applicable state, local, and federal procurement procedures and will maintain a financial management system that complies with the minimum requirements of 49 CFR 18.20.
25. **Governing Law.** This contract is governed by and shall be interpreted in accordance with the laws of the State of California. (Reference: DGS Standard Agreement “General Terms and Conditions,” form GTC610)
26. **Indemnification.** Subrecipient agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by contractor in the performance of this agreement. (Reference: DGS Standard Agreement “General Terms and Conditions,” form GTC610). Institutes of Higher Education see #44.

27. Intangible Property.

- a. The subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under award. The California Office of Traffic Safety and the National Highway Traffic Safety Administration reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.
- b. Subrecipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."
- c. The federal government has the right to:
 - (1) obtain, reproduce, publish or otherwise use the data first produced under an award; and
 - (2) authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.
- d. Freedom of Information Act
 - (1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the federal government in developing an agency action that has the force and effect of law, the federal awarding agency shall request, and the subrecipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable sub recipients. This fee is in addition to any fees the agency may assess under the FOIA (5 USC 552(A)(4)(a)).
 - (2) The following definitions apply for purposes of paragraph (d) of this section:
 - (i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:
 - (A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the federal government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

e. Title to intangible property and debt instruments acquired under a grant or contract vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of OMB Circular A-110, paragraph 34(g).

(Reference: Office of Management and Budget (OMB) Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and OMB Circular A-102 Grants and Cooperative Agreements with State and Local Governments)

28. **Logos.** The OTS logo will appear on all promotional materials where appropriate and practical. Contact the appropriate OTS Coordinator for copies.

29. **Non-discrimination Clause.**

State requirements: During the performance of this grant agreement, subrecipient and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Subrecipient and contractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Subrecipient and contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Subrecipient and its contractors shall

give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Subrecipients shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

Priority Hiring Considerations. For agreements in excess of \$200,000, the subrecipient, in accordance with the California Public Contracting Code § 10353, shall consider filling vacancies in positions funded by the agreement to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be applicable to any contracts for a grant as defined in Section 10105. (Section 10105 defines a grant as “. . . the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind which will exceed a total cost calculated pursuant to subdivision (b).”

This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be construed so as to do any of the following:

- a. Interfere with or create a violation of the terms of valid collective bargaining agreements.
- b. Require the subrecipient to hire an unqualified recipient of aid.
- c. Interfere with, or create a violation of, any federal affirmative action obligation of a contractor for hiring disabled veterans or veterans of the Vietnam era.
- d. Interfere with, or create a violation of, the requirements of Section 12990 of the Government Code. (Reference: PCC § 10353)

30. **Independent Contractor.** Subrecipient/contractor, and the agents and employees of subrecipient/contractor, in the performance of this grant agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

31. **Recycling Certification.** The subrecipient shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this agreement, regardless of whether the produce meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (Reference: PCC § 10233, 10308.5, 10354)

32. **Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the

rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

33. **Single Audit Act Certification.** The OTS is the agency responsible for administering California's federal highway safety funds on behalf of the Governor. Federal funds are provided for this grant by the United States Department of Transportation. The records and supportive documentation for all completed grants are subject to an on-site audit and OTS reserves the right to inspect and review during normal working hours the work product of any independent auditor in support of their audit.

The subrecipient certifies that it will comply with the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.), as amended, which requires the following:

- a. State or local governments that receive \$750,000 or more a year in federal financial assistance shall have an audit made in accordance with the Office of Management and Budget (OMB) Circular No. A-133.
- b. State or local governments that receive less than \$750,000 a year shall be exempt from compliance with the Act and other federal audit requirements.
- c. Nothing in this paragraph exempts State or local governments from maintaining records of federal financial assistance or from providing access to such records to Federal Agencies, as provided for in federal law or in Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations".
- d. The State Controller's Office notifies OTS of those cities, counties, and special districts that have not submitted an audit report or have not indicated to SCO that they are exempt each fiscal year. Grantee agencies that are not in compliance will be notified and required to provide verification of compliance or be subject to sanctions including, reimbursement withholding or grant cancellation.

34. **Solicitation.** No employee of the applicant agency, the contractor, or any agency acting on behalf of the agency, may solicit or accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

35. **Termination for Cause.** The State may terminate this grant agreement and be relieved of any payments should the subrecipient fail to perform the requirements of this grant agreement at the time and in the manner herein provided.

36. **Termination without Cause.** Either party may terminate without cause upon thirty days written notice to the other party. All work performed pursuant to the contract and prior to the date of termination may be claimed for reimbursement (Reference: State Contracting Manual, Chapter 7.85).

37. **Timeliness.** Time is of the essence in this grantee agreement (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC610).

38. **Unenforceable Provision.** In the event that any provision of this grantee agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions

of this agreement have force and effect and shall not be effected thereby. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC610)

Traffic Enforcement Agencies Only

Full-time subrecipient traffic enforcement personnel and any equipment funded under this grant agreement shall be dedicated solely to grant supported enforcement tasks unless a criminal offense is committed in the officer's presence; a response to an officer in distress is initiated, and or a riot requires that all available enforcement personnel be committed in response.

Nothing in this grant agreement shall be interpreted as a requirement, formal or informal, that a particular police officer issue a specified or predetermined number of citations in pursuance of the goals and objectives hereunder.

Institutions of Higher Education

1. **Subcontracts.** Subrecipient may enter into contract(s) to perform applicable provisions of this grant agreement. The subrecipient is responsible for ensuring that all activities delegated to contractors are in support of this grant agreement.

Consultants and/or contractors shall be selected in accordance with the subrecipient agency procurement policies and procedures in order to comply with the terms of this grant agreement and in accordance with the OTS GPM.

The subrecipient, consultant or contractor are subject to all applicable terms and conditions and are bound by the applicable certifications of the grant agreement and 49 CFR Part 18, and/or CFR Part 19 whichever is applicable.

OTS is not obligated to make any payment under any grant agreement prior to final execution or outside the terms of the contract period. Contractor expenditures incurred prior to final contract execution are taken at the risk of that contractor agency and will be considered unallowable if that agreement/contract is not executed.

2. **Indemnification.** The University shall defend, indemnify and hold harmless the State, its officers, employees and agents from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this grant agreement but only the proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the University, its respective officers, agents or employees.

In accordance with Government Code Section 895.4, the State shall defend, indemnify and hold harmless the University, its officers, employees and agents from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the State, its respective officers, agents or employees.

State Certifications (Revised 5/15)

Federal certifications and assurances are included in [Appendix A](#) of this *Grants Management Manual*. The following laws apply to persons or entities doing business with the State of California.

1. **Statement of Compliance.** Subrecipient has, unless exempted, complied with the nondiscrimination program requirements (GC 12990 (a-f) and CCR, Title 2, Section 8103). (Not applicable to public entities.)
2. **National Labor Relations Board Certification.** Subrecipient or contractor certifies that no more than one (1) final unappealable finding of contempt of court by a federal court has been issued against subrecipient or contractor within the immediately preceding two-year period because of subrecipient or contractor's failure to comply with an order of a federal court which orders subrecipient or contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
3. **Expatriate Corporations.** Subrecipient or contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract code Section 10286 and 10286.1, and is eligible to contract with the State of California.
4. **Sweat Free Code of Conduct.** All subrecipients contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The subrecipient further declares under penalty of perjury that they adhere to the Sweat Free Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

The subrecipient agrees to cooperate fully in providing reasonable access to the subrecipient's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

5. **Domestic Partners.** For agreements over \$100,000 executed or amended after January, 1, 2007, the subrecipient certifies that it is in compliance with Public Contract Code section 10295.3
6. **CONFLICT OF INTEREST.** Subrecipient or contractor needs to be aware of the following provisions regarding current or former state employees. If subrecipient or contractor

has any questions on the status of any person rendering services or involved with the agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410)

- i. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.
- ii. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411)

- i. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- ii. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving state service.

If subrecipient or contractor violates any provisions of above paragraphs, such action by subrecipient or contractor shall render this agreement void. (PCC 10420)

Members or boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430(e))

7. **Labor Code/Workers' Compensation.** Subrecipient or contractor needs to be aware of the provisions which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions, and subrecipient or contractor affirms to comply with such provisions before commencing the performance of the work of this agreement. (Labor Code Section 3700)
8. **Americans With Disabilities Act.** Subrecipient or contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 USC 12101 et seq.)
9. **Subrecipient/Contractor Name Change.** An amendment is required to change the subrecipient or contractor's name as listed on this grant agreement. Upon receipt of

legal documentation of the name change an amendment will be processed. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

10. **Corporate Qualifications to Do Business in California.** When agreements are to be performed in the State by corporations, the authorizing agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.

“Doing business” is defined in Revenue and Taxation Code (R&TC) Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

11. **Resolution.** Upon request, a county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the grant agreement.
12. **Air or Water Pollution Violation.** Under the State laws, the subrecipient or contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
13. **Non-Duplication of Grant Funding.** The grant applicant has no ongoing or completed grants under agreement with other federal funding sources which duplicate or overlap any work contemplated or described in this traffic safety grant. It is further agreed that any pending or proposed request for other federal grant funds which would duplicate or overlap work under this traffic safety grant will be revised to exclude any such duplication of grant fund expenditures. It is understood that any such duplication of federal fund expenditures subsequently determined by audit will be subject to recovery by the Office of Traffic Safety.
14. **Energy Efficiency.** It is understood the grant applicant will purchase only energy efficient equipment, whenever possible and appropriate.
15. **Limited English Proficiency.** The grant applicant will take reasonable steps to ensure meaningful access by persons with limited English proficiency to the information and services provided through federal financial assistance.

16. **Administrative Support and Statement of Intent.** This program has full support of the authorizing agency, and every effort will be made to continue the activities after the grant conclusion. If required by local governance, the city council or the board of supervisors will endorse this grant through a resolution.

17. **Non-Enforcement Supplanting Avoidance.** Non-enforcement salaried and hourly personnel assigned to this grant are conducting a new traffic safety program not previously funded with city, county or State funding or were previously in a grant-funded position.

RAIL SAFETY EDUCATION TARGET SCHOOLS

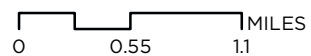
2018-19 School Year



Alameda County

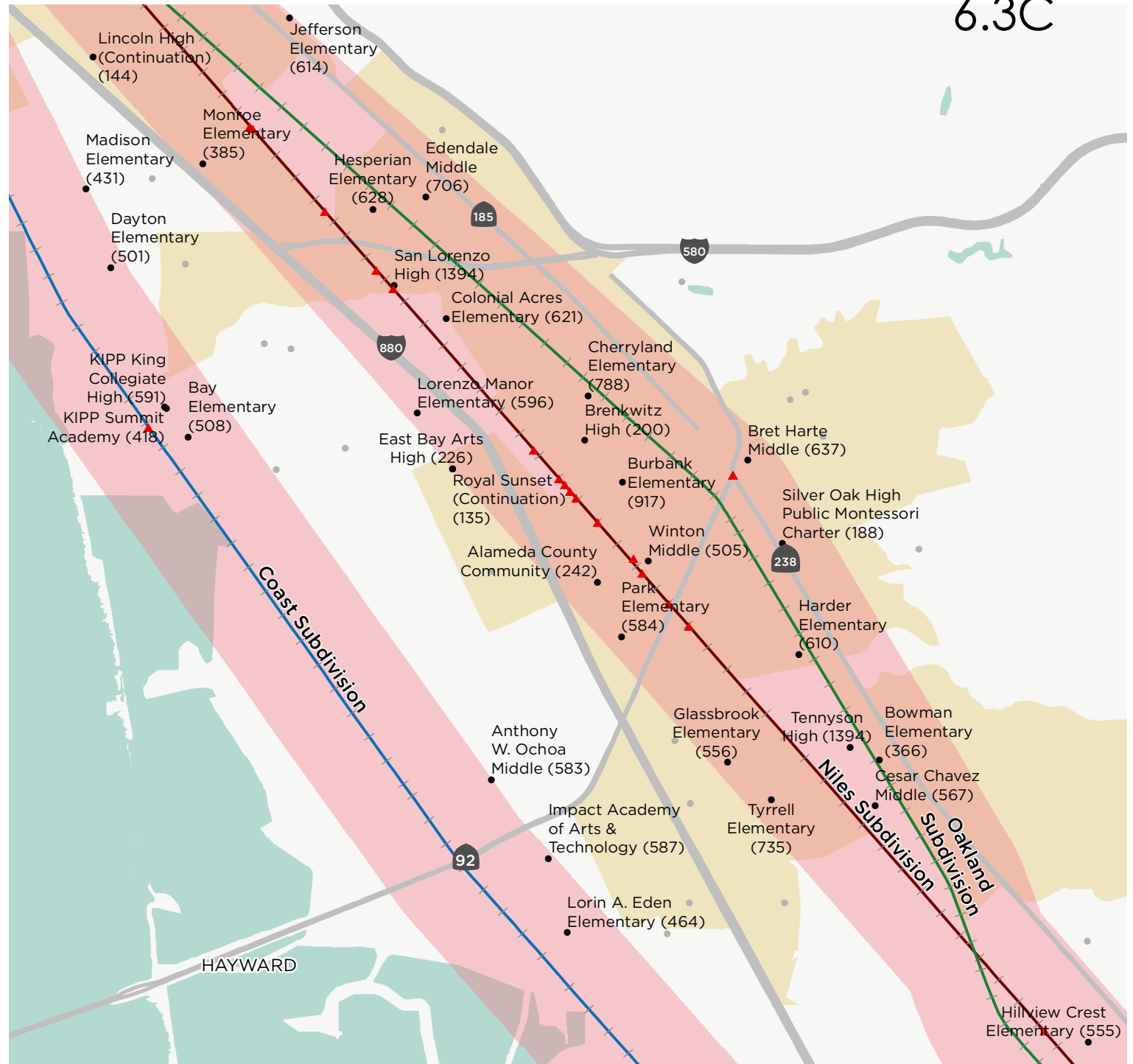
- Schools Within 1/2 Mile of Railroad
- Schools Within 1 Mile of Railroad
- ▲ Rail Collisions*
- Oakland Subdivision
- Niles Subdivision
- Coast Subdivision
- Communities of Concern
- Half Mile Buffer

*Location of trespass incidents is self-reported by the railroad operator to the FRA.



DATA SOURCES:
Alameda County,
Caltrans, NHGIS
US Census Bureau,
Federal Railroad
Administration.
(2011-May 2017)

6.3C



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Attachment D. Pedestrian and Bicyclist Rail Safety Education Target Schools

7.3D

| | School Name | Grades Served | Location | School Enrollment (School Year 2016-17) | Total Enrollment |
|---|---|---------------|---------------|---|------------------|
| Schools Within ½ Mile of Railroad Tracks | Alameda County Community | K-12 | Hayward | 242 | 18,376 |
| | Anthony W. Ochoa Middle | 7-8 | Hayward | 583 | |
| | Bay Elementary | K-5 | San Lorenzo | 508 | |
| | Bowman Elementary | K-6 | Hayward | 366 | |
| | Brenkwitz High | 9-12 | Hayward | 200 | |
| | Bret Harte Middle School (HUSD) | 7-8 | Hayward | 637 | |
| | Burbank Elementary | K-6 | Hayward | 917 | |
| | Cesar Chavez Middle School | 7-8 | Hayward | 567 | |
| | Cherryland Elementary | K-6 | Hayward | 788 | |
| | Colonial Acres School | K-5 | Hayward | 621 | |
| | Dayton Elementary | K-5 | San Leandro | 501 | |
| | East Bay Arts High | 9-12 | Hayward | 226 | |
| | Edendale Middle | 6-8 | San Lorenzo | 706 | |
| | Glassbrook Elementary | K-6 | Hayward | 556 | |
| | Harder Elementary | K-6 | Hayward | 610 | |
| | Hesperian Elementary | K-5 | San Lorenzo | 628 | |
| | Hillview Crest Elementary | K-5 | Hayward | 555 | |
| | Impact Academy of Arts & Technology | 7-12 | Hayward | 587 | |
| | James Monroe Elementary | K-5 | San Leandro | 385 | |
| | Jefferson Elementary (SLUSD) | K-5 | San Leandro | 614 | |
| | KIPP King Collegiate High | 9-12 | San Lorenzo | 591 | |
| | KIPP Summit Academy | 5-8 | San Lorenzo | 418 | |
| | Lincoln High (Continuation) | 9-12 | San Leandro | 144 | |
| | Lorenzo Manor Elementary | K-5 | Hayward | 596 | |
| | Lorin A. Eden Elementary | K-6 | Hayward | 464 | |
| | Madison Elementary | K-5 | San Leandro | 431 | |
| | Park Elementary | K-6 | Hayward | 584 | |
| | Royal Sunset (Continuation) | 7-12 | Hayward | 135 | |
| San Lorenzo High School | 9-12 | San Lorenzo | 1,394 | | |
| Silver Oak High Public Montessori Charter | 9-12 | Hayward | 188 | | |
| Tennyson High | 9-12 | Hayward | 1,394 | | |
| Tyrrell Elementary | K-6 | Hayward | 735 | | |
| Winton Middle | 7-8 | Hayward | 505 | | |
| Schools Within 1 Mile of Railroad Tracks | Arroyo High | 9-12 | San Lorenzo | 1,780 | 14,962 |
| | Bohannon Middle | 6-8 | San Lorenzo | 854 | |
| | Corvallis Elementary | K-5 | San Leandro | 527 | |
| | Del Rey Elementary | K-5 | San Lorenzo | 527 | |
| | Eden Gardens Elementary | K-6 | Hayward | 589 | |
| | Eldridge Elementary | K-6 | Hayward | 476 | |
| | Faith Ringgold School of Arts and Science | K-8 | Hayward | 135 | |
| | Grant Elementary | K-5 | San Lorenzo | 405 | |
| | Hayward High | 9-12 | Hayward | 1,576 | |
| | Highland | K-12 | Hayward | 14 | |
| | Hillside Elementary | K-5 | San Leandro | 479 | |
| | Knowledge Enlightens You (KEY) Academy | K-8 | Hayward | 559 | |
| | Leadership Public Schools | 9-12 | Hayward | 578 | |
| | Longwood Elementary | K-6 | Hayward | 708 | |
| | Mt. Eden High | 9-12 | Hayward | 2,007 | |
| | Palma Ceia Elementary | K-6 | Hayward | 588 | |
| | Ruus Elementary | K-6 | Hayward | 573 | |
| | Schafer Park Elementary | K-6 | Hayward | 734 | |
| | Strobridge Elementary | K-6 | Castro Valley | 550 | |
| | Treeview Elementary | K-6 | Hayward | 496 | |
| Washington Manor Middle School | 6-8 | San Leandro | 807 | | |
| Total Enrollment | | | | 33,338 | |

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Attachment E Trespass Collisions by Corridor

| Crossing Corridor | Length (Miles) | Population within ¼ mi. | Total Passenger and Freight Trains | Trespass Collisions, 2011 - 2017 | Trespass Fatalities, 2011 - 2017 |
|---|----------------|-------------------------|------------------------------------|----------------------------------|----------------------------------|
| Niles – San Lorenzo & Hayward | 4.9 | 34,100 | 14 | 12 | 11 |
| Niles – East Oakland | 2.5 | 8,600 | 32 | 5 | 3 |
| Martinez – Emeryville | 2.2 | 6,700 | 60 | 4 | 1 |
| Niles – Downtown District – San Leandro | 1.8 | 11,600 | 14 | 4 | 1 |
| Niles – South San Leandro | 1.0 | 6,800 | 14 | 3 | 2 |
| Martinez – Berkeley/Albany | 1.2 | 1,900 | 62 | 2 | 2 |
| Niles – Canyon District | 3.4 | 8,800 | 14 | 2 | 2 |
| Niles – Coliseum District | 2.3 | 8,200 | 32 | 2 | 2 |
| Niles – Union City | 2.4 | 11,700 | 14 | 2 | 2 |
| Oakland – Livermore/Unincorporated | 7.1 | 11,600 | 19 | 2 | 2 |
| Niles – Jack London District | 1.5 | 3,200 | 32 | 2 | 0 |
| Coast – Newark & Fremont | 4.2 | 10,800 | 18 | 1 | 1 |
| Coast – San Lorenzo | 0.1 | 1,000 | 18 | 1 | 1 |
| Coast – Union City | 1.5 | 7,900 | 18 | 1 | 1 |
| Oakland – Shinn Connector | 5.4 | 17,700 | 19 | 1 | 1 |
| Oakland – Pleasanton | 2.3 | 5,200 | 19 | 1 | 0 |
| Warm Springs | 6.0 | 15,159 | 0 | 1 | 0 |
| Other Corridors | n/a | n/a | n/a | 0 | 0 |
| <i>Unassigned – Fremont Area*</i> | <i>n/a</i> | <i>n/a</i> | <i>n/a</i> | <i>1</i> | <i>1</i> |
| Total | | | | 47 | 33 |

*A fatal trespass crash was reported in the Fremont area, but could not be assigned to a particular corridor. Therefore, no social cost was estimated.

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