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Transportation Projects. Vehicle License Fee. Initiative Constitutional Amendment.

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November 18, 2013**VIA PERSONAL DELIVERY**

The Honorable Kamala D. Harris.
Attorney General
1300 I Street, 17th Floor, P.O. Box 944255
Sacramento, CA 95814

RECEIVED

NOV 18 2013

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ashley Johansson, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Constitutional
Amendment

Dear Ms. Harris:

Pursuant to Article II, Section 10(d) of the California Constitution, we hereby submit the attached proposed Initiative Constitutional Amendment, entitled the "California Road Repairs Act of 2014," to your office and request that you prepare a title and summary of the measure as provided by law. Included with this submission is the required proponent affidavits signed by the proponents of this measure pursuant to Section 9608 of the California Elections Code. Our addresses as registered voters are attached to this letter, along with a check for \$200.00.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Kurt Oneto (telephone: 916/446-6752).

Thank you for your assistance.

Sincerely,



Will Kempton, Proponent



James Earp, Proponent

Enclosure: Proposed Initiative Constitutional Amendment

Section 1. Title.

This act shall be known, and may be cited as, the California Road Repairs Act of 2014.

Section 2. Findings and Declarations.

(a) Maintaining our local streets, roads, and highways is a critical priority to protect our economy, our environment, and our quality of life.

(b) However, the vast majority of California's roads and highways were built decades ago and are rapidly aging and in major need of repairs now.

(c) According to a recent report by the California Transportation Commission, 58 percent of state roads need rehabilitation and/or pavement maintenance, 20 percent of state bridges require major maintenance or preventative work, and 6 percent of the state's bridges need to be replaced. At the local level, 55 percent of roads need to be repaired or replaced.

(d) The poor condition of our roads costs the average California driver more than \$600 every year in vehicle maintenance costs.

(e) At the same time, more drivers and higher rates of vehicle travel are creating greater traffic congestion on streets and highways around the state. Nearly 70 percent of California's urban roads and highways are congested, causing significant delays in traffic, public safety issues, and increased air pollution from idling vehicles.

(f) This worsening traffic congestion costs California motorists an estimated \$18.7 billion annually in lost time and fuel, and increases the amount of harmful pollutants that damage the environment.

(g) California is facing a transportation funding crisis. Prior transportation funding measures expire this year. Beginning in 2014, state and local transportation

funds will be cut in half even though our need to repair and maintain roads has never been greater.

(h) What's more, the state Legislature has continually diverted money that is supposed to fund transportation improvements to non-transportation state budget items, robbing critical transportation funding and worsening the condition of our roads, bridges, and highways.

(i) We need to keep up with road maintenance or it will cost us much more to make repairs later. Every \$1 in maintenance we put off today will end up costing \$50 in more expensive replacements later.

(j) The California Road Repairs Act would provide essential funding for critical road repairs, maintenance, and expansion across the state, including: improving roads with known safety hazards; maintaining and rehabilitating local streets and roads; repairing and replacing aging bridges; maintaining and expanding state freeways and highways to reduce traffic congestion; and investing in local mass transit and rail.

(k) This act will create thousands of jobs and billions in economic growth—putting people to work and helping our recovering economy.

(l) The act also requires strict annual financial audits, to be made publicly available, to insure maximum accountability and transparency.

Section 3. Statement of Purpose.

The purpose of this measure is to improve our economy and environment while preventing deterioration of our transportation system and reducing auto maintenance bills by providing a secure funding source to make essential repairs to California's roads.

Section 4. Article XIX D is added to the Constitution of the State of California, to read:

ARTICLE XIX D

California Road Repairs Fund

SECTION 1. The California Road Repairs Fund is hereby created in the State Treasury. The Legislature shall not divert revenues intended for deposit into the Fund; and shall not borrow revenues from the Fund or from any other fund or account that receives revenues from the Fund. Revenues that are deposited into, or distributed out of, the Fund shall only be used for the specific purposes identified in this article.

SECTION 2. (a) A California road repairs fee at the rate of 1.00 percent of the market value of a vehicle is hereby imposed for the purposes of this article. The fee shall be imposed in increments of 0.25 percent over four years, as follows:

(1) From January 1, 2015 to December 31, 2015, the rate of imposition shall be 0.25 percent.

(2) From January 1, 2016 to December 31, 2016, the rate of imposition shall be 0.50 percent.

(3) From January 1, 2017 to December 31, 2017, the rate of imposition shall be 0.75 percent.

(4) From January 1, 2018 and thereafter, the rate of imposition shall be 1.00 percent.

(b) The California road repairs fee imposed pursuant to this section shall be collected and administered in the same manner, and subject to the same exceptions and exclusions, as the vehicle license fee imposed under the Vehicle License Fee Law (Part 5 [commencing with Section 10701] of Division 2 of the Revenue and Taxation Code), or its successor, except as otherwise required by this article.

(c) Revenue collected during each fiscal year from the fee imposed pursuant to this section, over and above the costs of collection and refunds authorized by law, shall be deposited into the California Road Repairs Fund.

(d) The revenues collected pursuant to this section are not subject to Section 15 of Article XI or to Article XIX.

(e)(1) Notwithstanding subdivision (a) and subdivision (b), commercial motor vehicles operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more shall be exempt from the road repairs fee imposed pursuant to this section until July 1, 2016. If prior to July 1, 2016 the Diesel Fuel Tax (Part 31 [commencing with Section 60001] of Division 2 of the Revenue and Taxation Code) is increased by three cents per gallon or more, so that commercial motor vehicles are paying their fair share to repair California's roads, then the exemption from the road repairs fee shall remain in effect. If the Diesel Fuel Tax is not increased by three cents per gallon or more prior to July 1, 2016, then the exemption for commercial motor vehicles from the road repairs fee imposed pursuant to this section shall cease to apply. If the Diesel Fuel Tax is increased by three cents per gallon or more prior to July 1, 2016 but later reduced or repealed, the exemption for commercial motor vehicles from the road repairs fee imposed pursuant to this section shall cease to apply as of the date of the reduction or repeal.

(2) In order for the exemption in paragraph (1) for commercial motor vehicles to apply on or after July 1, 2016, any increase in the Diesel Fuel Tax (Part 31 [commencing with Section 60001] of Division 2 of the Revenue and Taxation Code) must contain an annual adjustment factor to incorporate any increase or decrease in inflation as measured by the Consumer Price Index published by the United States Bureau of Labor Statistics.

SECTION 3. (a) Notwithstanding any other statute, regulation, or other law to the contrary, all moneys, revenues, and funds identified in subdivision (a) of Section 183.1 of the Streets and Highways Code, as that section read on November 1, 2013, over and above the costs of collection and refunds authorized by law, shall be deposited into the California Road Repairs Fund.

(b) This article supersedes, and shall be controlling over, any other statute, regulation, or other law which creates a different method of depositing, distributing, or

using moneys, revenues, and funds identified in subdivision (a) of Section 183.1 of the Streets and Highways Code, as that section read on November 1, 2013.

(c) If the Legislature reduces or repeals any of the moneys, revenues, or funds (or the sources thereof) identified in subdivision (a) of Section 183.1 of the Streets and Highways Code, as that section read on November 1, 2013, and adopts an alternative source of revenue to replace those moneys, revenues, or funds, the replacement revenue shall be deposited into the California Road Repairs Fund, and shall be distributed pursuant to subdivision (b) of Section 5. All other provisions of this article shall apply to any revenues adopted or raised by the Legislature to replace the moneys, revenues, or funds identified in subdivision (a) of Section 183.1 of the Streets and Highways Code, as that section read on November 1, 2013.

(d) Any statute passed by the Legislature, or any action taken by the Treasurer or Director of Finance or other state or local official, between November 1, 2013 and the date this article becomes effective which attempts to encumber, bond against, covenant, securitize, commit as security, or otherwise bind, restrict, or limit the use of the moneys, revenues, and funds deposited into the California Road Repairs Fund pursuant to this section are hereby repealed and shall forever be null and void.

SECTION 4. (a) Notwithstanding any other statute, regulation, or other law to the contrary, revenues from taxes imposed by subdivision (b) of Section 7360 and Section 7361.1 of the Revenue and Taxation Code (or any successor to those laws) on motor vehicle fuels for use in off-highway vehicles shall not be deposited into the Aeronautics Account, the Harbors and Watercraft Revolving Fund, the Department of Food and Agriculture Fund, or the Off-Highway Vehicle Trust Fund, and shall not be appropriated, allocated, or deposited in any manner that is inconsistent with this article.

(b) Notwithstanding any other statute, regulation, or other law to the contrary, revenues from taxes imposed by subdivision (b) of Section 7360 and Section 7361.1 of the Revenue and Taxation Code (or any successor to those laws) on motor vehicle fuels for use in off-highway vehicles, over and above the costs of collection and refunds authorized by law, shall be deposited into the California Road Repairs Fund.

(c) If the Legislature reduces or repeals any of the revenues (or the sources thereof) identified in subdivision (b) and adopts an alternative source of revenue to replace those revenues, the replacement revenue shall be deposited into the California Road Repairs Fund, and shall be distributed pursuant to subdivision (a) of Section 5. All other provisions of this article shall apply to any revenues adopted or raised by the Legislature to replace the revenues identified in subdivision (b).

(d) Any statute passed by the Legislature, or any action taken by the Treasurer or Director of Finance or other state or local official, between November 1, 2013 and the date this article becomes effective which attempts to encumber, bond against, covenant, securitize, commit as security, or otherwise bind, restrict, or limit the use of the revenues deposited into the California Road Repairs Fund pursuant to this section are hereby repealed and shall forever be null and void.

SECTION 5. (a) Revenues deposited into the California Road Repairs Fund pursuant to Section 2 and Section 4 shall be continuously appropriated from the Fund without regard to fiscal years in the following proportions for expenditure solely for the following purposes:

(1) 40 percent for deposit into the State Highway Account in the State Transportation Fund to fund the State Highway Operation and Protection Program pursuant to subdivision (c) of Section 163 and Section 164.6 of the Streets and Highways Code, as those sections read on November 1, 2013. Funds provided under this paragraph shall be apportioned as follows:

(A) 50 percent of the funds provided under this paragraph shall be distributed at the discretion of the Department of Transportation among the various areas of the state.

(B) 50 percent of the funds provided under this paragraph shall be distributed according to the Barnes-Mills-Walsh formula contained in Section 188 of the Streets and Highways Code, as that section read on November 1, 2013, between the counties included in Group 1 and the counties included in Group 2. For purposes of this subparagraph, the division of counties into Group 1 and Group 2 shall be based on the designation made in Section 187 of the Streets and Highways Code, as that section read

on November 1, 2013. The apportionment of funds provided under this subparagraph shall be further broken down as follows:

(i) 75 percent of the funds provided under this subparagraph shall be apportioned among the counties in each Group in the proportion that the total population of the county bears to the total population of all the counties in the Group.

(ii) 25 percent of the funds provided under this subparagraph shall be apportioned among the counties in each Group in the proportion that the number of lane miles of state highways in each county bears to the total number of lane miles of state highways in the Group.

(2) 25 percent for deposit into the Highway Users Tax Account for road and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by counties, including a city and county, in accordance with the following formulas:

(A) 75 percent of the funds provided under this paragraph shall be distributed among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(B) 25 percent of the funds provided under this paragraph shall be distributed among the counties in the proportion that the number of miles of maintained county roads in each county bears to the total number of miles of maintained county roads in the state. For purposes of distributing funds under this subparagraph, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(3) 25 percent for deposit into the Highway Users Tax Account for street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by cities, including a city and county. Funds provided under this paragraph shall be distributed among the cities in the proportion that the total population of the city bears to the total population of all the cities in the state, provided, however, that each city shall be allocated a minimum of \$400,000 pursuant to this paragraph.

(4) 10 percent for deposit into the Public Transportation Account in the State Transportation Fund to fund public transit, as defined in subdivision (f) of Section 1 of Article XIX A. The funds provided under this paragraph shall be used for capital maintenance and transit system and equipment rehabilitation and replacement purposes. Funds distributed under this paragraph shall be apportioned as follows:

(A) 50 percent shall be distributed to eligible agencies using the formula contained in Section 99313 of the Public Utilities Code, as that section read on November 1, 2013.

(B) 50 percent shall be distributed to eligible agencies using the formula contained in Section 99314 of the Public Utilities Code, as that section read on November 1, 2013.

(b) Revenues deposited into the California Road Repairs Fund pursuant to Section 3 shall be continuously appropriated without regard to fiscal years for deposit into the State Highway Account in the State Transportation Fund for distribution to the Department of Transportation for the following purposes:

(1) To fund the State Highway Operation and Protection Program pursuant to subdivision (c) of Section 163 and Section 164.6 of the Streets and Highways Code, as those sections read on November 1, 2013.

(2) For preventative maintenance.

(c) Eligible expenditures for transportation purposes under this section shall include the mitigation of environmental effects identified in an environmental impact report for a specific project, the payment for property taken or damaged for road repair and public transit purposes, and the administrative costs necessarily incurred for those purposes.

(d) Consistent with the purpose of this article to fund road repairs rather than capital projects, revenues distributed to state, regional, and/or local government bodies pursuant to this article shall not be used for the repayment of any principal or interest on any bonds.

(e) The Legislature shall take no action with respect to the State Highway Account, the State Transportation Fund, the Highway Users Tax Account, or the Public Transportation Account which delays, undermines, interrupts, or in any way frustrates the distribution and expenditure of revenues derived from the California Road Repairs Fund, as specified in this section.

SECTION 6. (a) In the event that the Legislature, the Governor, or any other state official or agency seeks to divert or borrow revenues either collected pursuant to this article or otherwise deposited into the California Road Repairs Fund pursuant to this article, or both, either by way of statute or regulation or other method, for purposes other than those specified in this article, any taxpayer, both individual and corporate, of this state has standing to seek judicial relief against the Controller, Director of Finance, Governor, Treasurer, or any other state official to enjoin such unlawful action and recover any revenues improperly diverted or borrowed along with reasonable attorneys' fees. Legal actions brought pursuant to this section shall not require the filing of a claim under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code or any successor to that law.

(b) If any legal action brought pursuant to subdivision (a) is successful either by way of final judgment, settlement, or resolution by administrative or legislative action, there is hereby continuously appropriated from the General Fund to the Controller, without regard to fiscal years, both of the following:

(1) The amount necessary to restore the fund or account from which the revenues were unlawfully diverted, borrowed, or taken to its financial status had the unlawful action not been taken.

(2) An amount necessary to cover the reasonable attorneys' fees incurred in bringing the legal action.

(c) Interest calculated at the Pooled Money Investment Fund rate from the date or dates the revenues were unlawfully diverted, borrowed, or taken shall accrue to the amounts required to be restored pursuant to this section. Within 30 days from the date a legal action is successful, the Controller shall make the transfer required by the

continuous appropriation under paragraph (1) of subdivision (b) and issue a notice to the parties that the transfer has been completed.

(d) If in any legal action brought pursuant to this section a restraining order or preliminary injunction is sought or issued, the plaintiffs or petitioners shall not be required to post a bond obligating the plaintiffs or petitioners to indemnify the government defendants or the State of California for any damage the restraining order or preliminary injunction may cause.

SECTION 7. All revenues deposited into the California Road Repairs Fund pursuant to this article shall be used only to supplement existing levels of funding for state and local highways, streets, and roads, and public transit. No moneys in the California Road Repairs Fund shall be used to supplant existing sources of funds generally available for state and local highways, streets, and roads or for public transit.

SECTION 8. (a) This article shall become effective in accordance with subdivision (a) of Section 10 of Article II of this Constitution.

(b) Section 3 and Section 4 of this article shall become operative the first July 1 following the effective date of this article.

SECTION 9. (a) All state, regional, and local government bodies receiving funds pursuant to this article shall, on an annual basis, provide an accounting of the amount of money received and how it was spent. The accounting shall include an audit of program and project expenditures and outcomes. The accounting shall be published on the respective body's Internet Web site.

(b) All state, regional, and local government bodies that administer programs and projects receiving funding pursuant to this article shall report on the activities and progress made toward the implementation of those programs and projects at least once every three years from the effective date of this article. The report shall, at a minimum, be provided to the Governor, the Legislature, and the California Transportation Commission, and shall be published on the respective body's Internet Web site.

(c) Not more than three percent of the funds provided to any state, regional, or local government body pursuant to this article shall be used for administrative costs, including the requirements imposed by subdivision (a) and subdivision (b).

Section 5. Section 13 of Article XIII B of the Constitution of the State of California is amended, to read:

SEC. 13. "Appropriations subject to limitation" of each entity of government shall not include appropriations of revenue from the California Children and Families First Trust Fund created by the California Children and Families First Act of 1998 or the California Road Repairs Fund created by the California Road Repairs Act of 2014. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Children and Families First Trust Fund or the California Road Repairs Fund. The surtax created by the California Children and Families First Act of 1998 and the revenues created by, or deposited into, the California Road Repairs Fund pursuant to the California Road Repairs Act of 2014 shall not be considered General Fund revenues for the purposes of Section 8 of Article XVI.

Section 6. Liberal Construction.

This act shall be liberally construed in order to effectuate its purposes.

Section 7. Conflicting Measures.

In the event that this measure and another measure or measures relating to road repair and transportation funding, or to charges or fees imposed on motor vehicles, shall appear on the same statewide election ballot, the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

Section 8. Severability.

The provisions of this Act are severable. If any section, subdivision, paragraph, clause, phrase, or word of this Act is for any reason held to be invalid by a decision of

any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every section, subdivision, paragraph, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Act would be subsequently declared invalid.