



AGREEMENT NUMBER 64GC17-00486	AMENDMENT NUMBER
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- This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY'S NAME: CALIFORNIA DEPARTMENT OF TRANSPORTION DIVISION OF RAIL & MASS TRANSPORTATION
 CONTRACTOR'S NAME: **County of Tulare**
- The term of this Agreement is:
 FROM: **Apr 02, 2018** TO: **Sep 30, 2020**
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.
 - Exhibit A - Project Summary and Scope of Work
 - Exhibit B - Project Management and Payment Provisions
 - Exhibit C - General Terms and Conditions
 - Exhibit D - Special Terms and Conditions
 - Exhibit E - 49 USC Section 5333(b) Special Warranty for 5311 Program and 5339 Program (if required)


IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		For Department of Transportation Use only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) County of Tulare		
BY (Authorized Signature in Blue Ink) 	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING Kuyler Crocker, Chairman of the Board of Supervisors		
ADDRESS 5961 S Mooney Blvd, Visalia, CA 93277		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Transportation, Division of Rail and Mass Transportation		
BY (Authorized Signature in Blue Ink) 	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING Michael Lange, FTA 5339 Program Manager		
ADDRESS 1120 N Street MS-39, Sacramento, CA 95814		

Item	Chapter	Statute	Appr Category	Fund Title	Fund	CFDA	Program
2660-102-0890(2)	14	2017	18102F	Federal Trust	0890	20-526	Section 5339

Current Encumbrance	0
Prior Encumbrance	\$856,489
Total Encumbrance	\$856,489

Unit	Project ID	Phase	Object	Amount	State FY
3744	0018000322	S	049	\$856,489	17/18

SIGNATURE OF ACCOUNTING OFFICE (Authorized Signature in Blue Ink) 	DATE SIGNED
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ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-39, Sacramento, CA 95814.

APPROVED AS TO FORM
COUNTY COUNSEL
 BY: 
 DEPUTY

matter no. 20191683

EXHIBIT A
PROJECT SUMMARY AND SCOPE OF WORK

Funding Program: Section 5339

Project Type: CA,CA,CA

Hours when PROJECT shall operate: Start: 5:45 A.M. End: 6:45 P.M.

Days/Dates when PROJECT shall operate: Sunday thru Saturday

Location where Service shall be offered: Tulare County

Detailed Description of Work:

Purchase replacement 35-foot Bus, CNG
 Purchase replacement 35-foot Bus, CNG
 Purchase replacement 35-foot Bus, CNG

Contract Projects:

ALI Code	Project Description	Federal Share \$	Local Share \$	Toll Credits	Total Cost
111202	Purchase Replacement	\$395,431	\$0	\$69,782	\$465,213
111202	Purchase Replacement	\$166,292	\$0	\$29,346	\$195,638
111202	Purchase Replacement	\$166,292	\$0	\$29,346	\$195,638

Contract Schedules:

Project Schedule:		Construction/REAcquisition:		Procurement Schedule:	
Performance Start	4/2/2018	Enviro CEQA/NEPA		Bid Package to Caltrans	10/1/2019
Performance End		Design (PS&E)		Issue RFP/IFB	
Last Date to Amend	6/31/2020	Right of Way		Award Contract/PO	11/1/2019
Agreement Expires	9/30/2020	Construction		Final Delivery/Install	4/1/2020
Final Invoice Due	6/30/2020				

Caltrans Project Contact:

Contact Name	Email Address	Phone Number
Michael Lange	michael.lange@dot.ca.gov	(916) 657-3946

EXHIBIT B
PROJECT MANAGEMENT AND PAYMENT PROVISIONS

1. The California Department of Transportation (hereafter called the STATE) is the sole State agency authorized to evaluate and submit to the Federal Transit Administration (hereafter called FTA) grant requests from eligible program subrecipients for eligible program purposes. The FTA receives its authority from Chapter 53 of Title 49 of the United States Codes (USC). The STATE participates in a number of federal programs, which include the following programs, which are identified in 49 USC Chapter 53.
 - A. FTA Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities (5310 Program). The 5310 Program is discretionary, providing grant funding for the provision of transportation services meeting the special needs of seniors and/or persons with disabilities, for whom mass transportation services are otherwise unavailable, insufficient, or inappropriate. Eligible applicants are private nonprofit corporations, private for-profit corporations and public agencies. Applications are scored and prioritized for funding. FTA Circular 9070.1G “Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions”, dated July 7, 2014, (5310 Circular) and any later revision thereto, applies to any PROJECT funded by the 5310 Program.
 - B. FTA Section 5311 Formula Grants for Rural Areas (5311 Program). The 5311 Program funds projects in rural areas for the purposes of planning, public transportation capital projects, operating costs, job access reverse commute projects, and the acquisition of public transportation service. Available funds are determined based on an FTA formula that includes population and transit service miles. Eligible subrecipients may include states and local governmental authorities, nonprofit organizations, tribal governments, and operators of public transportation or intercity bus service that receive FTA grant funds indirectly through a recipient. Intercity bus projects are funded from a subprogram of the 5311 Program. The 5311(f) Subprogram is discretionary, with applications scored and prioritized for funding. Private for-profit operators of transit services or intercity bus services may participate in the 5311(f) Subprogram as third-party contractors for recipients or as subrecipients. FTA Circular 9040.1G “Formula Grants for Rural Areas: Program Guidance and Application Instructions”, dated October 24, 2014, (5311 Circular) and any later revision thereto applies to any PROJECT funded by the 5311 Program or the 5311(f) Subprogram. Unless stated otherwise in this Agreement, any reference herein to the 5311 Program applies to the 5311(f) Subprogram.
 - C. FTA Section 5339 Bus and Bus Facilities Program (5339 Program). The purpose of the 5339 Program is to fund to eligible agencies the purchase of capital bus and bus-related projects that support the continuation and expansion of public transportation services. Funding is discretionary and applications are scored to determine funding priority. Eligible subrecipients include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income. FTA Circular 5100.1 “Bus and Bus Facilities Formula Program: Guidance and Application Instructions, dated May 18, 2015, (5339 Circular) and any later revision thereto applies to any PROJECT funded by the 5339 Program.
2. This Agreement is subject to the Fixing America’s Surface Transportation Act (FAST Act) (Federal Transportation Funding Law) (<https://www.transit.dot.gov/FAST>).
3. This Agreement is governed by numerous policies and guidance documents issued by the United States Department of Transportation (USDOT) and FTA, which includes:
 - A. USDOT Master Agreement (23), dated October 1, 2016, (USDOT Master Agreement) and any later revision thereto.
 - B. FTA Circular 4220.1F, “Third-Party Contracting Guidance,” November 1, 2008, (Third-Party Contracting Circular) and any later revision thereto.

- C. FTA Circular 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients", dated October 1, 2012, (Title VI Circular) and any later revision thereto.
 - D. FTA Circular 5010.1D, "Grant Management Requirements" dated November 1, 2008, and revised August 27, 2012, (Grant Management Circular) and any later revision thereto.
 - E. FTA Project and Construction Management Guidelines, as updated July 2011, (Project and Construction Management Guidelines), an advisory handbook published by USDOT.
 - F. Fiscal Year 2017 Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements, as published December 20, 2016.
4. This Agreement is governed by the Caltrans State Management Plan (SMP), dated February 6, 2015, which is available at the Department of Transportation, Division of Rail and Mass Transportation's website (<http://www.dot.ca.gov/rail/docs/smp.update.2015.pdf>). If this PROJECT is funded from the 5339 Program, it is instead governed by State Management Plan FTA Section 5339 Program, dated July 2016, which is available at <http://www.dot.ca.gov/hq/MassTrans/Docs-Pdfs/5339/5339.smp.final.2016-07-29.pdf>.
 5. The CONTRACTOR has been designated by the STATE as an eligible applicant under 49 USC Chapter 53 Section 5310, 5311, or 5339. The CONTRACTOR is proposing transportation services (hereafter called the PROJECT) that are eligible for assistance under the applicable Section of 49 USC Chapter 53.
 6. The CONTRACTOR's application for a grant under 49 USC Chapter 53 has been certified to the FTA by the STATE as having met all the statutory and administrative requirements for PROJECT approval. The purpose of this Agreement is to implement the approved PROJECT.
 7. The CONTRACTOR agrees to provide transportation services that meet the specific requirements and intent of the applicable Program described in 49 USC Chapter 53, which is providing the funding for this PROJECT and with the CONTRACTOR's application for federal assistance, which is on file with the STATE.
 8. The CONTRACTOR agrees to complete the defined PROJECT described in the grant application, which adopts all of the terms and conditions of this Agreement.
 9. The CONTRACTOR assures and certifies that private for-profit transit operators have been afforded a fair and timely opportunity to participate to the maximum extent feasible in the planning and provision of the proposed transportation services.
 10. Transportation services under this Agreement shall be provided for a minimum of 20 hours per week.
 11. It is the parties' intention that grant funds will be available for timely expenditure, commencing with the State fiscal year when this Agreement is executed. In the event that funds are not appropriated for the purpose of this Agreement in an amount sufficient to allow the encumbrance of grant funds in accordance with this paragraph, the parties agree that this Agreement will terminate at the end of the fiscal year for which funds have been encumbered. The CONTRACTOR's obligations under this Agreement shall remain in effect until the PROJECT is completed under the terms of this Agreement. Upon closeout of this Agreement, any unreimbursed funds will revert as described in Exhibit B and no further invoices shall be paid to CONTRACTOR.
 12. Any 5311 Program funds, exclusive of 5311(f) Program funds, awarded for PROJECT cannot be carried over more than one (1) year by the CONTRACTOR.
 13. Invoices may be submitted no more frequently than once per month for the PROJECT.

14. The full PROJECT invoice, showing both Federal Share and Local Share, shall be submitted by CONTRACTOR to the STATE for review and approval prior to payment. The STATE verifies PROJECT costs and payments made to ensure that funding shares are reported accurately for the Federal Financial Report (SF-425) that the STATE must file pursuant to the award of federal grants.
15. Invoices shall meet all the requirements of this Agreement, be itemized in a manner consistent with the budget for PROJECT found in the PROJECT application, and be submitted through the STATE's BlackCat Grants system. Appropriate backup documentation to support all PROJECT costs to be reimbursed shall be included. Appropriate documents may include, but are not limited to, purchase orders, signed invoices for materials, supplies and equipment, and for travel describing the purpose of travel as it pertains to the PROJECT, classifications of employees performing PROJECT work, hourly rates, and identification of work to be reimbursed for the payment period, indirect costs (only if permitted by the STATE under Exhibit B), and subcontractor costs itemized similarly to those of the CONTRACTOR. CONTRACTOR's certification that goods or services purchased have been received and accepted shall accompany the invoice. Proof of payment made to the vendor or a copy of the method of payment must be submitted by the CONTRACTOR. Proof of payment includes bank statements or cancelled checks showing check number and "Paid in Full" or CONTRACTOR accounting records showing the transaction.
16. The CONTRACTOR's invoices and the vendor's invoices shall be consistent internally and with any purchase order applicable to the PROJECT and shall include a breakdown of equipment unit costs, sales tax, registration fees, and any other items procured with said purchase orders, including items and costs not reimbursable under this PROJECT and any items not subject to sales tax. The latter includes "items and materials when used to modify a vehicle for physically handicapped persons", which are exempt from sales tax under Revenue and Taxation Code Section 6369.4.
17. Only work performed or goods or services received that fall on or between the Performance Period dates in Exhibit A are eligible for reimbursement. Invoices shall show dates of work, services or receipt of goods.
18. Eligibility for reimbursement of costs for the PROJECT shall be determined as follows.
 - A. For Public Agencies and Commercial Organizations, the net PROJECT cost and allowable individual items of PROJECT cost shall be determined in conformance with Code of Federal Regulations (CFR) 48, Federal Acquisition Regulations (FAR) Chapter 1 Part 31 "Contract Cost Principles and Procedures", 2 CFR Part 225 (formerly Office of Management and Budgets (OMB) Circular A-87) "Cost Principles for State, Local, and Indian Tribal Governments", FAR Chapter 1 Subpart 31.2, "Contracts with Commercial Organizations," and other applicable regulations, circulars, or memoranda that may be issued by FTA.
 - B. For Non-Profit Agencies, the net PROJECT cost and eligibility of individual items of PROJECT cost shall be determined in conformance with CFR Part 48, FAR Chapter 1 Part 31, 2 CFR Part 230 (formerly OMB Circular A-122) "Cost Principles for Non-Profit Organizations", and other applicable regulations, circulars, or memoranda that may be issued by the FTA.
19. Direct and Indirect Costs.
 - A. The CONTRACTOR shall comply with 2 CFR Part 225 or 2 CFR Part 230, as applicable, and certifies that all direct costs (and indirect costs, if permitted by STATE) billed are allowable. All direct costs, even for PROJECT administration activities must be adequately supported with proper documentation.
 - B. For Public Agencies only in all programs besides the 5310 Program, indirect costs may approved for reimbursement at the discretion of the STATE and Program Manager. Indirect costs must be supported

by an approved Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal (ICRP). The CONTRACTOR shall obtain approval of the CONTRACTOR's CAP from the STATE's Audits and Investigations Office prior to submitting any invoices for payment for the PROJECT. Indirect charges incurred prior to STATE's approval of the CAP or ICRP are not an allowable expense.

- C. Under no circumstances are any indirect costs an allowable expense for a 5310 Program PROJECT.
20. Payment for services satisfactorily provided, work satisfactorily performed or goods received under this Agreement shall be made on a reimbursement basis and in arrears only for actual eligible costs.
 21. Incomplete or disputed invoices shall be returned to CONTRACTOR, unpaid. Corrected invoices must be resubmitted to STATE prior to the payment of the invoice.
 22. Upon STATE's review and acceptance of an undisputed invoice by the STATE, the STATE agrees to reimburse the CONTRACTOR for eligible costs. Reimbursement will be made at the rate of Federal Share percentage shown in Exhibit A, up to the total amount of Federal Share.
 23. Final invoice shall be submitted to the STATE no later than ninety (90) days after the expiration of this Agreement. In no case, shall a final invoice be submitted after the date specified in Exhibit A.
 24. Project Closeout.
 - A. For discretionary programs, such as 5310 Program, 5311(f) Subprogram and 5339 Program, any remaining balance/cost savings will be returned to STATE. For formula programs, such as 5311 Program (except for projects funded from 5311(f) Subprogram), CONTRACTOR agrees that once PROJECT is complete, any outstanding balance will be returned to the STATE for statewide redistribution or reallocation per FSTIP requirements, unless CONTRACTOR requests otherwise in writing at time of final invoice.
 - B. Upon successful completion of the PROJECT or upon termination by STATE, the parties shall determine the amount of compensation, if any, to be repaid by the CONTRACTOR to STATE in order to avoid any STATE liability to FTA due to payments erroneously made to the CONTRACTOR in excess of the total PROJECT amount eligible for Federal reimbursement.
 25. The parties agree that only the following section(s) of Exhibit B that have a mark ("X") opposite to the transportation services category (hereafter called the PROJECT) shall apply to this Agreement.

A. **Capital Project (Vehicle/Equipment) (5339)**

1. The CONTRACTOR's scope of work shall be as described in Exhibit A.
2. New PROJECTs for equipment or new vehicles shall not designated as "used" by Federal Trade Commission Agency 16 CFR Part 455.1(d)(2) or California Vehicle Code Section 100-680.
3. CONTRACTOR agrees to operate the equipment funded and made available through the PROJECT within the service area as described in Exhibit A.
4. The STATE's obligations to compensate the CONTRACTOR under the terms of this Agreement shall terminate upon payments of CONTRACTOR's invoice(s) for the FTA allowable portions of PROJECT costs. Reimbursements will only be allowed after execution of this Agreement.
5. If the PROJECT includes capital costs of contracting, allowable expenses may include depreciation and interest on facilities and equipment, as well as other capital costs such as preventive maintenance. Under the capital cost of contracting, only privately owned assets are eligible. Any capital assets that have any remaining federal interest in them, or items purchased with state or local government assistance shall not be capitalized, nor shall costs incurred delivering services ineligible for FTA assistance, such as charter or school bus service. Detailed information regarding the capital cost of contracting is available in the 5310 Circular.
6. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Exhibit C is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this Agreement and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting.



B. **Transfer of Used Vehicle/Equipment (5339)**

1. The CONTRACTOR shall use the PROJECT equipment at all times exclusively and in conformity with the Project Scope of Work in Exhibit A and the Project Description and Justification for Funding Request (Attachment 1 to this Agreement).
2. Vehicles may not be transferred without prior written approval from STATE.
3. The PROJECT equipment as described in Exhibit A and Attachment 1 to this Agreement was transferred from:

SA to County of Tulare.
4. The STATE has evaluated and approved the transfer for vehicle/equipment based on the CONTRACTOR's request containing the following information.
 - a. Project Description and Justification for Funding Request (Replacement or Expansion)
 - b. Existing Transportation Services (current fleet)
 - c. Proposed Transportation Services
 - d. Signed Certifications and Assurances
 - e. Board Resolutions of Both Parties participating in the transfer
5. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Exhibit C is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this Agreement and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting.

EXHIBIT C
GENERAL TERMS AND CONDITIONS

1. Subrecipient. For the purpose of this Agreement, the CONTRACTOR is the Subrecipient as referenced in the Federal Transportation Funding Law and the applicable Program Circular. As a Subrecipient of FTA funds the CONTRACTOR agrees to comply with the federal statutes, regulations, executive orders, directives and administrative requirements which relate to applications made to and grants received from FTA, including but not limited to, the USDOT FTA Master Agreement and the FTA Circular for the 5310 Program, the 5311 Program and/or the 5339 Program.
2. Budget Contingency Clause.
 - A. The CONTRACTOR agrees that it will provide funds in an amount sufficient, together with the grant, to assure payment of those actual total net PROJECT costs. The funds provided shall include sufficient funds from other eligible sources to provide the PROJECT local matching requirements in accordance with Federal Transportation Funding Law.
 - B. It is mutually agreed that if the State Budget Act or the Federal Transportation Funding Law of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the STATE shall have no liability to pay any funds whatsoever to CONTRACTOR or to furnish any other considerations under this Agreement and CONTRACTOR shall not be obligated to perform any provisions of this Agreement.
 - C. If funding for any fiscal year is reduced or deleted by the State Budget Act or the Federal Transportation Funding Law for purposes of this program, the STATE shall have the option to either cancel this Agreement with no liability occurring to the STATE, or offer an amended Agreement to CONTRACTOR that reflects the reduced amount.
3. Prompt Payment and Return of Retainage.
 - A. All payments to the CONTRACTOR shall be made in accordance with California Government Code (GC), Chapter 4.5, commencing with Section 927, which is known as the California Prompt Payment Act. If payment is not made within the 45 calendar-day limit stipulated by the California Prompt Payment Act, interest penalties may be payable to the CONTRACTOR.
 - B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
 - C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
 - D. The CONTRACTOR must pay third-party contractors within 7 days of receipt of each undisputed progress payment from the STATE, unless the PROJECT is for Construction. In the case of a Construction project only, the CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the STATE. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.
4. Approval.
 - A. Except as provided herein, this Agreement is of no force or effect until signed by both parties and approved by the STATE.

- B. The STATE reserves the right to sign and approve the Agreement provided however, the commencement of work shall not be authorized until the expenditure of federal funds has been authorized by the FTA for a specific Federal fiscal year or a pre-award expenditure authority approved by the STATE. The CONTRACTOR may not commence performance until federal authorization has been obtained.
 - C. It is mutually understood between the parties that this Agreement, for the mutual benefit of both parties, may have been written before ascertaining the availability of congressional or legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after the determination was made.
 - D. This Agreement is valid and enforceable only if sufficient funds are made available to the STATE by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
 - E. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
 - F. State Law. This Agreement shall be interpreted according to the laws of the State of California, except as to those provisions where federal law shall apply; as to those provisions where federal law applies, the rules, regulations, statutes and executive orders of the federal government shall be applicable. In the event that any provision of this Agreement requires that CONTRACTOR observe or comply with or perform any activity in contradiction or violation of State law, the CONTRACTOR will notify STATE at once, in writing, of such provision. The remaining Agreement provisions shall not be affected. The unenforceable provision(s) shall be renegotiated by the CONTRACTOR and STATE for mutually agreed appropriate changes and/or modifications; and the CONTRACTOR shall proceed, as soon as is possible, with PROJECT.
 - G. No issuance of a Standard Agreement or amendments will be provided until proof that the project has been programmed and is in an approved FSTIP has been received by the STATE.
5. Enforcement/Remedies for Non-Compliance. If a CONTRACTOR materially fails to comply with any term of this Agreement, or fails to refund any moneys due STATE, the STATE may take one or more of the following actions:
- A. Disallow or temporarily withhold cash payments pending correction of the deficiency by the CONTRACTOR.
 - B. Wholly or partially suspend or terminate the current award for the CONTRACTOR's PROJECT.
 - C. Withhold future awards to the CONTRACTOR for the program.
 - D. Withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from remaining grant balance and/or future apportionments, or any other funds due CONTRACTOR from the Federal Trust Fund or any other sources of funds.
 - E. Take any other remedies that may be legally available.
6. Timeliness. Time is of the essence in this Agreement. CONTRACTOR shall return the signed Agreement to the STATE within 90 calendar days after mailing. In the event this Agreement is not signed and returned within 90 days of mailing, the PROJECT identified in Exhibit A of this Agreement may be withdrawn and cancelled at the discretion of the STATE.
7. Amendment. No amendment or alteration of the terms of this Agreement shall be valid unless submitted in writing, signed by the parties and approved as required. This Agreement may be amended in writing, by mutual consent of the parties, on a case-by-case basis where warranted. The request for an Amendment

must be made in writing to the Program Manager at least two months before the Agreement Expiration Date shown in Exhibit A. If an Amendment is issued by STATE, the Amendment shall be signed and returned by the CONTRACTOR within 90 calendar days of issuance. If CONTRACTOR does not sign and return the Amendment within 90 days of issuance, the PROJECT may be either withdrawn or cancelled at the discretion of the STATE.

8. No Oral Understanding or Agreement. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.
9. Assignment. This Agreement is not assignable by the CONTRACTOR, either in whole or in part, without the consent of the STATE in the form of a formal written amendment.
10. Independent Contractor. The CONTRACTOR, and the agents and employees of the CONTRACTOR, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the STATE.
11. Antitrust Claims. The CONTRACTOR by signing this Agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the CONTRACTOR shall comply with the requirements of the California Government Code (GC) Sections set out below.
 - A. GC Sections 4550 through 4554 regarding 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 BPC Section 16750(c).
 2. GC Section 4550 defines a "public purchasing body" as the STATE or the subdivision or agency making a public purchase.
 - 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 Section 15) or under the Cartwright Act (BCP Chapter 2 (commencing with Section 16700) of Part 2 of Division 7, arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Per GC Section 4552, such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.
 - C. Per GC Section 4553., 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 awarding body or public purchasing body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the awarding body or public purchasing body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
 - 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 either 1) the assignee has not been injured thereby, or 2) the assignee declines to file a court action for the cause of action, per GC Section 4554.
12. Child Support Compliance Act. For any Agreement in excess of \$100,000, the CONTRACTOR acknowledges in accordance with PCC Section 7110, that:
 - A. The CONTRACTOR 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 California Family Code; and

- B. The CONTRACTOR, 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.

12. Unenforceable Provision. In the event that any provision of this Agreement is unenforceable or held to be unenforceable by a court of competent jurisdiction, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
13. Priority Hiring Considerations. If this Agreement includes services in excess of \$200,000, the CONTRACTOR shall give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid under the California Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
14. State Management Plan (SMP). The STATE is designated by the Governor to administer the FTA Federal Transit grant programs in California. The implementation and administration of the FTA programs are outlined in the SMP. Should there be a discrepancy between the SMP and this Agreement, the Agreement shall govern.
15. Annual Certification and Assurances. As requested by the STATE, the CONTRACTOR must complete and submit to the STATE the annual FTA Certifications and Assurances for Federal Transit Administration Assistance Programs, Certifications and Assurances Checklist and Signature Page to be provided by STATE.
16. Buy America. The CONTRACTOR shall comply with the Buy America requirements of 49 USC Section 5323(j) and 49 CFR Part 661 for all procurements of steel, iron and manufactured products used in PROJECT. Buy America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000). Separate requirements for rolling stock are set out at 49 USC Section 5323(j)(2)(c) and 49 CFR Part 661.11.
17. U.S. Flag Requirements.
- A. Shipments by Ocean Vessel. For third-party contracts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subcontractors must comply with 46 USC Section 55303 and 46 CFR Part 381, "Cargo Preference-U.S. Flag Vessels."
- B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subcontractors must comply with the 49 USC Section 40118, which may be cited as the "Fly America Act" "Use of United States Flag Air Carriers," and 41 CFR Parts 301-10.131 through 301-10.143.
- C. Project Travel. In accordance with 49 USC Section 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.
18. Accounting Records. The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR's accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by STATE. All records shall provide a breakdown of total costs charged to the PROJECT including properly-executed payrolls, time records, invoices and vouchers.

19. Vehicle Operator Licensing. The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration (FMCSA) regulations and the California Vehicle Code including, but not limited to, the requirement that all vehicle operators have a valid State of California driver's license, including any special operator license that may be necessary for the type of vehicle operated.
20. Audit Requirements. The CONTRACTOR shall be responsible for meeting the audit requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 1201. The required audit reports shall be submitted to the State Controller with a copy to STATE in conformance with the compliance guidelines issued by the California Department of Finance. The cost of audits made in accordance with the provisions of 2 CFR Part 200 is an allowable charge to this PROJECT.
21. Record Keeping. The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the performance period and for three (3) years from the date of final payment under this Agreement and all subcontracts.
22. Examination of Records. The STATE, the STATE'S Office of Audits and Investigations, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Agreement for audits, examinations, excerpts, and transactions. Copies thereof shall be furnished by CONTRACTOR upon request. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the STATE or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information. The CONTRACTOR shall include a clause to this effect in every subcontract entered into relative to the PROJECT.
23. Examination of Accounting. The CONTRACTOR'S accounting system and billing procedures are subject to audit by STATE prior to contract award, and accounting records pertaining to work performed and costs billed to STATE are subject to audit for a period of three (3) years after date of final payment under this Agreement. If the CONTRACTOR fails to retain records such as employee time cards, payroll records, travel records, equipment time and cost records, billings from subcontractors, material and equipment suppliers' records that are sufficient to permit audit verification of the validity of costs charged to STATE, the CONTRACTOR will be liable for reimbursement to STATE of all unsubstantiated billings.
24. Reporting Forms. The CONTRACTOR shall furnish STATE with any additional reports or data that may be required by FTA or other federal agencies. Such information will be submitted on forms provided by STATE.
25. Debarment and Suspension. The CONTRACTOR agrees as follows:
 - A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 USC Section 6101 note; and U.S. DOT regulations on Debarment and Suspension and 49 CFR Part 29.
 - B. Unless otherwise permitted by FTA, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-agreement of any amount with a party identified in the "U.S. General Services Administration's (U.S. GSA) System for Award Management (<https://www.sam.gov>) List of Parties Excluded from Federal procurement or Non-Procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.

- C. In accordance with 2 CFR Part 1200 and OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective subrecipient, third-party contractor or subcontractor containing information about the debarment and suspension status and other specific information of that contractor and its principals before award of a third-party contract or subcontract at any tier of \$25,000 or more.

26. Compliance with Federal Statutes. During the performance of this Agreement, the CONTRACTOR, its assignees and successors in interest, agree to comply with all Federal statutes and regulations applicable to grantee recipients under 49 USC Chapter 53, including, but not limited to the following:
- A. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC Subsection 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC Subsection 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C Subsection 12132, and federal transit law at 49 USC Section 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations FTA may issue.
 - B. Equal Employment Opportunity (EEO). The following equal employment opportunity requirements apply to the underlying contract:
 - 1. Race, Color, Creed, National Origin, Religion, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC Subsection 2000e, and federal transit laws at 49 USC Section 5332, the CONTRACTOR agrees to comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Part 60 *et seq.*, (which implement Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC Subsection 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - 2. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC Section 623 and federal transit law at 49 USC Section 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - 3. Disability. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - C. The CONTRACTOR agrees to include the foregoing requirements in each solicitation for subcontract financed in whole or in part with Federal assistance provided by FTA and agrees to notify the subcontractor of their obligations under this Agreement and the Regulations relative to Civil Rights.

- D. In accordance with 49 CFR Part 21 and as described in the Title VI Circular, as it may be updated or amended, and the California Department of Transportation Title VI Program Plan, the CONTRACTOR shall comply with and ensure that each third-party contractor at any tier of the PROJECT also complies with the following reporting requirements:
1. Prepare and submit a Title VI Program.
 2. Establish and maintain a Title VI complaint procedures.
 3. Record Title VI investigations, complaints, and lawsuits.
 4. Provide meaningful access to Limited English Proficient Persons.
 5. Notify beneficiaries of protection under Title VI.
 6. Provide additional information upon request.
 7. Provide an Annual Title VI Certification and Assurance.
 8. Guidance on conducting an Analysis of Construction projects.
 9. Guidance on promoting Inclusive Public Participation.
 10. Report minority representation on transit related Planning and Advisory Bodies.
- E. The following requirements only apply to those providers of public transportation that both operate fixed route service and demand response service. The following requirements do not apply to those providers of public transportation that only operate demand response service. Demand response includes general public paratransit, Americans with Disabilities Act complementary paratransit, and non-profit organizations participating in the 5310 Program and serving only their own clientele, which may be referred to as closed-door service. The CONTRACTOR shall comply with the following requirements and ensure the compliance of each third-party contractor at any tier of the PROJECT:
1. Service standards
 - a. Vehicle load for each mode
 - b. Vehicle headway for each mode
 - c. On-time performance for each mode
 - d. Service available for each mode
 2. Service policies
 - a. Transit Amenities for each mode
 - b. Vehicle Assignment for each mode
- F. Every three years, on a date determined by the STATE, the CONTRACTOR shall submit the following information to the STATE as part of their Title VI Program per Chapter III of the Title VI Circular.
1. Title VI Notice to the Public, including a list of locations where the notice is posted
 2. Title VI Complaint Procedures instructing the public how to file a Title VI discrimination complaint
 3. Title VI Complaint Form used by the CONTRACTOR
 4. List of transit-related Title VI investigations, complaints, and lawsuits against the CONTRACTOR
 5. Public Participation Plan, including information about outreach methods to engage minority and limited English proficient (LEP) populations, as well as a summary of outreach efforts made by the CONTRACTOR since its last Title VI submission
 6. Language Assistance Plan for providing language assistance to its LEP population as required by the Title VI Circular and USDOT LEP Guidance
 7. A table depicting the membership of non-elected committees and councils, the membership of which is selected by the recipient, broken down by race, and a description of the process the agency uses to encourage the participation of minorities on such committees
 8. A Title VI equity analysis if the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc.
 9. A copy of board meeting minutes, resolution, or other appropriate documentation showing the board of directors or appropriate governing entity or official(s) responsible for policy decisions, reviewing and approving the Title VI Program.

10. Additional information as specified in Chapters IV, V, and VI of the Title VI Circular depending on whether the CONTRACTOR is a transit provider, nonprofit or public agency.
- G. Sanctions for Noncompliance. In the event of the CONTRACTOR's noncompliance with any provision of Civil Rights requirement in this Agreement, the STATE shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
1. Withholding of payments to the CONTRACTOR under the Agreement until the CONTRACTOR complies, and/or
 2. Cancellation, termination or suspension of the Agreement, in whole or in part.
- H. Incorporation of Provisions. The CONTRACTOR shall include the provisions of the foregoing Paragraphs A through E in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontractor or procurement as the STATE or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the STATE to enter into such litigation to protect the interest of the STATE. In addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.
27. Disadvantaged Business Enterprise (DBE). The CONTRACTOR agrees to:
- A. Comply with 49 CFR Part 26 "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs," and shall cooperate with STATE with regard to maximum utilization of DBEs, using its best efforts to ensure that DBEs shall have the maximum opportunity to compete for sub contractual work under this Agreement.
 - B. Prior to beginning PROJECT work, the CONTRACTOR shall complete and sign a DBE Implementation Agreement form to be provided by the STATE. The completed DBE Implementation Agreement must be returned to the STATE no later than the date that this Agreement is executed.
 - C. Report twice annually on DBE participation in CONTRACTOR's contracting opportunities; commitments, awards, and actual payments.
 - D. In accordance with 49 CFR Part 26.53(f)(1)(i), the CONTRACTOR shall not terminate a DBE subcontractor without prior written approval of the STATE. A CONTRACTOR that terminates a DBE subcontractor must make a good faith effort to find a replacement DBE subcontractor to perform at least the same amount of work under the contract to meet the contract goal established for the work. The good faith effort should be documented and submitted to the STATE within a reasonable time after obtaining approval by the STATE to terminate an existing DBE as required by 49 CFR Part 26.53(g).
 - E. CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any federally-assisted contract or in the administration of its DBE program. The CONTRACTOR's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC Section 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC Section 3801 *et seq.*).
 - F. The CONTRACTOR and their subcontractors shall make available, upon request of the STATE, a copy of all DBE subcontracts. The CONTRACTOR must ensure its third-party contractors and subcontractor also comply with these requirements.
28. Section 504 and Americans with Disabilities Act Program Requirements (ADA). The CONTRACTOR will comply with 49 CFR Parts 27, 37 and 38, which implement the ADA and Section 504 of the Rehabilitation Act

of 1973 (29 USC Section 794), as amended. The CONTRACTOR must ensure its third-party contractors operating public transportation service comply with these requirements.

29. Special Section 5333(b) Warranty for 5311 Program and 5339 Program. When the PROJECT includes the acquisition, improvement, or operation of public transportation, the CONTRACTOR shall comply with applicable transit employee protective requirements as specified by 49 USC Section 5333(b) (formerly Section 13(c) of the Urban Mass Transportation Act) as executed by the Secretary of Labor and the Secretary of Transportation. When applicable, those terms and conditions are described in Exhibit E of this Agreement. The CONTRACTOR agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by the FTA.
30. Contract Work Hours and Safety Standards. The CONTRACTOR agrees to comply with the following requirement for Construction contracts and, if applicable, non-construction project contracts that employ laborers or mechanics on a public work:
 - A. The CONTRACTOR shall comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 USC Section 3704 and 29 CFR Part 1926, "Safety and Health Regulations for Construction." The CONTRACTOR and subcontractor must ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous.
 - B. No CONTRACTOR or subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at the rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
31. Public Lands. The CONTRACTOR agrees to refrain from using in its PROJECT any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of National, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and also refrain from using in its PROJECT any land from a historic site of National, State, or local significance unless the Federal Government makes the specific findings as required by 49 USC Section 303.
32. Energy Conservation. The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, USC Section 6321 *et seq.*
33. Receipt of Commission. The CONTRACTOR warrants that it has not paid, and also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for these funds obtained as a consequence of this Agreement.
34. Conflict of Interest.
 - A. In accordance with 41 USC Section 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.
 - B. The CONTRACTOR certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any personal financial interest or benefit which either directly or indirectly arises from this Agreement.

- C. The CONTRACTOR shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose which could result in private gain or which gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- D. The CONTRACTOR will not be awarded a contract if the financial interests are held by a current officer or employee of the STATE. Additionally, a contract will not be awarded to an officer or employee of the STATE to provide goods and service. Likewise, the CONTRACTOR's officials and employees shall also avoid actions that result in or create the appearance of:
 - 1. Using an official position for private gain;
 - 2. Giving preferential treatment to any particular person;
 - 3. Losing independence or impartiality; and/or
 - 4. Adversely affecting the confidence of the public or local officials in the integrity of the program.
- E. Former STATE employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision-making process relevant to the Agreement, or for one (1) year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed contract at any time during the 12-month period prior to that employee's separation from State service.
- F. Neither the CONTRACTOR nor any of its employees, suppliers or subcontractors shall enter into any contract, subcontract, or arrangement in connection with the PROJECT or any property included or planned to be included in the PROJECT, in which any member, officer, or employee of the CONTRACTOR or its subcontractor, during the PROJECT term and for one year thereafter, has any direct or indirect conflict of interest. If any such present or former member, officer, or employee involuntarily acquires or had acquired prior to the beginning of the PROJECT term any such interest, and if such interest is immediately disclosed to the CONTRACTOR and such disclosure is entered upon the minutes of the CONTRACTOR's written report to STATE of such interest, the STATE, may waive the conflict of interest, provided that the officer or employee shall not participate in any action by the CONTRACTOR or the locality relating to such contract, subcontract, or arrangement.
- G. The CONTRACTOR shall insert in all contracts entered into in connection with the PROJECT or with any property included or planned to be included in any PROJECT, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer, or employee of the CONTRACTOR or of the locality during the PROJECT term or for one year thereafter shall have any interest, direct or indirect, in this agreement or the proceeds thereof."
- H. The provisions of this subsection shall not be applicable to any agreement between the CONTRACTOR and its fiscal depositories or to any agreement for utility services, whose rates are fixed or controlled by a governmental agency.

35. Lobbying.

- A. if the CONTRACTOR'S PROJECT exceeds \$100,000, the CONTRACTOR agrees that it will not use federal assistance funds to support lobbying, in accordance with 31 USC Section 1352 and 49 CFR Part 20, "New Restrictions on Lobbying". FTA will not make any federal assistance available to the CONTRACTOR until STATE has received the CONTRACTOR's certification that the CONTRACTOR has not and will not use federally-appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal grant, cooperative agreement or other federal award from which funding for the PROJECT is originally derived.
- B. If any funds other than federally-appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of

Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," to the STATE.

- C. The CONTRACTOR shall require that the following certification language be included in the award documents for all subawards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000 and that all subrecipients shall certify and disclose accordingly.

"This certification is a material representation of facts upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 USC Section 1352. 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."

36. Program Fraud and False or Fraudulent Statements or Related Acts.

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC Section 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made pertaining to that underlying agreement or the FTA-assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed, in whole or in part, with federal assistance originally awarded by FTA under the authority of 49 USC Section 5307, the Federal Government reserves the right to impose the penalties of 18 USC Section 1001 and 49 USC Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. The CONTRACTOR agrees to include the above two clauses in each subcontract, whether partly or wholly financed with federal assistance provided by FTA. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who is subject to the provisions.

37. Drug-Free Workplace. The CONTRACTOR certifies by signing this Agreement that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with GC 8355 *et seq.* The CONTRACTOR is required to include the language of this certification in award documents for all sub-awards at all tiers (including subcontracts, contracts under grants, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any subrecipient at any tier, or their employees, perform a safety-sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor any tier, each affected subrecipient at any tier, and their employees with 49 USC 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.

38. Charter Service Operations. The CONTRACTOR agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter

service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR Part 604 Subpart B. Any charter service provided under one of the exceptions must be incidental, meaning it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on Federally-assisted equipment) of providing the service. The CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR Part 604 apply to this Agreement, and any violation of this Agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

39. School Bus Operations. Pursuant to 49 USC Section 5323(f) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 USC Section 5323 (f) and implementing regulations, and (2) comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment or facilities acquired with federal assistance awarded by FTA. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR Part 605 apply to any school transportation agreement, and a violation of this Agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.
40. Use of \$1 Coins. As applicable, and to comply with Section 104 of the Presidential \$1 Coin Act of 2006, 31 USC Section 5112(p), the CONTRACTOR must ensure that FTA assisted property that requires the use of coins or currency in public transportation service or supporting service be fully capable of accepting and dispensing \$1 coins.
41. Protection of Animals. The CONTRACTOR must ensure that all third-party contractors providing services involving the use of animals must comply with the Animal Welfare Act, 7 USC Section 2131 *et seq.* and Department of Agriculture regulations, "Animal Welfare", 9 CFR Subchapter A, Parts 1,2,3, and 4.
42. Termination Clauses.
- A. Termination for Convenience. When it is in the STATE'S best interest, the STATE reserves the right to terminate this Agreement, in whole or in part, at any time by providing a ten (10) day written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the STATE. If the CONTRACTOR has any property in its possession belonging to the STATE, the CONTRACTOR will account for the same, and dispose of it in the manner the STATE directs.
- B. Termination for Default.
1. The STATE may terminate this Agreement upon a finding that the CONTRACTOR has not made satisfactory progress toward procuring the PROJECT equipment, services, salary and wages, as appropriate, within twelve (12) months of execution of this Agreement, has not billed for operating assistance funds within twelve (12) months of execution of this Agreement, or that the CONTRACTOR is otherwise not complying with the terms of this Agreement. Termination shall be by written notice specifying the reason for termination and giving the CONTRACTOR thirty (30) days to correct the default. The STATE shall be the sole judge as to whether the CONTRACTOR's corrective measures are adequate. If the CONTRACTOR fails to remedy the breach or default or any of the terms, covenants, or conditions of this Agreement to the STATE's satisfaction, the STATE shall have the right to terminate the Agreement without any further obligation to the CONTRACTOR. Any such

termination for default shall not preclude the STATE from also pursuing all available remedies against the CONTRACTOR.

2. The STATE may terminate this contract upon finding that the CONTRACTOR is not operating the PROJECT equipment in accordance with the project description in Exhibit A of this Agreement, or that the CONTRACTOR is otherwise not complying with the terms of this contract. Termination shall be by written notice specifying the reason for termination and giving the CONTRACTOR thirty (30) days to correct the default. The STATE shall be the sole judge as to whether the CONTRACTOR'S corrective measures are adequate. If the CONTRACTOR fails to remedy to the STATE'S satisfaction the breach or default of any of the terms, covenants, or conditions of this contract, the STATE shall have the right to terminate the contract without any further obligation to the CONTRACTOR. Any such termination for default shall not preclude the STATE from pursuing all available remedies against CONTRACTOR and its sureties for said breach or default. Once a contract has been terminated within the provisions of this section, the STATE reserves the right to seize vehicles or equipment procured under this Agreement.
 3. CONTRACTOR shall remit to the STATE the proportional amount of current market value that exceeds \$5,000 per unit at the time of disposition of PROJECT equipment, which shall be based on the Federal Share percentage of funds paid by CONTRACTOR under this Agreement. Fair market value shall be deemed to be the value of the PROJECT equipment as determined by a competent appraisal at the time the equipment is withdrawn from use.
 4. CONTRACTOR shall return the equipment to the STATE in the same condition as when received by the CONTRACTOR, except for reasonable wear and tear resulting from its use. The parties shall thereupon determine the amount of compensation, if any, to be paid by the CONTRACTOR to the STATE in order to avoid any STATE liability to FTA or to others.
- C. **Period of Performance Extension.** If it is later determined by the STATE that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, and after determining a new delivery of performance schedule, the STATE may allow the CONTRACTOR to continue work or treat the termination as a termination for convenience.
- D. **Mutual Termination.** The PROJECT may also be terminated if the STATE and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.
43. **Disputes.** The STATE and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes arising under this Agreement informally. If the dispute persists, the CONTRACTOR shall submit a written demand for a decision regarding the dispute to the STATE's authorized representative for this Agreement or his or her designee. The STATE's authorized representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have an opportunity to challenge the STATE authorized representative's determination but must make that challenge in writing within ten (10) working days to the STATE's Chief, Office of Federal Transit Grants or his/her designee. If the CONTRACTOR challenge is not made within the ten (10) day period, the STATE's authorized representative's original written decision shall become the final decision of the STATE. The STATE and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the STATE's Chief, Office of Federal Transit Grants or his/her designee shall be final, conclusive and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

44. Procurement.

- A. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the CONTRACTOR agrees that it will comply with the requirements of 49 USC Section 5323(h)(2) by refraining from using any Federal assistance funds awarded by STATE on behalf of the FTA to support procurements using exclusionary or discriminatory specifications.
- B. For all procurements of commodities, property, supplies, equipment or services under an FTA assisted grant, the CONTRACTOR shall provide full and open competition and comply with the procurement requirements set forth in 49 USC Section 5325(a), applicable third-party procurement requirements of 49 USC Chapter 53, 49 USC Section 5325(b) to award a third-party contracting using a competitive procurement process, and other procurement requirements of Federal laws in effect now or as amended to the extent applicable. The CONTRACTOR shall prepare a bid or proposal package, including equipment and material specifications or a scope of work.
- C. Purchases over the federal micro-purchase threshold, or similar local threshold, which result in a third-party contract without an ongoing period of performance, shall be procured through a purchase order. Purchase orders shall contain all applicable federal third-party contract clauses. Upon request for reimbursement, the CONTRACTOR shall submit a copy of the purchase order to the STATE.
- D. The CONTRACTOR agrees that it may not use FTA assistance to support its procurements unless there is satisfactory compliance with federal laws and regulations. In accordance with applicable USDOT third-party procurement regulations at 2 CFR Part 1201 and the provisions of the Third-Party Contracting Circular, including, but not limited to, the following provisions apply to all procurements:
 1. To state clearly that the final contract award to any bidder or proposer requires prior written approval by the STATE and that procurement solicitations are consistent with the PROJECT description identified in Exhibit A.
 2. To comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 USC Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements. Also, to include all required Federal procurement provisions in each subcontract financed in whole or in part with Federal assistance provided by FTA.
 3. For all contracts and subcontracts financed with Federal assistance, to comply with cargo preference requirements of 46 USC Section 1241 and 46 CFR Part 381 when contracts involve equipment, materials, or commodities which may be transported by ocean vessels.
 4. In accordance with 49 USC Section 5325(e)(1), in the procurement of rolling stock, may not enter into a multi-year contract to purchase additional rolling stock and replacement parts with options exceeding five (5) years after the date of the original contract.
 5. To comply with 49 USC Section 5325(f), agrees that any third-party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
 6. To comply with the requirements of 49 USC Section 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.
 7. To comply with the requirements of 49 USC Section 5318(c) and (e) and FTA regulations, "Bus Testing", 49 CFR Part 665, including the certification that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or before authorizing final acceptance of that bus, that model of bus will have been tested at the Altoona Bus Research and Testing Center. The CONTRACTOR must obtain the final testing report and provide a copy of the report to the STATE.
 8. To require each bidder to certify that it has complied with 49 CFR Part 26, which requires each transit vehicle manufacturer to submit a certification that it has complied with FTA's DBE requirements.

9. In subcontracts exceeding \$100,000, to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC Section 7401 *et seq.* and federal Clean Water Act, as amended, 33 USC Section 1251 *et seq.* CONTRACTOR agrees to report and require each third-party contractor or subcontractor at any tier of the PROJECT to report any violation of these requirements resulting from any PROJECT implementation activity of a third-party contractor, subcontractor, or itself to FTA and the appropriate U.S. EPA Regional Office.
10. To comply with the mandatory energy standards and policies of the STATE's energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 USC Section 6201 *et seq.*, and perform an energy assessment for any building constructed, reconstructed or modified with federal assistance.
11. To comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act of 1975 (Public Law 94-163, 89 Statute 871, enacted December 22, 1975).
12. To the extent applicable, agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 USC Section 517(d), 23 USC Section 512 note, and 23 CFR Parts 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 *et seq.*, and any other implementing directives FTA may issue at a later date, except to the extent the FTA determines otherwise in writing. Third-party contracts involving ITS must comply with Federal requirements.
13. In accordance with 40 CFR Part 85, "Control of Air Pollution from Mobile Sources," 40 CFR Part 86, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," and 40 CFR Part 600, "Fuel Economy of Motor Vehicles, the CONTRACTOR must include provisions in all third-party contract for procurement of rolling stock to ensure compliance with applicable Federal air pollution control and fuel economy regulations.
14. For PROJECTs designated as experimental, development, or research work, the CONTRACTOR must comply with patent and rights in data requirements in accordance with 37 CFR Part 401. The STATE reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and reserves the right to grant authority to others. The CONTRACTOR also agrees to include these requirements in each subcontract funded under the PROJECT.
15. CONTRACTOR shall refer to FTA "Best Practices Procurement Manual" for additional procurement guidance on procurement processes and any omissions applicable to the PROJECT. The CONTRACTOR'S failure to comply with all mandates shall constitute a material breach of this Agreement.
16. CONTRACTOR must comply with 2 CFR Part 225 or 2 CFR Part 230, as applicable, in determining whether PROJECT costs are allowable or unallowable. Where applicable, CONTRACTOR must comply with cost principles of FAR Chapter 1 Subpart 31.2.
17. CONTRACTOR must have written protest procedures describing its pre-bid/pre-proposal, post proposal, and post-award procedures. CONTRACTOR shall disclose the CONTRACTOR's protest procedures and the STATE's appeal process to all bidders. All CONTRACTOR's protest decisions must be dated and in writing. A protester must exhaust all administrative remedies with the CONTRACTOR before pursuing an appeal with the STATE. An appeal to the STATE must be filed no more than ten (10) calendar days from the date of the CONTRACTOR's protest decision, as evidenced by postmarked date. Reviews of protests by the STATE will be limited to:
 - a. CONTRACTOR's failure to have or follow its own protest procedures.
 - b. CONTRACTOR's failure to review a complaint or protest.
 - c. Violations of federal or state law or regulation.

18. Construction or Facility Improvement Contracts, including those issued to Third-Parties.
- a. Davis Bacon Act (contracts over \$2,000.00). In accordance with 49 USC Section 5333(a) and the implementing regulations of 29 CFR Part 5, the CONTRACTOR shall comply with the employee protection requirements of the Davis-Bacon Act for construction activities exceeding \$2,000.00 performed in connection with the PROJECT. The Davis-Bacon Act applies to contracts in excess of \$2,000.00 for construction, alteration, or repair of public buildings or public works and requires the inclusion of a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the U.S. Secretary of Labor.
 - b. Bonding. For contracts or subagreements exceeding \$100,000.00, the following bonding requirements must be included:
 - i. Bid guarantee from each CONTRACTOR equivalent to five (5%) percent of the bid price
 - ii. Performance bond on the part of the CONTRACTOR for 100 percent (100%) of the contract price
 - iii. Payment bond in the amount of either (1) 50% of the contract price if the contract price is not more than \$1 million dollars, or (2) 40% of the contract price if the contract price is more than \$1 million
 - c. Copeland Anti-Kickback Act. For contracts or subagreements exceeding \$100,000.00 and in accordance with 18 USC Section 874 Copeland "Anti-Kickback" Act, 29 CFR Part 3 "Contractors and subcontractors on Public Building or Public Work Financed in part by Loans or Grants from the United States," the CONTRACTOR and subcontractor are prohibited from requiring, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled.
19. Seismic Safety. The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all work performed under this contract, including work performed by a subagreement, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the PROJECT.
45. Bid or Proposal and Third-Party Contract Award. All procurement documents including, but not limited to, oral or written quotations, purchase orders, bid or proposal solicitation documents, CONTRACTOR's proposed third-party vendor selection documents, request for non-competitive bid, and use of assigned options (i.e. piggybacking) must be reviewed and approved by the STATE prior to the award of the contract. No award shall be made without the written approval from the STATE. No exercise of optional periods of performance (Option Years) shall be made without written approval from the STATE. The CONTRACTOR, or procurement agent acting on its behalf, shall prepare the bid or proposal documents, solicit and receive competitive bids or proposals, evaluate the bids or proposals received, and select the lowest price compliant bid for award.
- A. The CONTRACTOR, or procurement agent acting on CONTRACTOR's behalf, shall forward to the STATE, at least twenty (20) business days prior to the release of the bid solicitation, a copy of the bid solicitation document, proposed third-party contract, independent cost estimate, and bidders list.
 - B. At least twenty (20) business days prior to contract award, the CONTRACTOR, or procurement agent acting on CONTRACTOR's behalf, shall forward to STATE a copy of the proposed third-party contract, verification of the incorporation of FTA-required third-party contract clauses, proof that the bid or proposal was publically advertised, list of all bids, proposals, or price quotations received, a copy of the selected bid or proposal, copy of the bids or proposals where prices were lower than the selected

vendor's, an explanation of the basis for selecting the selected vendor and for rejecting lower bids (if any). In the case of a single bid, sole source, or negotiated price contract, this explanation shall include a statement by the CONTRACTOR that the price is fair and reasonable and that the basis for that determination is consistent with guidance in the Third-Party Contracting Circular.

- C. All third-party contracts, subcontracts and contract modifications, and exercising of Option Years funded under PROJECT shall include essential elements including, but not restricted to, parties, price or rate of compensation, scope of work, contract timeline, contract termination and other legal considerations.
- D. CONTRACTOR shall perform a cost or price analysis in connection with every procurement action funded under the PROJECT, including contract modifications and exercise of Option Years. Before receiving bids or proposals, CONTRACTOR must make independent cost estimates to determine price reasonableness.

46. FTA Regulations, Policies, Procedures and Directives. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directive, including, without limitation, those listed directly or by reference in the USDOT FTA Master Agreement between the STATE and FTA, as they may be amended or revised from time to time, during the term of this Agreement. The CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement. In the event any portion, term, condition or provision of this Agreement should be deemed illegal or in conflict with the laws of the State of California or with federal law or otherwise be unenforceable, the remaining portion, terms, conditions or provisions shall not be affected thereby.
47. Incorporation of FTA Terms. The provisions in this Agreement include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the Agreement. All contractual provisions required by the USDOT, as set forth in the Third-Party Contracting Circular are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any STATE requests which would cause the STATE to be in violation of these Standard Terms and Conditions.
48. Amendments to Federal, State and Local Laws, Regulations and Directives. The terms of the most recent amendment to any Federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless FTA provides otherwise in writing.
49. Property Maintenance and Inspection. While the PROJECT is in the possession or control of the CONTRACTOR, the CONTRACTOR shall operate or maintain the PROJECT in accordance with detailed maintenance and inspection schedules provided by the manufacturer, keeping a written log or record of all repairs and maintenance. STATE and the FTA shall have the right to conduct periodic inspections for the purpose of confirming the existence, condition, and proper maintenance of the PROJECT. No alterations may be made to the PROJECT in its as-received condition without first receiving written approval from STATE. The CONTRACTOR shall notify the STATE, within ten (10) working days of any loss or damage, including accident, fire, vandalism, theft, to the PROJECT.
50. Useful Life Standard. In accordance with the Grant Management Circular and consistent with the SMP, the following Useful Life Standard (ULS) shall determine when PROJECT property will no longer be subject to monitoring and reporting requirements. CONTRACTOR will be released from the monitoring and reporting requirements after the STATE has approved CONTRACTOR's request for disposition of PROJECT property through the BlackCat Grants system. While age and mileage are the primary criteria used to determine the useful life of vehicles, this determination is based on the date the vehicle or other equipment was put into

active service, not the actual model year of the vehicle. These criteria are subject to review by the 5310, 5311, or 5339 Program Chief, as applicable, if either factor is less than the value shown herein.

<u>TYPE OF EQUIPMENT</u>	<u>USEFUL LIFE STANDARD</u>
Minivans	4 years or 100,000 miles
Small, Medium, Large Bus	5 years or 150,000 miles
Larger Bus	7 years or 200,000 miles
Largest Bus (5311/5339 Only)	10 years or 350,000 miles
Computer Equipment	3 years
Asphalt Paving, Parking Lot (5311 Only)	10 years
Bus Shelters (5311 Only)	10 years
Building Structures (5311 Only)	40 years
Bus Lift	15 years
Bus Stop Signs (5311 Only)	5 years
Communication Equipment	3 years
Communication Equipment on Vehicles	Same as ULS associated with Vehicle
Farebox/Ticket Machine	10 years
Surveillance Equipment	3 years

51. Property Ownership and Relinquishment.

- A. At all times while PROJECT property or equipment is in the possession or control of the CONTRACTOR, the CONTRACTOR shall be the registered owner and STATE shall be the legal owner (lien holder). Whenever any PROJECT property or equipment is withdrawn from the PROJECT for any reason, the CONTRACTOR shall immediately notify the STATE. The CONTRACTOR shall not transfer ownership of PROJECT property or equipment at any time while this Agreement is in effect. As lien holder, the STATE may take possession of PROJECT property or equipment due to the CONTRACTOR's non-compliance with contract terms or by mutual agreement between the STATE and the CONTRACTOR. The STATE shall retain the original Certificate of Title until such time that disposition of PROJECT property or equipment is released by the STATE to the CONTRACTOR or other appropriate party.
- B. Whenever any PROJECT property or equipment is withdrawn from the service for any reason prior to meeting the ULS, and at the discretion of the STATE, the CONTRACTOR shall be required to do one of the following:
1. Remit to the STATE, for repayment to the FTA, a proportional amount of the fair market value of the property, which shall be determined on the basis of the ratio of the Federal grant funds paid under this Agreement to the actual purchase cost of the property. Fair market value shall be deemed to be either 1) the unamortized value of the remaining service life per unit based on a straight-line depreciation of the original purchase price or 2) the Federal Share of the sale price.
 2. Relinquish the property to the STATE in the same condition as when received by the CONTRACTOR except for reasonable wear and tear resulting from its use. The parties shall thereupon determine the amount of compensation, if any, to be paid by the CONTRACTOR to the STATE in order to avoid any STATE liability to FTA or to others. Upon subsequent disposal of the property, the STATE shall reimburse the CONTRACTOR for its proportional amount of the property value received or identified by the STATE, if any.
 3. When PROJECT property is lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the property immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. Based on the calculation, the proceeds shall be applied to the cost of replacing the damaged or destroyed PROJECT property taken out of service.

4. If any damage to PROJECT property results from abuse or misuse occurring with the CONTRACTOR's knowledge and consent, the CONTRACTOR agrees to restore the PROJECT property to its original condition or refund the value of the Federal interest in that property to the STATE.

52. Worker's Compensation. The CONTRACTOR hereby warrants that it carries Workers' Compensation

Insurance on all of its employees who will be engaged in the performance of this Agreement. If staff provided by the CONTRACTOR is defined as independent contractors, this clause does not apply.

53. Insurance.

- A. While the PROJECT equipment is in the possession or control of the CONTRACTOR, the CONTRACTOR shall maintain adequate insurance protection against liability for damages for personal bodily injuries (including death), property damage, and vehicle damage as conditioned in this section.
- B. The minimum limits of liability may be increased by the STATE at any time upon thirty (30) day notice to the CONTRACTOR.
- C. The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California, Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).
- D. The STATE, its officers, employees, and agents shall be named as additional insured.
- E. The STATE is designated as the Loss Payee for claims of damage to the insured vehicle(s).
- F. The STATE will not be responsible for any premiums or assessments on the policy.
- G. The CONTRACTOR, and/or third-party subcontractor, shall furnish to the STATE, before delivery of the PROJECT vehicle(s) to the CONTRACTOR, a certificate of insurance issued by a company licensed to write such insurance in California.
- H. Prior to the annual insurance policy expiration date, the CONTRACTOR shall furnish to the STATE a new certificate of insurance or other written evidence of insurance satisfactory to the STATE. At any time that such evidence of insurance has not been provided, the STATE shall have the immediate right to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.
- I. The CONTRACTOR shall provide the STATE at least thirty (30) day notice of cancellation or material change of the vehicle insurance policy.
- J. Public Agency or For-Profit CONTRACTORS. The following terms apply to all CONTRACTORS who are defined as a Public Agency or For-Profit entity, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:
 1. Property Damage: The CONTRACTOR shall place property damage per occurrence (combined single limit), whether the property of one or more claimants, in an amount not less than one million five hundred thousand dollars (\$1,500,000) for property damage liability in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) for property damage liability combined in respect to vehicles with seating capacity of sixteen (16) or more.
 2. Bodily Injury: The CONTRACTOR shall place bodily injury per occurrence (combined single limit) in an amount not less than one million five hundred thousand dollars (\$1,500,000) in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) in respect to vehicles with seating capacity of sixteen (16) or more.
 3. Vehicle Physical Damage: The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California,

Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).

- K. Non-Profit Agencies: The following terms apply to all CONTRACTORS who are defined as a non-profit agency, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:
1. Property Damage: The CONTRACTOR shall place property damage per occurrence (combined single limit), whether the property of one or more claimants, in an amount not less than one million dollars (\$1,000,000) for property damage liability in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) for property damage liability in respect to vehicles with seating capacity of sixteen (16) or more.
 2. Bodily Injury: The CONTRACTOR shall place bodily injury per occurrence (combined single limit) in an amount not less than one million dollars (\$1,000,000) in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) for bodily injury in respect to vehicles with seating capacity of sixteen (16) or more.
 3. Vehicle Physical Damage: The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California, Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).

54. Excise Tax. The State of California is exempt from federal excise taxes and no payment will be made for any taxes levied on employees' wages. The STATE will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

55. Potential Subcontractors.

- A. No Relationship Between STATE and Third-Party Contractor. Nothing contained in this Agreement or otherwise, shall create any contractual relation, obligation or liability between the STATE and any third-party contractors, and no third-party agreement shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be as fully responsible to the STATE for the acts and omissions of its third-party 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 CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the STATE'S obligation to make payments to the CONTRACTOR. As a result, the STATE shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.
- B. Third-Party Contracts and Subagreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the subcontractors of third-party contractors and their subagreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each subagreement financed in whole or in part with financial assistance provided by FTA.
- C. No Federal Government Obligations to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in, or approval of, any solicitation or third-party

agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.

- D. **Obligations on Behalf of the STATE.** The CONTRACTOR shall have no authority to contract for or on behalf of the STATE or to incur obligations on behalf of the STATE.
- E. **STATE Approval of All Third-Party Contracts.** The STATE shall approve in writing all proposed third-party contract agreements, Memoranda of Understanding, Intergovernmental Agreements, or similar documents relating to the performance of the Agreement prior to implementation. The CONTRACTOR agrees that it will not enter into any third-party contracts unless the same are approved in writing by the STATE. Any proposed amendments to such third-party contracts must be approved by the STATE prior to implementation.

56. **Narrowband Migration.** The CONTRACTOR must comply with the Federal Communications Commission Public Notice DA09-2589 deadline for private land mobile radio services in the 150-174 MHz and 421-512 MHz bands which will migrate to narrowband (12.5 kHz or narrower) technology effective January 1, 2013.

57. **Indemnification.** Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CONTRACTOR and/or its agents under or in connection with any work, authority or jurisdiction conferred upon CONTRACTOR under this Agreement. It is understood and agreed that CONTRACTOR and/or its agents shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CONTRACTOR and/or its agents, employees, and representatives under this Agreement.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. Purchase Order. Upon approval by the STATE of a procurement award, the CONTRACTOR (or procurement agent acting on its behalf) may issue a purchase order for the PROJECT. Each purchase order shall be consistent with the approved bid award listed in Exhibit A, be consistent with Billing and Payment instructions listed in Exhibit B, and include a reference to the STATE's contract number as assigned to this Agreement.
2. Disposition. The disposition of the PROJECT and any PROJECT-related equipment or property shall be made in accordance with 49 USC Chapter 53, the applicable Program Circular, and the SMP. Disposition requests shall be submitted through the BlackCat Grants system.
3. Release of Title. As long as STATE is lien holder of the vehicle, CONTRACTOR is obligated to provide required periodic reporting described in Exhibit D, even if the ULS for the PROJECT has been exceeded. When the ULS has been achieved, the STATE shall remain the lien holder for vehicles or equipment until all of the steps in the disposition process described in the preceding regarding Disposition have been completed. Upon completion of the disposition process, the STATE shall make a determination as to whether the ULS has been achieved. Useful Life requirements are enumerated in Exhibit C of this Agreement. The STATE has the discretion to base its determination upon either PROJECT mileage, PROJECT age or a combination of both. Upon determining that the ULS has been achieved, the STATE shall release title to the CONTRACTOR. Upon release of title to CONTRACTOR, the CONTRACTOR shall keep the PROJECT or alternatively, the proceeds from the sale of the PROJECT, in its public transportation program.
4. Complementary Paratransit Service. The CONTRACTOR, providing complementary paratransit service, certifies that they have submitted to the STATE an initial plan for compliance with the complementary paratransit service provision by January 26, 1992, as required by 49 CFR Part 37, and have provided the STATE annual updates to its plan each year, as required by 49 CFR Part 37 Section 139(j).
5. Reporting Requirements. Upon request by the STATE, the CONTRACTOR must submit the following reports (Failure to meet these requirements may result in withholding of all invoice payments and may be grounds for PROJECT termination):
 - A. 5311Program and 5339 Program: National Transit Data (NTD) Reporting. CONTRACTOR shall submit their data to Caltrans (Department) in a timely manner annually, per due dates as directed by the Department NTD annual reporting is required by FTA.
 - B. 5311 Program Operating Assistance projects: Drug and Alcohol Management Information System (MIS) Reporting. CONTRACTOR shall submit their Drug and Alcohol MIS data annually, as required by FTA.
 - C. Milestone Reporting.
 1. Bi-Annual Reporting (Capital and Mobility Management Projects). The CONTRACTOR shall submit a Bi-Annual Report of vehicle/equipment usage or its progress of the mobility management activities within thirty (30) calendar days after the close of each federal reporting period. The federal reporting periods are: 1) October 1 through March 31; and 2) April 1 through September 30. Bi-Annual reports are due no later than April 30, and October 30 of each calendar year.
 2. Annual Reporting (Operating Assistance Projects). The CONTRACTOR shall submit an annual report of progress made on the PROJECT by no later than thirty (30) days after the close of the annual federal reporting period of October 1 through September 30. Annual reports are due no later than October 30.

- D. Federal Funding Accountability and Transparency Act (FFATA) Reporting. CONTRACTOR on its own behalf and for any of its Subcontractors shall comply with the requirements of FFATA, as required by the FFATA Public Law 109-282, 31 U.S. C. 6101. If requested to do so by STATE, CONTRACTOR shall submit required information to allow STATE to fulfill its reporting requirements under FFATA.
 - E. Final Reporting. The CONTRACTOR shall submit a final PROJECT report documenting final PROJECT costs. This report shall be on a form to be provided by the STATE. For 5310 Program, the report shall include narrative on and PROJECT outcomes and how program performance measures have been met by this PROJECT for the target group as referenced in the CONTRACTOR's application.
6. Liability Insurance. In addition to Exhibit C "Insurance", the following provisions shall also apply:
- A. The CONTRACTOR is responsible for any deductible or self-insured retention contained within the insurance program.
 - B. Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of the Agreement, a new certificate must be received by the STATE at least ten (10) days after the expiration of this insurance. This new insurance must still meet the terms of this Agreement.
 - C. In the event CONTRACTOR fails to keep in effect at all times the specified insurance coverage, the STATE may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.
 - D. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the STATE.
 - E. Public Agency or For-Profit CONTRACTORS. The following terms apply to all CONTRACTORS who are defined as a Public Agency or For-Profit entity, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:
 - 1. Commercial General Liability.
 - a. The limits of liability shall be at least:
 - i. \$2,000,000 for each occurrence (combined single limit for bodily injury and property damage).
 - ii. \$2,000,000 aggregate for products liability completed operations.
 - iii. \$4,000,000 general aggregate. This general aggregate limit shall apply separately to the CONTRACTOR's work under this Agreement.
 - iv. \$15,000,000 umbrella or excess liability. For PROJECTs over \$25,000,000 only, an additional \$10,000,000 umbrella or excess liability (for a total of \$25,000,000). Umbrella or excess policy shall include products liability completed operations coverage and may be subject to \$15,000,000 or \$25,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
 - b. The STATE, including their officers, directors, agents, and employees, shall be named as additional insured under the Commercial General Liability policy with respect to liability arising out of or connected with work or operations performed by or on behalf of CONTRACTOR under this Agreement.
 - c. The policy shall stipulate that the insurance afforded the additional insured shall apply as primary insurance. Any other insurance or self-insurance maintained by the STATE will be excess only and shall not be called upon to contribute with this insurance.
 - F. Non-Profit Agencies. The following terms apply to all CONTRACTORS who are defined as a non-profit agency, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:
 - 1. Commercial General Liability.
 - a. The limits of liability shall be at least:

- i. \$2,000,000 for each occurrence (combined single limit for bodily injury and property damage).
 - ii. \$2,000,000 aggregate for products completed operations.
 - iii. \$4,000,000 general aggregate. This general aggregate limit shall apply separately to the CONTRACTOR's work under this Agreement.
 - iv. \$5,000,000 umbrella or excess liability. For PROJECTs over \$25,000,000 only, an additional \$10,000,000 umbrella or excess liability (for a total of \$15,000,000). Umbrella or excess policy shall include products liability completed operations coverage and may be subject to \$5,000,000 or \$15,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
- b. The STATE, including their officers, directors, agents, and employees, shall be named as additional insured under the Commercial General Liability policy with respect to liability arising out of or connected with work or operations performed by or on behalf of CONTRACTOR under this Agreement.
 - c. The policy shall stipulate that the insurance afforded the additional insured shall apply as primary insurance. Any other insurance or self-insurance maintained by the STATE will be excess only and shall not be called upon to contribute with this insurance.

EXHIBIT E

49 USC SECTION 5333(b) SPECIAL WARRANTY FOR 5311 PROGRAM AND 5339 PROGRAM

1. This PROJECT is subject to 49 USC Section 5333(b) (formerly Section 13(c)) "Documentation and Agreement by Subrecipient to Terms and Conditions of 49 USC Section 5333(b) Special Warranty" (Special Warranty).

2. Name and Address of Subrecipient:

Agency Name: County of Tulare
Agency Address: 5961 S Mooney Blvd
Visalia, CA 93277

3. PROJECT Description for FFY 2016:

Purchase Replacement Std 35 Ft Bus

Purchase Replacement < 30 Ft Bus

Purchase Replacement < 30 Ft Bus

4. County and Service Area of PROJECT:

Tulare County

5. List of all current operators of public transportation (including CONTRACTOR) and corresponding labor organizations (if applicable) representing the employees of the providers in the above service area that are eligible or potentially eligible recipients of federal 5311 Program or 5339 Program funding assistance even if they are not currently recipients, human service agency providers that provide transportation to the general public, and taxi operators providing shared-ride transportation on a regular and continuing basis:

Public Transportation Operators

Labor Organizations (or N/A)

TEAM

Local 517

512 W Oak

Visalia, CA 93292

Gary Jenkins

5596279933

garyjenkins@teamsterslocal517.com

6. The 5311 Program or 5339 Program PROJECT(s) subject to this Agreement are subject to the Special

Warranty, including the National Model Agreement which is a part thereof. The Special Warranty refers to the CONTRACTOR as a subrecipient (Subrecipient). The Subrecipient shall be fully knowledgeable of the terms and conditions of the Special Warranty and the National Model Agreement and agrees to comply with those same terms and conditions for the duration of the 5311 Program or 5339 Program PROJECT. The text of the National Model Agreement is available from the United States Department of Labor. Furthermore, these terms and conditions will be a part of any and all agreements and contracts between or among the Federal Government, the State of California, and the Subrecipient, entered into with respect to the subject Section 5311 or Section 5339 PROJECT.

7. For the purposes of the Special Warranty for the 5311 Program or 5339 Program, the State of California is neither the legally nor financially responsible party under the Special Warranty, and the State assumes no special obligations under the Special Warranty that are not otherwise part of its normal obligations as a grant administering agency.