

STANDARD AGREEMENT

DOT-213 (REV 06/2009)

AGREEMENT NUMBER
642528

AMENDMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Department of Transportation, Division of Mass Transportation, Elderly and Disabled Specialized Transit

CONTRACTOR'S NAME

Laguna Honda Hospital and Rehabilitation

2. The term of this Agreement is:

October 9, 2014 through October 31, 2021

3. 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 - Scope of Work	1-2	page(s)
Exhibit B - Budget Detail and Payment Provisions	3-5	page(s)
Exhibit C - General Terms and Conditions	6-24	page(s)
Exhibit D - Special Terms and Conditions (Attached hereto as part of this agreement)	25-27	page(s)
Exhibit E - Additional Provisions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	page(s)

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto.**CONTRACTOR**

Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.)

Laguna Honda Hospital and Rehabilitation

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Barbara A. Garcia

ADDRESS

375 Laguna Honda Blvd San Francisco, CA 94116

STATE OF CALIFORNIA

AGENCY NAME

Department of Transportation, Elderly and Disabled Specialized Transit

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Bruce W. Plowman Branch Chief

ADDRESS

1120 N Street MS 39 Sacramento CA 95814

**California Department of
Transportation use only**

AMOUNT ENCUMBERED BY THIS DOCUMENT

\$134,000.00

PROGRAM/CATEGORY (CODE AND TITLE)

Transportation

FUND TITLE

Federal Trust

PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT

\$0.00

(OPTIONAL USE)

Fed Cat No. 20.513 SA 642528-10

TOTAL AMOUNT ENCUMBERED TO DATE

\$134,000.00

ITEM

2660-608-0055

2660-102-0890(2)

CHAPTER

21

STATUTE

2012

FISCAL YEAR

2012/2013

OBJECT OF EXPENDITURE (CODE AND TITLE)

64-3742-632005 \$134,000 3G061

I hereby certify upon my own personal knowledge that budgeted funds available for the period and purpose of the expenditure stated above.

T.B.A. NO.

B.R. NO.

SIGNATURE OF ACCOUNTING OFFICER

DATE SIGNED

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-89, Sacramento, CA 95814.

STANDARD AGREEMENT

DOT-213 (REV 06/2009)

AGREEMENT NUMBER

642561

AMENDMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Department of Transportation, Division of Mass Transportation, Elderly and Disabled Specialized Transit

CONTRACTOR'S NAME

Laguna Honda Hospital and Rehabilitation Center

2. The term of this Agreement is:

October 9, 2014 through October 31, 2021

3. 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 - Scope of Work	1-2	page(s)
Exhibit B - Budget Detail and Payment Provisions	3-5	page(s)
Exhibit C - General Terms and Conditions	6-24	page(s)
Exhibit D - Special Terms and Conditions (Attached hereto as part of this agreement)	25-27	page(s)
Exhibit E - Additional Provisions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	page(s)

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto.**CONTRACTOR**

Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.)

Laguna Honda Hospital and Rehabilitation Center

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Barbara A. Garcia

ADDRESS

375 Laguna Honda Blvd San Francisco, CA 94116

STATE OF CALIFORNIA

AGENCY NAME

Department of Transportation, Elderly and Disabled Specialized Transit

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Bruce W. Plowman Branch Chief

ADDRESS

1120 N Street MS 39 Sacramento CA 95814

AMOUNT ENCUMBERED BY THIS DOCUMENT

\$105,000.00

PROGRAM/CATEGORY (CODE AND TITLE)

Transportation

FUND TITLE

Federal Trust

PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT

\$0.00

(OPTIONAL USE)

Fed Cat No. 20.513 SA 641561-10

TOTAL AMOUNT ENCUMBERED TO DATE

\$105,000.00

ITEM

2660-608-0055

2660-102-0890(2)

CHAPTER

33

STATUTE

2011

FISCAL YEAR

2011/2012

OBJECT OF EXPENDITURE (CODE AND TITLE)

64-3742-632005 \$105,000 3G057

I hereby certify upon my own personal knowledge that budgeted funds available for the period and purpose of the expenditure stated above.

T.B.A. NO.

B.R. NO.

SIGNATURE OF ACCOUNTING OFFICER

DATE SIGNED

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-89, Sacramento, CA 95814.

EXHIBIT A

SECTION 5310

SCOPE OF WORK

1. The CONTRACTOR shall use the PROJECT equipment at all times exclusively and in conformity with the following project description for as long as the equipment is needed for the PROJECT. Vehicles may not be transferred out of this geographic area, even if within same agency, without prior written approval from STATE.
2. The CONTRACTOR shall provide transportation service primarily to elderly persons and persons with disabilities, including their incidental baggage, and to persons accompanying the elderly persons or persons with disabilities.
3. If any PROJECT equipment, designated under Exhibit A, Paragraph 5 of this contract is to replace existing equipment, the equipment being replaced shall be withdrawn from the existing PROJECT inventory and placed in backup service upon delivery and acceptance of the new PROJECT equipment.
4. The CONTRACTOR'S scope of work is described as follows:
 - A. At a minimum, transportation service shall be provided between XXAM to XX PM, DAY through DAY (or at a minimum of 20 hours per week) for each vehicle.
 - B. The CONTRACTOR'S geographic area that will be served by the transportation program is as follows:
 [Insert project specific service area per application]
5. The new PROJECT for equipment or new vehicles (not designated as "used" by Federal Trade Commission Agency 16 CFR Part 455.1(d)(2)) as well as California Vehicle Code Section 100-680, and estimated cost, is as follows:

ITEM	QUANTITY	*AWARD	TOTAL AMOUNT
Medium Bus (R)	2	67,000	134,000

Grant Award-Total Cost of PROJECT Equipment: \$ 134,000

Federal Share: 88.53% \$ 118,630
 Toll Credit: 11.47% \$ 15,370

*Maximum grant amount as determined by awarded project costs.

6. The following vehicles will be removed from active service and placed into backup service, or sold.

VIN	Model Year	Make	Back Up	Sold
20106	1994	Ford E 350		X
17650	1999	Ford E 450		X



EXHIBIT A**7. Transfer of Used Vehicle/Equipment**

- A. The STATE will evaluate potential transfer need for vehicle/equipment. The CONTRACTOR will submit an abbreviated Application containing the following information.
- Project Description and Justification for Funding Request (Replacement or Expansion);
 - Proposed Service and Operating Plan (including map of service area);
 - Existing Transportation Services (current fleet);
 - Proposed Transportation Services; and
 - Signed Certifications and Assurances
- B. The CONTRACTOR's abbreviated Application as attached, is incorporated, herein, and is made part of this Agreement. In the event the CONTRACTOR's abbreviated Application is in conflict with any terms or conditions of this Agreement, this Agreement shall supersede the CONTRACTOR's abbreviated Application.
- C. The CONTRACTOR agrees to perform the PROJECT to provide transportation services primarily to elderly persons and persons with disabilities, including their incidental baggage, and to persons accompanying the elderly persons or persons with disabilities in accordance with the terms and conditions of this Agreement and the CONTRACTOR's abbreviated Application for Federal assistance which is on file with the Mass Transportation Program and is now expressly incorporated into this Agreement.
- D. The CONTRACTOR shall use the PROJECT equipment at all times exclusively and in conformity with the project description for as long as the equipment is needed for the PROJECT. Vehicles may not be transferred without prior written approval from STATE.

8. The PROJECT representatives during the term of this Agreement will be:

State Agency: Department of Transportation	CONTRACTOR: Laguna Honda Hospital and Rehabilitation
Name: Bruce Plowman	Name: Barbara A Garcia
Title: Chief, Elderly and Disabled Specialized Transit	Title: Executive Director
Phone: (916) 657-3875	Phone: 415-759-2363
Fax: (916) 654-9366	Fax: 415-759-2263

Direct all inquiries to:

State Agency: Department of Transportation	CONTRACTOR: Laguna Honda Hospital and Rehabilitation
Section/Unit: Division of Mass Transportation	Section/Unit:
Attention: Valarie Smith	Attention: William Frazier
Address: P.O. Box 942874 Sacramento, CA 94274-0001	Address: 375 Laguna Honda Blvd San Francisco, CA 94116
Phone: (916) 654-8065	Phone: 415-759-3384
Fax: (916) 654-9366	Fax: 415-759-2374



EXHIBIT B**SECTION 5310****BUDGET DETAIL AND PAYMENT PROVISIONS**1. Invoicing and Payment

- A. Local Share. The CONTRACTOR agrees that it will deposit funds with Bank of America in the amount specified within 90 days after signing Agreement (minus the amount required for locally procured other equipment). In accordance with FTA C 9070.1F, the local share may be derived from Federal programs that are eligible to be expended for transportation, other than DOT programs, or from Department of Transportation (DOT) Federal Lands Highway Program. The CONTRACTOR will be responsible for 100% of all costs which exceed the approved grant amount. In no event shall the STATE be obligated to contribute STATE funds toward the cost of the PROJECT. Deposit instructions shall be provided to the CONTRACTOR by the STATE.
- B. Local Match Deposit. PROJECT equipment will not be procured by the STATE, on behalf of the CONTRACTOR, until the deposit of the CONTRACTOR'S local match has been verified by the STATE. Local Match deposit shall be deposited within 90 days of Agreement execution.
- C. Billing and Payment for Vehicle Procurement. Maximum vehicle funding limits shall be set by the STATE and shall apply to non-profit and public agencies without prejudice. Purchase order requirements are further detailed in Exhibit D. The Federal Share for all vehicle procurements shall not exceed 88.53% of the grant amount identified.
1. Non-Profit Agencies. The STATE is required to order vehicles for non-profit agencies from a State approved Contract. The CONTRACTOR must deposit the local match in the designated Bank of America account before the vehicle is ordered. No further billing or payment is required of the CONTRACTOR. In the event a balance due is owed to the CONTRACTOR for any unused portion of the local match, the CONTRACTOR shall request a refund from Caltrans in writing. Caltrans will initiate the refund process with Bank of America.
 2. Public Agencies. Payment for vehicles ordered by public agencies shall comply with the appropriate provision below:
 - a. Public agency CONTRACTORS that have a vehicle procured for them by the STATE will follow payment options identified in Exhibit B above.
 - b. Public agency CONTRACTORS, that purchase vehicles themselves from a State approved Contract, shall purchase vehicle in full from the vendor. Purchase order reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle delivery is accepted by the STATE.
 - c. Public agency CONTRACTORS, that complete their own procurement not from the State Contract, shall purchase vehicle in full from the vendor. Purchase order reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle delivery is accepted by the STATE.
 - d. Upon review and approval by the STATE, STATE agrees to reimburse the Public Agency CONTRACTOR for allowable costs not to exceed 88.53% of the approved grant amount upon receipt of a complete and correct invoice package including proof of payment which includes a preaward and post delivery audit, and otherwise meets the requirements of this Standard Agreement. Incomplete or disputed invoices shall be returned to Public Agency Contractor, unpaid, for correction.



EXHIBIT B

3. Procurement options are identified in Exhibit D.
- D. Billing and Payment for Other Equipment. Funds allocated for use on this PROJECT identified as Other Equipment are payable to the CONTRACTOR in arrears on a reimbursement basis. The CONTRACTOR shall submit its request(s) for payment to the STATE upon completion of procurement process detailed in Exhibit D.. The request(s) for payment shall certify that the CONTRACTOR has received and accepted the equipment and shall be submitted together with copies of the vendor's original invoice and the CONTRACTOR'S purchase order including proof of payment. The CONTRACTOR'S invoice and the vendor's paid invoice shall be consistent with the purchase order and include a breakdown of unit costs, sales tax, registration fees, any items not payable 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 § 6369.4
- E. Upon review and approval by the STATE, the STATE agrees to reimburse the CONTRACTOR for allowable costs as defined in 2 CFR Part 225 and 49 CFR, Part 18 upon receipt of an invoice that is itemized per the Bid Approval Letter, and otherwise meets the requirements of this Standard Agreement. Incomplete or disputed invoices shall be returned to Contractor, unpaid, for correction.
- F. The obligations of the STATE to CONTRACTOR under the terms of this contract shall terminate upon payment of CONTRACTOR'S invoices for the PROJECT equipment. All invoices shall be submitted for payment within 90 days of equipment acquisition. The obligations of the Contractor under this Agreement shall remain in effect until all PROJECT equipment has been disposed of under the terms of this Agreement.
- G. The net PROJECT cost and allowability of individual items of PROJECT cost shall be determined in conformance with CFR 48, Federal Acquisition Regulations System, Chapter 1, Part 31, 2 CFR Part 230 (OMB Circular A-122), "Cost Principles for Non-profit Organizations," and other applicable regulations, circulars, or memorandums that may be issued by Federal Transportation Administration (FTA).
2. Budget Contingency Clause
- A. It is mutually agreed that if the Budget Act 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.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act 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 Agreement amendment to CONTRACTOR to reflect the reduced amount.
3. Prompt Payment Clause.
- A. In the event the contractor is a certified small business or similar entity, but not a public agency, the STATE shall make payment within 45 days in accordance with Government Code Chapter 4.5 Section 927.



EXHIBIT B

- B. The CONTRACTOR shall pay any third-party contractor not later than 10-days of receipt of each progress payment unless a longer period is agreed to in writing, as cited in the California Business and Professions Code, Section 7108.5.
- C. Should the CONTRACTOR choose to include retainers in third-party contracts, the CONTRACTOR must adhere to the requirements of Section 7108.5 as cited above. The CONTRACTOR must ensure prompt and full payment of retainage to third-party contractors no later than 30 days after the third-party contractor's work is satisfactorily completed, as cited in 49 CFR Part 26.29.

4. Project Payment Closeout Clause

- A. CONTRACTOR agrees that once PROJECT payment is complete, any outstanding balance will revert to the STATE for distribution or reallocation to the FTA Section 5310 Program.
- 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 the 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.



EXHIBIT C

GENERAL TERMS AND CONDITIONS FOR ALL FEDERAL GRANT PROGRAM

1. Subrecipient. For the purpose of this Agreement, the CONTRACTOR is the subrecipient as referenced in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (pub.L.109-059). As a grant 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 limited to the USDOT FTA Master Agreement (15), October 1, 2008 and FTA C 9070.1F, Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions, or FTA C 9040.1F, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, or FTA C 9045.1, New Freedom Program Guidance and Application Instructions, or FTA C 9050.1, The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions.
2. 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 should not be authorized until the expenditure of federal funds has been authorized by the FTA for a specific Federal fiscal year. The CONTRACTOR may not commence performance until federal authorization has been obtained.
 - C. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties 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 provisions(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 of the project has been programmed and is in an approved FSTIP.



EXHIBIT C

3. 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 other remedies that may be legally available.
4. Timeliness. Time is of the essence in this agreement and shall be signed and returned by the CONTRACTOR 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 from FTA's grant award may at the discretion of the STATE be withdrawn and cancelled.
5. 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. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties. Amendments shall be signed and returned by the CONTRACTOR within 90 calendar days after mailing. In the event this amendment is not signed within 90 days of mailing, the PROJECT identified in Exhibit A of this AGREEMENT from FTA's grant award may at the discretion of the STATE be withdrawn and cancelled.
6. 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.
7. 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.
8. 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 Government Codes Sections set out below.
- A. The Government Code Chapter on Antitrust claims contains the following definitions:
 - i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the STATE or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - ii. "Public purchasing body" means the STATE or the subdivision or agency making a public purchase. Government Code Section 4550.
 - B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.



EXHIBIT C

- C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
9. Child Support Compliance Act. "For any Agreement in excess of \$100,000, the CONTRACTOR acknowledges in accordance with Public Contract Code 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 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."
10. 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.
11. 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 Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
12. State Management Plan. The STATE is designated by the Governor to administer the FTA Section 5310, 5311, 5316 and 5317 programs in California. The implementation and administration of the FTA programs are outlined in the each program's State Management Plan and is available at the Department of Transportation, Division of Mass Transportation website at, <http://www.dot.ca.gov/hq/MassTrans/>.
13. 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.
14. 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 U.S.C. 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.

EXHIBIT C

15. Buy America. The CONTRACTOR shall comply with the Buy America requirements of 49 USC 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 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
16. 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 U.S.C. 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 "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States Flag Air Carriers," and 41 CFR Sections 301-10.131 through 301-10.143.
 - C. Project Travel. In accordance with 49 U.S.C. 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.
17. 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.
18. 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.
19. Vehicle Operator Licensing. The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration 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 OMB Circular A-133; or any revision or supplement thereto. 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 OMB Circular A-133 is an allowable charge to this PROJECT, to the extent provided by OMB Circular A-133.
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 subrecipient contracts.
22. Examination of Records. STATE'S Audits Office, 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,

EXHIBIT C

excerpts, and transactions, and copies thereof shall be furnished if requested. 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 cost 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 reports and/or data 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 U.S.C. 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 included in the "U.S. General Services Administration's (U.S. GSA) 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 include 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. Before entering into any sub-agreements with any subrecipient, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that subrecipient and its "principals," as defined at 49 CFR Part 29.
 - D. Before entering into any third-party contract exceeding \$25,000, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any third-party sub-contract of any amount (at any tier) to a debarred or suspended sub-contractor, and to obtain a similar certification from any third-party subcontractor (at any tier) seeking a contract exceeding \$25,000.
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 the Federal Transit Act, including, but not limited to the following:
- A. Race, Color, Creed, National Origin, Sex - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No.

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11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 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 equally during employment, without regard to their race, color, creed, national origin, sex, or age. 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.

- B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 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 Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. Solicitations for Subcontracts Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the FTA to be pertinent to ascertain compliance with such Regulations or directives. 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.
- E. In accordance with 49 CFR Part 21 and as described in FTA Circular 4702.1B, dated October 1, 2012, and the California Department of Transportation Title VI Program Plan, and upon request from the STATE, the CONTRACTOR shall comply with the following reporting requirements. The CONTRACTOR is also responsible for ensuring compliance of each third-party contractor at any tier of the PROJECT.
1. Provide an Annual Title VI Certification and Assurance.
 2. Establish and maintain 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.



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6. Provide additional information upon request.
7. Prepare and submit a Title VI Program.
8. Guidance on conducting an Analysis of Construction PROJECT'S.
9. Guidance on promoting Inclusive Public Participation.
10. Report minority representation on transit related Planning and Advisory Bodies.

Please refer to the Title VI Program Checklist in Appendix A at the end of this exhibit for more detail on the Title VI Program requirements.

- F. Sanctions for Noncompliance. In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of 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.
- G. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will 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; provided, however, that 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, and, 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. The CONTRACTOR agrees to:

- A. Comply with U.S. DOT regulations, "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs", 49 CFR Part 26 and will cooperate with STATE with regard to maximum utilization of disadvantaged business enterprises, and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum opportunity to compete for sub contractual work under this Agreement.
- B. Complete and submit to STATE a DBE Implementation Agreement with the DOT-213 Standard Agreement. STATE shall provide the Implementation Agreement to the CONTRACTOR prior to vehicle ordering.
- C. Report twice annually on DBE participation in their contracting opportunities; their award/commitments and actual payments.
- D. The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by U.S. DOT, 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

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agreement. Upon notification to the recipient of its failure to carry out its approved program, the STATE may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C, 3801 et seq.).

- E. The CONTRACTOR, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
28. Section 504 and Americans with Disabilities Act Program Requirements. The CONTRACTOR will comply with 49 C.F.R. Parts 27, 37 and 38, implementing the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.
29. Warranty for Application to the Small Urban and Rural Program. The CONTRACTOR accepts the terms and conditions of the "Special Section 13(c) Warranty for Application to the Small Urban and Rural Program," as executed by the Secretary of Labor and the Secretary of Transportation on May 31, 1979, and those terms and conditions are incorporated by reference into this Agreement.
30. 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 U.S.C. § 303.
31. 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, U.S.C. §§ 6321 et seq.
32. 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.
33. Conflict of Interest.
- A. In accordance with 41 U.S.C. § 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

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employee of the STATE to provide goods and service. Likewise, the CONTRACTOR officials and employees shall also avoid actions resulting in or creating an appearance of:

1. Using an official position for private gain;
 2. Giving preferential treatment to any particular person;
 3. Losing independence or impartiality;
 4. Affecting adversely 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 2 years from the date of separation if that employee had any part of the decision making process relevant to the agreement, or for 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 within the 12-month period to his or her 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, the rates for which are fixed or controlled by a governmental agency.

34. Lobbying.

- A. The CONTRACTOR agrees that it will not use Federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. DOT Regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, if the CONTRACTOR'S PROJECT exceeds \$100,000, FTA will not make any Federal assistance available to the CONTRACTOR until FTA has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use Federal 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 any other Federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;

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- B. If applicable, if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any 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," in accordance with the form instructions.
- C. The CONTRACTOR shall require that the language of this certification be included in the award documents for all sub-awards 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 Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

35. 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 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, 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 contract 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 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 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 financed in whole or in part with Federal assistance provided by FTA. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

36. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the Federal

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Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

- B. The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
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 Government code Section 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 U.S.C. Section 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 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides 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-Subpart B. Any charter service provided under one of the exceptions must be "incidental," i.e., 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 U.S.C. 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 U.S.C. 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 and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. 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 U.S.C. Section 5312(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 U.S.C. Sections 2131 et seq. and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1,2,3, and 4.



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42. Additional 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. 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 to STATE's satisfaction the breach or default or any of the terms, covenants, or conditions of this Agreement the STATE shall have the right to terminate the Agreement without any further obligation to the CONTRACTOR. Any such termination for default shall not in any way operate to preclude the STATE from also pursuing all available remedies against the CONTRACTOR.
- 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, the STATE, after setting up a new delivery of performance schedule, 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 informally. If the dispute persists, the CONTRACTOR shall submit to the authorized STATE Representative for this Agreement or designee a written demand for a decision regarding the disposition of any dispute arising under this Agreement. The STATE 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 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 Representative 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. For all procurements of property, supplies, equipment or services under an FTA assisted grant, the CONTRACTOR shall provide full and open competition and comply with the procurement

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requirements set forth in 49 U.S.C. Section 5325(a), applicable third-party procurement requirements of 49 U.S.C. chapter 53 and other procurement requirements of Federal laws in effect now or as amended to the extent applicable. The CONTRACTOR shall prepare a bid package, including equipment and material specifications or a scope of work. In accordance with applicable U.S. DOT third-party procurement regulations at 49 C.F.R. § 18.36 and the provisions of FTA Circular 4220.1F, "Third-Party Contracting Guidance," November 1, 2008, and any later revision thereto, the CONTRACTOR agrees that it may not use FTA assistance to support its procurements unless there is satisfactory compliance with Federal laws and regulations including but not limited to the following:

- A. To state clearly that the final contract award to any bidder requires prior written approval by the STATE and that bids are consistent with the PROJECT equipment description identified in Exhibit A, Scope of Work.
- B. To comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. 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.
- C. For all contracts and subcontracts financed with Federal assistance, to comply with cargo preference requirements of 46 U.S.C. § 1241 and 46 CFR Part 381 when contracts involve equipment, materials, or commodities which may be transported by ocean vessels.
- D. To comply with the requirements of 49 U.S.C. § 5323 (c) and FTA regulations, "Bus Testing", 49 C.F.R. Part 665, and any revision thereto.
- E. To comply with the requirements of 49 U.S.C. § 5323(l) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any revision thereto.
- F. To comply with the requirements of 49 U.S.C. § 5325(b) to award a third-party contract using a competitive procurement process.
- G. In accordance with 49 U.S.C. § 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.
- H. To comply with 49 U.S.C. § 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.
- I. To comply with the requirements of 49 U.S.C. Section 5323(m) and FTA regulations, "Pre- Award and Post-Delivery Audits of Rolling Stock Purchases, " 49 CFR Part 663, and any revision thereto.
- J. To award a third-party contract using a competitive procurement process in compliance with the requirements of 49 U.S.C. Section 5325.
- K. To comply with the requirements of 49 U.S.C. Section 5318(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.



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- L. To require each bidder to certify that it has complied with 49 CFR 26, which requires each transit vehicle manufacturer to establish annual goals for the participation of disadvantaged business enterprise and to submit those goals to FTA for approval.
- M. To comply with 49 U.S.C. Section 5323(j), FTA's Buy America regulations at 49 CFR Part 661 and any amendments thereto, and any implementing guidance issued by FTA, with respect to each third-party contract.
- N. To meet applicable regulations of 49 CFR Part 663 in the purchase of revenue rolling stock.
- O. In subcontracts exceeding \$100,000, to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et. seq. and Clean Water Act, as amended, 33 U.S.C. Section 1251 et. seq. Agrees to report and require each third-party contractor or subcontractor at any tier 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.
- P. To comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.
- Q. 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.
- R. To the extent applicable, agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit PROJECTs," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.
- S. 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.
- T. 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.
- U. CONTRACTOR must comply with applicable cost principles circulars, current in Title 2 of the Code of Federal Regulations, in determining whether project costs are allowable or unallowable. Title 2 CFR Part 225, previously OMB Circular A-87, establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments and federally recognized Indian tribal governments. 2 CFR Part 230 previously OMB Circular A-122, establishes cost principles for nonprofits. Where applicable, CONTRACTOR must comply with cost principles of FAR 31.2.

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V. CONTRACTOR must have written protest procedures covering the pre-bid/pre-proposal, post proposal, and post award processes, and shall in all instances disclose to all bidders the CONTRACTOR's protest and the STATE's appeal procedures. 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. Reviews of protests by the STATE will be limited to:

- a. CONTRACTOR's failure to have or follow its own protest procedures, or its failure to review a complaint or protest
- b. Violations of the Federal or State law or regulation.

An appeal to the STATE must be received or postmarked ten (10) calendar days (includes mailing time) from the date of the protest decision (See Exhibit A, 2 for contact person and his/her address).

45. Bid Proposal and Contract Award. All bid solicitation documents, proposed vendor selection and request for non-competitive bid 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. The CONTRACTOR (or procurement agent acting on its behalf) shall prepare the bid documents, solicit and receive competitive bids or proposals, shall evaluate the bids or proposals received, and shall select the lowest price compliant bid for award.
- A. The CONTRACTOR (or procurement agency acting on its behalf) shall forward to the STATE, at least thirty (30) days prior to the release of the bid solicitation, a copy of the bid solicitation document proposed contract, and bidders list.
 - B. Prior to contract award, the CONTRACTOR (or procurement agency acting on its behalf) shall forward to STATE a list of all bids, proposals, or price quotations received, a copy of the selected bid or proposal, copy of the bids or proposals of all those whose prices are 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 shall include a statement by the CONTRACTOR that the price is fair and reasonable and the basis for that determination (FTA Circular C 4220.1F "Third-party Contracting Guidance").
46. FTA Regulations, Policies, Procedures and Directives. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (15) dated October, 2008) between the STATE and FTA, as they may be amended or promulgated 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. 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.
48. Disposition of Equipment. The disposition of all PROJECT equipment shall be made in accordance with the requirements of 49 C.F.R. Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" and FTA C 9070.1F (Section 5310) and 49 U.S.C. § 5310. Whenever any PROJECT equipment is withdrawn from the PROJECT for any reason, the CONTRACTOR shall immediately notify the STATE. Should the PROJECT be terminated, all property procured under this agreement becomes property of the STATE and may be

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transferred to other eligible contractors at the sole discretion of the STATE. At the option of the STATE, the CONTRACTOR shall do one of the following:

- A. Written Notice of Termination. 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, Scope of Work, 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 CONTRACTOR fails to remedy to STATE'S satisfaction the breach or default or 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 in any way operate to preclude the STATE from also 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.
 - B. Remit to the STATE the proportional amount of current market value that exceeds \$5,000 per unit at the time of disposition, if any, of PROJECT equipment which shall be based on the percentage of the FTA grant 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; and
 - C. 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.
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.
50. 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) days 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.



EXHIBIT C

- 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 right immediately 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) days 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, whether the property of one or more claimants, in an amount not less than one million five hundred thousand dollars (\$1,500,000) per occurrence (combined single limit) for property damage liability combined in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) per occurrence 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 in an amount not less than one million five hundred thousand dollars (\$1,500,000) per occurrence (combined single limit) in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) per occurrence 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).
- 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, whether the property of one or more claimants, in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit) for property damage liability combined in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) per occurrence 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 in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit) in respect to vehicles with seating

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capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury in respect to vehicles with seating capacity of sixteen (16) or more.

- c. **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).

51. **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.

52. **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, or 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, Memorandums of Understanding (MOU), 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.



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53. Narrowband Migration Deadline. 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.
54. 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 under, 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 under this Agreement., employees, representatives, and agents.



EXHIBIT C

APPENDIX A
TITLE VI PROGRAM CHECKLIST

Every three years, on a date determined by FTA, each recipient is required to submit the following information to the Federal Transit Administration (FTA) as part of their Title VI Program. Subrecipients shall submit the information below to their primary recipient (the entity from whom the subrecipient receives funds directly), on a schedule to be determined by the primary recipient.

General Requirements (Chapter III)

All recipients must submit:

- Title VI Notice to the Public, including a list of locations where the notice is posted
- Title VI Complaint Procedures (i.e., instructions to the public regarding how to file a Title VI discrimination complaint)
- Title VI Complaint Form
- List of transit-related Title VI investigations, complaints, and lawsuits
- Public Participation Plan, including information about outreach methods to engage minority and limited English proficient populations (LEP), as well as a summary of outreach efforts made since the last Title VI Program submission
- Language Assistance Plan for providing language assistance to persons with limited English proficiency (LEP), based on the DOT LEP Guidance
- 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
- A Title VI equity analysis if the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc.
- 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 reviewed and approved the Title VI Program. For State DOT's, the appropriate governing entity is the State's Secretary of Transportation or equivalent. The approval must occur prior to submission to FTA.
- Additional information as specified in chapters IV, V, and VI, depending on whether the recipient is a transit provider, a State, or a planning entity (see below)
- The State of California shall include a description of how the agency monitors its subrecipients for compliance with Title VI, and a schedule of subrecipient Title VI Program submissions

EXHIBIT D**SECTION 5310****Additional Provisions**

1. Agreement Discrepancy. Should there be a discrepancy between the State Management Plan and this Agreement, the Agreement shall govern.
2. Independent Performance. The CONTRACTOR, and the agents and employees of CONTRACTOR, in the performance of the Agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.
3. Procurement Standards
 - A. The local procurement of all PROJECT equipment shall be conducted in accordance with the procurement standards set forth in the Federal Office of Management and Budget (OMB) Circular A-102, 49 C.F.R. Part 18 "Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments" and OMB Circular A-122, 49 C.F.R. Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Educations, Hospitals, and Other Non-profit Organizations." The STATE will act as the procurement agent for all vehicles for non-profit Agencies.
 - B. FTA Circular C 4220.1F "FTA Third-Party Contracting Guidelines", FTA C 9070.1F (Section 5310), 49 U.S.C. § 5310, 49 C.F.R. Part 663 "Pre-Award and Post Delivery Audits of Rolling Stock" and the State's Contract Vehicle Manual. The CONTRACTOR shall conduct the procurement or, with the approval of the STATE, designate another Section 5310 recipient or a government agency to conduct the procurement on its behalf.
4. Pre-Award Authority. The STATE shall not authorize the procurement of vehicles or equipment under this Agreement until such time that the Federal Transit Administration has notified the STATE that the Program of Projects has been fully funded and is available to the STATE for disbursement.
5. Vehicle Procurement Options. All vehicle procurements shall comply with one of the following conditions depending on agency type and option selected:
 - A. Non-Profit Agencies. The STATE is required to order vehicles for non-profit agencies from a State approved Contract.
 - B. Public Agencies. Public agencies have three (3) vehicle procurement options.
 1. STATE purchases vehicles for CONTRACTOR from a State approved Contract.
 2. CONTRACTOR purchases vehicles directly from a State approved Contract. CONTRACTOR shall purchase vehicle in full from the vendor with prior STATE approval.
 3. CONTRACTOR purchases vehicles through its' own procurement procedures. Public agencies who choose to procure vehicles through its' own process must receive prior STATE authorization.
 - C. Payment Provisions are detailed in Exhibit B.
6. Purchase Orders for Vehicles. All vehicle procurements shall:
 - A. Be consistent with the approved bid award listed in Exhibit A, Scope of Work.

EXHIBIT D

- B. Be consistent with Billing and Payment instructions listed in Exhibit B, Budget Detail and Payment Provisions.
- C. Designate through the vender with Department of Motor Vehicles, Caltrans, Division of Mass Transportation, as the lien holder on the Certificate of Title and the CONTRACTOR as the registered owner.
7. Bid Proposal Approval for Other Equipment. No award shall be made without written approval from the STATE prior to purchase. The CONTRACTOR shall submit the following documents for approval to the STATE in advance of the proposed award:
- A. Solicitation document detailing the specifications of the PROJECT for purchase.
- B. At least three (3) competitive like-kind bids using the same specifications indicated in Part A above.
- C. A listing of all bids, proposals, or price quotations which includes an analysis of all bids received detailing comparison information.
- D. Disadvantaged Business Enterprise (DBE) Awards/Commitments Form.
- E. An explanation of the basis for selecting the proposed vendors and for rejecting lower bids (if any). In the case of a single bid, sole source, or negotiated price contract, the CONTRACTOR shall include a statement certifying that the price is fair and reasonable and the justification for the single-bid determination (FTA Circular C 4220.1F "FTA Third-Party Contracting Guidelines").
8. Purchase of Other Equipment. After receiving written approval from the STATE, CONTRACTOR shall purchase approved PROJECT equipment within three months of Agreement execution or be subject to contract termination provisions described in Exhibit C Part 47. Upon receiving documentation outlined in, Exhibit B, BUDGET DETAIL AND PAYMENT PROVISIONS of this Standard Agreement, and the Disadvantaged Business Enterprise (DBE) Actual Payment Form, the STATE will reimburse the Federal Share.
9. Evidence of Insurance. The CONTRACTOR 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. Evidence of insurance shall also be provided to the STATE annually and prior to the expiration date of the certificate. At any time that such evidence of insurance has not been provided, the STATE shall have the right immediately to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.
10. Equipment Ownership and Relinquishment. At all times while the PROJECT equipment is in the possession or control of the CONTRACTOR, the CONTRACTOR shall be the registered owner and STATE shall be the legal owner or lienholder. The CONTRACTOR shall not transfer ownership of the PROJECT equipment at any time while this contract is in effect. As the lienholder, the STATE may take possession of the PROJECT equipment, as a result of 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 the PROJECT equipment is released by the STATE to the CONTRACTOR or other appropriate party as outlined in Exhibit C of this Agreement.
11. Semi-Annual Milestone Reporting. The CONTRACTOR shall submit a Semi-Annual Milestone Report of its use of PROJECT equipment within thirty (30) calendar days after the close of each

EXHIBIT D

federal reporting period. The federal reporting periods are: 1) October 1 – March 31; 2) April 1 – September 30.. (Semi-Annual Milestone Reports are due no later than April 30, and October 30 of each calendar year.) The report shall contain information requested by the STATE to indicate the extent to which the CONTRACTOR is carrying out the PROJECT in accordance with the terms of this contract. Failure to meet these requirements shall be considered grounds for PROJECT Termination as described in Exhibit C of this Agreement.

- 12. Loss or Damage to PROJECT Equipment. The CONTRACTOR shall notify the STATE, within ten (10) working days of any loss or damage, including accident, fire, vandalism, theft, to the PROJECT equipment.
- 13. Disadvantaged Business Enterprise. CONTRACTOR shall report their DBE participation in their Other Equipment procurement opportunities using the STATE'S DBE Award/Commitments and Actual Payments forms to be provided by the STATE at the time of initial equipment bidding. Additional DBE requirements are provided at Exhibit C.

- 14. Useful Life.
The following Useful Life standards shall determine when PROJECT equipment will no longer be subject to monitoring and reporting requirements once the agency notifies Caltrans in writing if the vehicle will be retained or sold. These criteria are subject to review by the 5310 Branch Chief if either factor is less than the value shown herein.

Minivans	100,000 miles or 4 years
Bus Type I, IA, IB, II, III	150,000 miles or 5 years
Bus Type VII	200,000 miles or 7 years
Bus Type VIII	350,000 miles or 10 years
Hardware/Software	3 years

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.

Fair market value shall be based on the value of the vehicle as determined by a current competent appraisal.

Per FTA Circular 5010.1D, page IV-25, when Useful Life Standards are met the STATE shall remain the lien holder for vehicles until one of the conditions below are met:

- A. Equipment with Fair Market Value Greater Than or Equal to \$5,000:

If the vehicle has met the Useful Life criteria, the CONTRACTOR will remain the registered owner and Caltrans will remain the lien holder. Should the CONTRACTOR choose to sell the vehicle, Caltrans must be notified in advance of the pending sale and provide in writing the terms of the sale and the intended use of the sale revenue. All sale revenue must be retained in the CONTRACTOR'S transportation program. Supporting documentation on the use of sale revenue must be provided to STATE upon request.

- B. Equipment with Fair Market Value Less Than \$5,000:

Once the vehicle has met the Useful Life standards, full title will be released to the CONTRACTOR. All sale revenue must be retained in the CONTRACTOR'S transportation program. Supporting documentation on the use of sale revenue must be provided to STATE upon request.



EXHIBIT A**SECTION 5310****SCOPE OF WORK**

1. The CONTRACTOR shall use the PROJECT equipment at all times exclusively and in conformity with the following project description for as long as the equipment is needed for the PROJECT. Vehicles may not be transferred out of this geographic area, even if within same agency, without prior written approval from STATE.
2. The CONTRACTOR shall provide transportation service primarily to elderly persons and persons with disabilities, including their incidental baggage, and to persons accompanying the elderly persons or persons with disabilities.
3. If any PROJECT equipment, designated under Exhibit A, Paragraph 5 of this contract is to replace existing equipment, the equipment being replaced shall be withdrawn from the existing PROJECT inventory and placed in backup service upon delivery and acceptance of the new PROJECT equipment.
4. The CONTRACTOR'S scope of work is described as follows:
 - A. At a minimum, transportation service shall be provided between XXAM to XX PM, DAY through DAY (or at a minimum of 20 hours per week) for each vehicle.
 - B. The CONTRACTOR'S geographic area that will be served by the transportation program is as follows:
[Insert project specific service area per application]
5. The new PROJECT for equipment or new vehicles (not designated as "used" by Federal Trade Commission Agency 16 CFR Part 455.1(d)(2)) as well as California Vehicle Code Section 100-680, and estimated cost, is as follows:

ITEM	QUANTITY	*AWARD	TOTAL AMOUNT
Larger Bus (R)	1	105,000	105,000

Grant Award-Total Cost of PROJECT Equipment: \$ 105,000

Federal Share: 88.53% \$ 92,957

Toll Credit: 11.47% \$ 12,044

*Maximum grant amount as determined by awarded project costs.

6. The following vehicles will be removed from active service and placed into backup service, or sold.

VIN	Model Year	Make	Back Up	Sold
92466	2000	BlueBird CSRE		X



EXHIBIT A

7. Transfer of Used Vehicle/Equipment

- A. The STATE will evaluate potential transfer need for vehicle/equipment. The CONTRACTOR will submit an abbreviated Application containing the following information.
 - Project Description and Justification for Funding Request (Replacement or Expansion);
 - Proposed Service and Operating Plan (including map of service area);
 - Existing Transportation Services (current fleet);
 - Proposed Transportation Services; and
 - Signed Certifications and Assurances
- B. The CONTRACTOR's abbreviated Application as attached, is incorporated, herein, and is made part of this Agreement. In the event the CONTRACTOR's abbreviated Application is in conflict with any terms or conditions of this Agreement, this Agreement shall supersede the CONTRACTOR's abbreviated Application.
- C. The CONTRACTOR agrees to perform the PROJECT to provide transportation services primarily to elderly persons and persons with disabilities, including their incidental baggage, and to persons accompanying the elderly persons or persons with disabilities in accordance with the terms and conditions of this Agreement and the CONTRACTOR's abbreviated Application for Federal assistance which is on file with the Mass Transportation Program and is now expressly incorporated into this Agreement.
- D. The CONTRACTOR shall use the PROJECT equipment at all times exclusively and in conformity with the project description for as long as the equipment is needed for the PROJECT. Vehicles may not be transferred without prior written approval from STATE.

8. The PROJECT representatives during the term of this Agreement will be:

State Agency: Department of Transportation	CONTRACTOR: Laguna Honda Hospital and Rehabilitation Center
Name: Chuck Gunter	Name: Barbara A. Garcia
Title: Chief, Elderly and Disabled Specialized Transit	Title: Executive Director
Phone: (916) 657-3875	Phone: 415-759-2363
Fax: (916) 654-9366	Fax:

Direct all inquiries to:

State Agency: Department of Transportation	CONTRACTOR: Laguna Honda Hospital
Section/Unit: Division of Mass Transportation	Section/Unit:
Attention: Valarie Smith	Attention: William Frazier
Address: P.O. Box 942874	Address: 375 Laguna Honda Blvd
Sacramento, CA 94274-0001	San Francisco, CA 94116
Phone: (916) 654-8065	Phone: 415-759-3384
Fax: (916) 654-9366	Fax:



EXHIBIT B**SECTION 5310****BUDGET DETAIL AND PAYMENT PROVISIONS**1. Invoicing and Payment

- A. Local Share. The CONTRACTOR agrees that it will deposit funds with Bank of America in the amount specified within 90 days after signing Agreement (minus the amount required for locally procured other equipment). In accordance with FTA C 9070.1F, the local share may be derived from Federal programs that are eligible to be expended for transportation, other than DOT programs, or from Department of Transportation (DOT) Federal Lands Highway Program. The CONTRACTOR will be responsible for 100% of all costs which exceed the approved grant amount. In no event shall the STATE be obligated to contribute STATE funds toward the cost of the PROJECT. Deposit instructions shall be provided to the CONTRACTOR by the STATE.
- B. Local Match Deposit. PROJECT equipment will not be procured by the STATE, on behalf of the CONTRACTOR, until the deposit of the CONTRACTOR'S local match has been verified by the STATE. Local Match deposit shall be deposited within 90 days of Agreement execution.
- C. Billing and Payment for Vehicle Procurement. Maximum vehicle funding limits shall be set by the STATE and shall apply to non-profit and public agencies without prejudice. Purchase order requirements are further detailed in Exhibit D. The Federal Share for all vehicle procurements shall not exceed 88.53% of the grant amount identified.
1. Non-Profit Agencies. The STATE is required to order vehicles for non-profit agencies from a State approved Contract. The CONTRACTOR must deposit the local match in the designated Bank of America account before the vehicle is ordered. No further billing or payment is required of the CONTRACTOR. In the event a balance due is owed to the CONTRACTOR for any unused portion of the local match, the CONTRACTOR shall request a refund from Caltrans in writing. Caltrans will initiate the refund process with Bank of America.
 2. Public Agencies. Payment for vehicles ordered by public agencies shall comply with the appropriate provision below:
 - a. Public agency CONTRACTORS that have a vehicle procured for them by the STATE will follow payment options identified in Exhibit B above.
 - b. Public agency CONTRACTORS, that purchase vehicles themselves from a State approved Contract, shall purchase vehicle in full from the vendor. Purchase order reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle delivery is accepted by the STATE.
 - c. Public agency CONTRACTORS, that complete their own procurement not from the State Contract, shall purchase vehicle in full from the vendor. Purchase order reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle delivery is accepted by the STATE.
 - d. Upon review and approval by the STATE, STATE agrees to reimburse the Public Agency CONTRACTOR for allowable costs not to exceed 88.53% of the approved grant amount upon receipt of a complete and correct invoice package including proof of payment which includes a preaward and post delivery audit, and otherwise meets the requirements of this Standard Agreement. Incomplete or disputed invoices shall be returned to Public Agency Contractor, unpaid, for correction.



EXHIBIT B

3. Procurement options are identified in Exhibit D.
- D. Billing and Payment for Other Equipment. Funds allocated for use on this PROJECT identified as Other Equipment are payable to the CONTRACTOR in arrears on a reimbursement basis. The CONTRACTOR shall submit its request(s) for payment to the STATE upon completion of procurement process detailed in Exhibit D.. The request(s) for payment shall certify that the CONTRACTOR has received and accepted the equipment and shall be submitted together with copies of the vendor's original invoice and the CONTRACTOR'S purchase order including proof of payment. The CONTRACTOR'S invoice and the vendor's paid invoice shall be consistent with the purchase order and include a breakdown of unit costs, sales tax, registration fees, any items not payable 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 § 6369.4
- E. Upon review and approval by the STATE, the STATE agrees to reimburse the CONTRACTOR for allowable costs as defined in 2 CFR Part 225 and 49 CFR, Part 18 upon receipt of an invoice that is itemized per the Bid Approval Letter, and otherwise meets the requirements of this Standard Agreement. Incomplete or disputed invoices shall be returned to Contractor, unpaid, for correction.
- F. The obligations of the STATE to CONTRACTOR under the terms of this contract shall terminate upon payment of CONTRACTOR'S invoices for the PROJECT equipment. All invoices shall be submitted for payment within 90 days of equipment acquisition. The obligations of the Contractor under this Agreement shall remain in effect until all PROJECT equipment has been disposed of under the terms of this Agreement.
- G. The net PROJECT cost and allowability of individual items of PROJECT cost shall be determined in conformance with CFR 48, Federal Acquisition Regulations System, Chapter 1, Part 31, 2 CFR Part 230 (OMB Circular A-122), "Cost Principles for Non-profit Organizations," and other applicable regulations, circulars, or memorandums that may be issued by Federal Transportation Administration (FTA).
- H. Requests for PROJECT reimbursements shall be submitted no later than May 1, 2014.
2. Budget Contingency Clause
- A. It is mutually agreed that if the Budget Act 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.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act 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 Agreement amendment to CONTRACTOR to reflect the reduced amount.
3. Prompt Payment Clause.
- A. In the event the contractor is a certified small business or similar entity, but not a public agency, the STATE shall make payment within 45 days in accordance with Government Code Chapter 4.5 Section 927.



EXHIBIT B

- B. The CONTRACTOR shall pay any third-party contractor not later than 10-days of receipt of each progress payment unless a longer period is agreed to in writing, as cited in the California Business and Professions Code, Section 7108.5.
- C. Should the CONTRACTOR choose to include retainers in third-party contracts, the CONTRACTOR must adhere to the requirements of Section 7108.5 as cited above. The CONTRACTOR must ensure prompt and full payment of retainage to third-party contractors no later than 30 days after the third-party contractor's work is satisfactorily completed, as cited in 49 CFR Part 26.29.

4. Project Payment Closeout Clause

- A. CONTRACTOR agrees that once PROJECT payment is complete, any outstanding balance will revert to the STATE for distribution or reallocation to the FTA Section 5310 Program.
- 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 the 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.

EXHIBIT C**GENERAL TERMS AND CONDITIONS FOR ALL FEDERAL GRANT PROGRAM**

1. Subrecipient. For the purpose of this Agreement, the CONTRACTOR is the subrecipient as referenced in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (pub.L.109-059). As a grant 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 limited to the USDOT FTA Master Agreement (15), October 1, 2008 and FTA C 9070.1F, Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions, or FTA C 9040.1F, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, or FTA C 9045.1, New Freedom Program Guidance and Application Instructions, or FTA C 9050.1, The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions.
2. 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 should not be authorized until the expenditure of federal funds has been authorized by the FTA for a specific Federal fiscal year. The CONTRACTOR may not commence performance until federal authorization has been obtained.
 - C. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties 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 provisions(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 of the project has been programmed and is in an approved FSTIP.



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3. 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 other remedies that may be legally available.
4. Timeliness. Time is of the essence in this agreement and shall be signed and returned by the CONTRACTOR 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 from FTA's grant award may at the discretion of the STATE be withdrawn and cancelled.
5. 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. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties. Amendments shall be signed and returned by the CONTRACTOR within 90 calendar days after mailing. In the event this amendment is not signed within 90 days of mailing, the PROJECT identified in Exhibit A of this AGREEMENT from FTA's grant award may at the discretion of the STATE be withdrawn and cancelled.
6. 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.
7. 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.
8. 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 Government Codes Sections set out below.
- A. The Government Code Chapter on Antitrust claims contains the following definitions:
 - i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the STATE or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - ii. "Public purchasing body" means the STATE or the subdivision or agency making a public purchase. Government Code Section 4550.
 - B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

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- C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
9. Child Support Compliance Act. "For any Agreement in excess of \$100,000, the CONTRACTOR acknowledges in accordance with Public Contract Code 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 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."
10. 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.
11. 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 Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
12. State Management Plan. The STATE is designated by the Governor to administer the FTA Section 5310, 5311, 5316 and 5317 programs in California. The implementation and administration of the FTA programs are outlined in the each program's State Management Plan and is available at the Department of Transportation, Division of Mass Transportation website at, <http://www.dot.ca.gov/hq/MassTrans/>.
13. 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.
14. 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 U.S.C. 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.

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15. Buy America. The CONTRACTOR shall comply with the Buy America requirements of 49 USC 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 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
16. 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 U.S.C. 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 "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States Flag Air Carriers," and 41 CFR Sections 301-10.131 through 301-10.143.
 - C. Project Travel. In accordance with 49 U.S.C. 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.
17. 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.
18. 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.
19. Vehicle Operator Licensing. The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration 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 OMB Circular A-133, or any revision or supplement thereto. 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 OMB Circular A-133 is an allowable charge to this PROJECT, to the extent provided by OMB Circular A-133.
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 subrecipient contracts.
22. Examination of Records. STATE'S Audits Office, 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,

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excerpts, and transactions, and copies thereof shall be furnished if requested. 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 cost 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 reports and/or data 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 U.S.C. 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 included in the "U.S. General Services Administration's (U.S. GSA) 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 include 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. Before entering into any sub-agreements with any subrecipient, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that subrecipient and its "principals," as defined at 49 CFR Part 29.
 - D. Before entering into any third-party contract exceeding \$25,000, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any third-party sub-contract of any amount (at any tier) to a debarred or suspended sub-contractor, and to obtain a similar certification from any third-party subcontractor (at any tier) seeking a contract exceeding \$25,000.
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 the Federal Transit Act, including, but not limited to the following:
- A. Race, Color, Creed, National Origin, Sex - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No.

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11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 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 equally during employment, without regard to their race, color, creed, national origin, sex, or age. 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.

- B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 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 Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. Solicitations for Subcontracts Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the FTA to be pertinent to ascertain compliance with such Regulations or directives. 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.
- E. In accordance with 49 CFR Part 21 and as described in FTA Circular 4702.1, and the California Department of Transportation Title VI Program Plan, and upon request from the STATE, the CONTRACTOR shall comply with the following reporting requirements. The CONTRACTOR is also responsible for ensuring compliance of each third-party contractor at any tier of the PROJECT.
1. Provide an Annual Title VI Certification and Assurance.
 2. Establish and maintain 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.



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6. Provide additional information upon request.
 7. Prepare and submit a Title VI Program.
 8. Guidance on conducting an Analysis of Construction PROJECT'S.
 9. Guidance on promoting Inclusive Public Participation.
- F. Sanctions for Noncompliance. In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of 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.
- G. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will 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; provided, however, that 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, and, 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. The CONTRACTOR agrees to:
- A. Comply with U.S. DOT regulations, "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs", 49 CFR Part 26 and will cooperate with STATE with regard to maximum utilization of disadvantaged business enterprises, and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum opportunity to compete for sub contractual work under this Agreement.
 - B. Complete and submit to STATE a DBE Implementation Agreement with the DOT-213 Standard Agreement. STATE shall provide the Implementation Agreement to the CONTRACTOR prior to vehicle ordering.
 - C. Report twice annually on DBE participation in their contracting opportunities; their award/commitments and actual payments.
 - D. The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by U.S. DOT, 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 part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C, 3801 et seq.).

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- E. The CONTRACTOR, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
28. Section 504 and Americans with Disabilities Act Program Requirements. The CONTRACTOR will comply with 49 C.F.R. Parts 27, 37 and 38, implementing the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.
29. Warranty for Application to the Small Urban and Rural Program. The CONTRACTOR accepts the terms and conditions of the "Special Section 13(c) Warranty for Application to the Small Urban and Rural Program," as executed by the Secretary of Labor and the Secretary of Transportation on May 31, 1979, and those terms and conditions are incorporated by reference into this Agreement.
30. 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 U.S.C. § 303.
31. 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, U.S.C. §§ 6321 *et seq.*
32. 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.
33. Conflict of Interest.
- A. In accordance with 41 U.S.C. § 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 officials and employees shall also avoid actions resulting in or creating an appearance of:
 - 1. Using an official position for private gain;
 - 2. Giving preferential treatment to any particular person;



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3. Losing independence or impartiality;
 4. Affecting adversely 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 2 years from the date of separation if that employee had any part of the decision making process relevant to the agreement, or for 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 within the 12-month period to his or her 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, the rates for which are fixed or controlled by a governmental agency.

34. Lobbying.

- A. The CONTRACTOR agrees that it will not use Federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. DOT Regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, if the CONTRACTOR'S PROJECT exceeds \$100,000, FTA will not make any Federal assistance available to the CONTRACTOR until FTA has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use Federal 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 any other Federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;
- B. If applicable, if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress,



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in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the form instructions.

- C. The CONTRACTOR shall require that the language of this certification be included in the award documents for all sub-awards 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 Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

35. 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 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, 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 contract 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 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 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 financed in whole or in part with Federal assistance provided by FTA. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

36. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.



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- B. The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
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 Government code Section 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 U.S.C. Section 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 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides 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-Subpart B. Any charter service provided under one of the exceptions must be "incidental," i.e., 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 U.S.C. 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 U.S.C. 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 and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. 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 U.S.C. Section 5312(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 U.S.C. Sections 2131 et seq. and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1,2,3, and 4.
42. Additional 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



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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. 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 to STATE's satisfaction the breach or default or any of the terms, covenants, or conditions of this Agreement the STATE shall have the right to terminate the Agreement without any further obligation to the CONTRACTOR. Any such termination for default shall not in any way operate to preclude the STATE from also pursuing all available remedies against the CONTRACTOR.
- 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, the STATE, after setting up a new delivery of performance schedule, 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 informally. If the dispute persists, the CONTRACTOR shall submit to the authorized STATE Representative for this Agreement or designee a written demand for a decision regarding the disposition of any dispute arising under this Agreement. The STATE 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 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 Representative 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. For all procurements of 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 U.S.C. Section 5325(a), applicable third-party procurement requirements of 49 U.S.C. chapter 53 and other procurement requirements of Federal laws in effect now or as amended to the extent applicable. The CONTRACTOR shall prepare a bid package, including equipment and material specifications or a scope of work. In accordance with applicable U.S. DOT third-party procurement regulations at 49 C.F.R. § 18.36 and the provisions of FTA Circular 4220.1F, "Third-Party Contracting Guidance," November 1, 2008, and any later revision thereto, the CONTRACTOR agrees that it may not

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use FTA assistance to support its procurements unless there is satisfactory compliance with Federal laws and regulations including but not limited to the following:

- A. To state clearly that the final contract award to any bidder requires prior written approval by the STATE and that bids are consistent with the PROJECT equipment description identified in Exhibit A, Scope of Work.
- B. To comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. 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.
- C. For all contracts and subcontracts financed with Federal assistance, to comply with cargo preference requirements of 46 U.S.C. § 1241 and 46 CFR Part 381 when contracts involve equipment, materials, or commodities which may be transported by ocean vessels.
- D. To comply with the requirements of 49 U.S.C. § 5323 (c) and FTA regulations, "Bus Testing", 49 C.F.R. Part 665, and any revision thereto.
- E. To comply with the requirements of 49 U.S.C. § 5323(l) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any revision thereto.
- F. To comply with the requirements of 49 U.S.C. § 5325(b) to award a third-party contract using a competitive procurement process.
- G. In accordance with 49 U.S.C. § 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.
- H. To comply with 49 U.S.C. § 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.
- I. To comply with the requirements of 49 U.S.C. Section 5323(m) and FTA regulations, "Pre- Award and Post-Delivery Audits of Rolling Stock Purchases, " 49 CFR Part 663, and any revision thereto.
- J. To award a third-party contract using a competitive procurement process in compliance with the requirements of 49 U.S.C. Section 5325.
- K. To comply with the requirements of 49 U.S.C. Section 5318(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.
- L. To require each bidder to certify that it has complied with 49 CFR 26, which requires each transit vehicle manufacturer to establish annual goals for the participation of disadvantaged business enterprise and to submit those goals to FTA for approval.

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- M. To comply with 49 U.S.C. Section 5323(j), FTA's Buy America regulations at 49 CFR Part 661 and any amendments thereto, and any implementing guidance issued by FTA, with respect to each third-party contract.
- N. To meet applicable regulations of 49 CFR Part 663 in the purchase of revenue rolling stock.
- O. In subcontracts exceeding \$100,000, to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et. seq. and Clean Water Act, as amended, 33 U.S.C. Section 1251 et. seq. Agrees to report and require each third-party contractor or subcontractor at any tier 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.
- P. To comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.
- Q. 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.
- R. To the extent applicable, agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit PROJECTs," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.
- S. 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.
- T. 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.
- U. CONTRACTOR must comply with applicable cost principles circulars, current in Title 2 of the Code of Federal Regulations, in determining whether project costs are allowable or unallowable. Title 2 CFR Part 225, previously OMB Circular A-87, establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments and federally recognized Indian tribal governments. 2 CFR Part 230 previously OMB Circular A-122, establishes cost principles for nonprofits. Where applicable, CONTRACTOR must comply with cost principles of FAR 31.2.
- V. CONTRACTOR must have written protest procedures covering the pre-bid/pre-proposal, post proposal, and post award processes, and shall in all instances disclose to all bidders the CONTRACTOR's protest and the STATE's appeal procedures. All CONTRACTOR's protest decisions must be dated and in writing. A protester must exhaust all administrative remedies with the

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CONTRACTOR before pursuing an appeal with the STATE. Reviews of protests by the STATE will be limited to:

- a. CONTRACTOR's failure to have or follow its own protest procedures, or its failure to review a complaint or protest
- b. Violations of the Federal or State law or regulation.

An appeal to the STATE must be received or postmarked ten (10) calendar days (includes mailing time) from the date of the protest decision (See Exhibit A, 2 for contact person and his/her address).

45. Bid Proposal and Contract Award. All bid solicitation documents, proposed vendor selection and request for non-competitive bid 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. The CONTRACTOR (or procurement agent acting on its behalf) shall prepare the bid documents, solicit and receive competitive bids or proposals, shall evaluate the bids or proposals received, and shall select the lowest price compliant bid for award.
- A. The CONTRACTOR (or procurement agency acting on its behalf) shall forward to the STATE, at least thirty (30) days prior to the release of the bid solicitation, a copy of the bid solicitation document proposed contract, and bidders list.
 - B. Prior to contract award, the CONTRACTOR (or procurement agency acting on its behalf) shall forward to STATE a list of all bids, proposals, or price quotations received, a copy of the selected bid or proposal, copy of the bids or proposals of all those whose prices are 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 shall include a statement by the CONTRACTOR that the price is fair and reasonable and the basis for that determination (FTA Circular C 4220.1F "Third-party Contracting Guidance").
46. FTA Regulations, Policies, Procedures and Directives. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (15) dated October, 2008) between the STATE and FTA, as they may be amended or promulgated 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. 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.
48. Disposition of Equipment. The disposition of all PROJECT equipment shall be made in accordance with the requirements of 49 C.F.R. Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" and FTA C 9070.1F (Section 5310) and 49 U.S.C. § 5310. Whenever any PROJECT equipment is withdrawn from the PROJECT for any reason, the CONTRACTOR shall immediately notify the STATE. Should the PROJECT be terminated, all property procured under this agreement becomes property of the STATE and may be transferred to other eligible contractors at the sole discretion of the STATE. At the option of the STATE, the CONTRACTOR shall do one of the following:

- A. Written Notice of Termination. The STATE may terminate this contract upon finding that the

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CONTRACTOR is not operating the PROJECT equipment in accordance with the project description in Exhibit A, Scope of Work, 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 CONTRACTOR fails to remedy to STATE'S satisfaction the breach or default or 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 in any way operate to preclude the STATE from also 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.

- B. Remit to the STATE the proportional amount of current market value that exceeds \$5,000 per unit at the time of disposition, if any, of PROJECT equipment which shall be based on the percentage of the FTA grant 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; and
 - C. 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.
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.
50. 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) days 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.



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- 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 right immediately 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) days 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, whether the property of one or more claimants, in an amount not less than one million five hundred thousand dollars (\$1,500,000) per occurrence (combined single limit) for property damage liability combined in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) per occurrence 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 in an amount not less than one million five hundred thousand dollars (\$1,500,000) per occurrence (combined single limit) in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) per occurrence 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).
- 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, whether the property of one or more claimants, in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit) for property damage liability combined in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) per occurrence 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 in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit) in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury in respect to vehicles with seating capacity of sixteen (16) or more.

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- c. **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).
51. **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.
52. **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, or 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, Memorandums of Understanding (MOU), 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.
53. **Narrowband Migration Deadline.** 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

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and 421-512 MHz bands which will migrate to narrowband (12.5 kHz or narrower) technology effective January 1, 2013.

54. 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 under, 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 under this Agreement., employees, representatives, and agents.



EXHIBIT D**SECTION 5310****Additional Provisions**

1. Agreement Discrepancy. Should there be a discrepancy between the State Management Plan and this Agreement, the Agreement shall govern.
2. Independent Performance. The CONTRACTOR, and the agents and employees of CONTRACTOR, in the performance of the Agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.
3. Procurement Standards
 - A. The local procurement of all PROJECT equipment shall be conducted in accordance with the procurement standards set forth in the Federal Office of Management and Budget (OMB) Circular A-102, 49 C.F.R. Part 18 "Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments" and OMB Circular A-122, 49 C.F.R. Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Educations, Hospitals, and Other Non-profit Organizations." The STATE will act as the procurement agent for all vehicles for non-profit Agencies.
 - B. FTA Circular C 4220.1F "FTA Third-Party Contracting Guidelines", FTA C 9070.1F (Section 5310), 49 U.S.C. § 5310, 49 C.F.R. Part 663 "Pre-Award and Post Delivery Audits of Rolling Stock" and the State's Contract Vehicle Manual. The CONTRACTOR shall conduct the procurement or, with the approval of the STATE, designate another Section 5310 recipient or a government agency to conduct the procurement on its behalf.
4. Pre-Award Authority. The STATE shall not authorize the procurement of vehicles or equipment under this Agreement until such time that the Federal Transit Administration has notified the STATE that the Program of Projects has been fully funded and is available to the STATE for disbursement.
5. Vehicle Procurement Options. All vehicle procurements shall comply with one of the following conditions depending on agency type and option selected:
 - A. Non-Profit Agencies. The STATE is required to order vehicles for non-profit agencies from a State approved Contract.
 - B. Public Agencies. Public agencies have three (3) vehicle procurement options.
 1. STATE purchases vehicles for CONTRACTOR from a State approved Contract.
 2. CONTRACTOR purchases vehicles directly from a State approved Contract. CONTRACTOR shall purchase vehicle in full from the vendor with prior STATE approval.
 3. CONTRACTOR purchases vehicles through its' own procurement procedures. Public agencies who choose to procure vehicles through its' own process must receive prior STATE authorization.
 - C. Payment Provisions are detailed in Exhibit B.
6. Purchase Orders for Vehicles. All vehicle procurements shall:
 - A. Be consistent with the approved bid award listed in Exhibit A, Scope of Work.

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- B. Be consistent with Billing and Payment instructions listed in Exhibit B, Budget Detail and Payment Provisions.
 - C. Designate through the vender with Department of Motor Vehicles, Caltrans, Division of Mass Transportation, as the lien holder on the Certificate of Title and the CONTRACTOR as the registered owner.
7. Bid Proposal Approval for Other Equipment. No award shall be made without written approval from the STATE prior to purchase. The CONTRACTOR shall submit the following documents for approval to the STATE in advance of the proposed award:
- A. Solicitation document detailing the specifications of the PROJECT for purchase.
 - B. At least three (3) competitive like-kind bids using the same specifications indicated in Part A above.
 - C. A listing of all bids, proposals, or price quotations which includes an analysis of all bids received detailing comparison information.
 - D. Disadvantaged Business Enterprise (DBE) Awards/Commitments Form.
 - E. An explanation of the basis for selecting the proposed vendors and for rejecting lower bids (if any). In the case of a single bid, sole source, or negotiated price contract, the CONTRACTOR shall include a statement certifying that the price is fair and reasonable and the justification for the single-bid determination (FTA Circular C 4220.1F "FTA Third-Party Contracting Guidelines").
8. Purchase of Other Equipment. After receiving written approval from the STATE, CONTRACTOR shall purchase approved PROJECT equipment within three months of Agreement execution or be subject to contract termination provisions described in Exhibit C Part 47. Upon receiving documentation outlined in, Exhibit B, BUDGET DETAIL AND PAYMENT PROVISIONS of this Standard Agreement, and the Disadvantaged Business Enterprise (DBE) Actual Payment Form, the STATE will reimburse the Federal Share.
9. Evidence of Insurance. The CONTRACTOR 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. Evidence of insurance shall also be provided to the STATE annually and prior to the expiration date of the certificate. At any time that such evidence of insurance has not been provided, the STATE shall have the right immediately to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.
10. Equipment Ownership and Relinquishment. At all times while the PROJECT equipment is in the possession or control of the CONTRACTOR, the CONTRACTOR shall be the registered owner and STATE shall be the legal owner or lienholder. The CONTRACTOR shall not transfer ownership of the PROJECT equipment at any time while this contract is in effect. As the lienholder, the STATE may take possession of the PROJECT equipment, as a result of 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 the PROJECT equipment is released by the STATE to the CONTRACTOR or other appropriate party as outlined in Exhibit C of this Agreement.
11. Semi-Annual Milestone Reporting. The CONTRACTOR shall submit a Semi-Annual Milestone Report of its use of PROJECT equipment within thirty (30) calendar days after the close of each

EXHIBIT D

federal reporting period. The federal reporting periods are: 1) October 1 – March 31; 2) April 1 – September 30.. (Semi-Annual Milestone Reports are due no later than April 30, and October 30 of each calendar year.) The report shall contain information requested by the STATE to indicate the extent to which the CONTRACTOR is carrying out the PROJECT in accordance with the terms of this contract. Failure to meet these requirements shall be considered grounds for PROJECT Termination as described in Exhibit C of this Agreement.

12. Loss or Damage to PROJECT Equipment. The CONTRACTOR shall notify the STATE, within ten (10) working days of any loss or damage, including accident, fire, vandalism, theft, to the PROJECT equipment.
13. Disadvantaged Business Enterprise. CONTRACTOR shall report their DBE participation in their Other Equipment procurement opportunities using the STATE'S DBE Award/Commitments and Actual Payments forms to be provided by the STATE at the time of initial equipment bidding. Additional DBE requirements are provided at Exhibit C.
14. Useful Life.

The following Useful Life standards shall determine when PROJECT equipment will no longer be subject to monitoring and reporting requirements once the agency notifies Caltrans in writing if the vehicle will be retained or sold. These criteria are subject to review by the 5310 Branch Chief if either factor is less than the value shown herein.

Minivans	100,000 miles or 4 years
Bus Type I, IA, IB, II, III	150,000 miles or 5 years
Bus Type VII	200,000 miles or 7 years
Bus Type VIII	350,000 miles or 10 years
Hardware/Software	3 years

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.

Fair market value shall be based on the value of the vehicle as determined by a current competent appraisal.

Per FTA Circular 5010.1D, page IV-25, when Useful Life Standards are met the STATE shall remain the lien holder for vehicles until one of the conditions below are met:

A. Equipment with Fair Market Value Greater Than or Equal to \$5,000:

If the vehicle has met the Useful Life criteria, the CONTRACTOR will remain the registered owner and Caltrans will remain the lien holder. Should the CONTRACTOR choose to sell the vehicle, Caltrans must be notified in advance of the pending sale and provide in writing the terms of the sale and the intended use of the sale revenue. All sale revenue must be retained in the CONTRACTOR'S transportation program. Supporting documentation on the use of sale revenue must be provided to STATE upon request.

B. Equipment with Fair Market Value Less Than \$5,000:

Once the vehicle has met the Useful Life standards, full title will be released to the CONTRACTOR. All sale revenue must be retained in the CONTRACTOR'S transportation program. Supporting documentation on the use of sale revenue must be provided to STATE upon request.

