

CONTRACT

Administering Agency: Nevada County Department of Public Works

Contract No. _____

Contract Description: Design Services – Bus Wash Project

DESIGN/ENGINEERING PROFESSIONAL SERVICES CONTRACT

THIS DESIGN/ENGINEERING PROFESSIONAL SERVICES CONTRACT (“Contract”) is made at Nevada City, California, as of June 14, 2022 by and between the County of Nevada, (“County”), and NORR Associates, Inc., (“Consultant”), who agree as follows:

1. **Services** Subject to the terms and conditions set forth in this Contract, Consultant shall provide the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A.

2. **Payment** County shall pay Consultant for services rendered pursuant to this Contract at the time and in the amount set forth in Exhibit B. The payments specified in Exhibit B shall be the only payment made to Consultant for services rendered pursuant to this Contract. Consultant shall submit all billings for said services to County in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures which Consultant uses for billing clients similar to County. **The amount of the contract shall not exceed Two Hundred and Forty Thousand Eight Hundred and Fifty Dollars (\$242,850).**

Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the agreement
Progress payments will be made monthly in arrears based on services provided and actual costs incurred.

Consultant shall not commence performance of work or services until this agreement has been approved by County and notification to proceed has been issued by County’s Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this agreement.

It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of funds or 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 that determination was made.

This agreement is valid and enforceable only if sufficient funds are made available to County for the purpose of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County governing board that may affect the provisions, terms, or funding of this agreement in any manner.

It is mutually agreed that if sufficient funds are not appropriated, this agreement may be amended to reflect any reduction in funds.

County has the option to terminate the agreement pursuant to Article 21. Termination, or by mutual agreement to amend the agreement to reflect any reduction of funds.

3. **Term** This Contract shall commence on, 7/1/2022. All services required to be provided by this Contract shall be completed and ready for acceptance no later than the **Contract Termination Date** of: 12/31/2023.

No alteration or variation of terms of the agreement shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding of agreement not incorporated herein, shall be binding on any of the parties hereto.

This agreement may be amended or modified only by mutual written agreement of the parties.

Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by County's Contract Administrator.

There shall be no change in Consultant's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this agreement, without prior written approval by County's Contract Administrator.

4. **Facilities, Equipment and Other Materials** Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Contract.

5. **Exhibits** All exhibits referred to herein and attached hereto are incorporated herein by this reference.

6. **Electronic Signatures** The parties acknowledge and agree that this Contract may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

7. **Time for Performance** Time is of the essence. Failure of Consultant to perform any services within the time limits set forth in Exhibit A, or elsewhere in this Contract, shall constitute material breach of this contract. Consultant shall devote such time to the performance of services pursuant to this Contract as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to this Contract. Neither party shall be considered in default of this Contract to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

8. **Liquidated Damages**
Liquidated Damages are presented as an estimate of an intangible loss to the County. It is a provision that allows for the payment of a specified sum should Consultant be in breach of contract. Liquidated Damages shall apply shall not apply to this contract.

9. **Relationship of Parties**

9.1 **Independent Contractor**

In providing services herein, Consultant, and the agents and employees thereof, shall work in an independent capacity and as an independent contractor and not as agents or employees of County. It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Consultant's assigned personnel shall not be entitled to any benefits payable to

employees of County. Consultant acknowledges that it customarily engages independently in the trade, occupation, or business as that is involved in the work required herein. Further, the Parties agree that Consultant shall perform the work required herein free from the control and direction of County, and that the nature of the work is outside the usual course of the County's business. In performing the work required herein, Consultant shall not be entitled to any employment benefits, Workers' Compensation, or other programs afforded to County employees. Consultant shall hold County harmless and indemnify County against such claim by its Consultants agents or employees. County makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such determination. Consultant shall be responsible for all reports and obligations including but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation and other applicable federal and state taxes.

9.2 **No Agent Authority** Consultant shall have no power to incur any debt, obligation, or liability on behalf of County or otherwise to act on behalf of County as an agent. Neither County nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Contract. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of the County.

9.3 **Indemnification of CalPERS Determination** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing service under this Contract or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the County, Consultant shall indemnify, defend, and hold harmless County for all payments on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

10. **Assignment and Subcontracting** Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Contract are personal to the Consultant and may not be transferred, subcontracted, or assigned without the prior written consent of County. Consultant shall not substitute or replace any personnel for those specifically named herein or in its proposal without the prior written consent of County.

Consultant shall cause and require each transferee, subcontractor, and assignee to comply with the insurance provisions set forth herein, to the extent such insurance provisions are required of Consultant under this Contract. Failure of Consultant to so cause and require such compliance by each transferee, subcontractor, and assignee shall constitute a Material Breach of this Contract, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

The Contract DBE goal is 5%. Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR, Part 26.

Nothing contained in this agreement or otherwise, shall create any contractual relation between the County and any Subconsultants, and no sub-agreement shall relieve the Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the County for the acts and omissions of its Subconsultants 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 Consultant. The Consultant's

obligation to pay its Subconsultants is an independent obligation from the County's obligation to make payments to the Consultant.

The Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the County Contract Administrator, except that which is expressly identified in the Consultant's approved Cost Proposal.

Any sub-agreement entered into as a result of this agreement, shall contain all the provisions stipulated in this entire agreement to be applicable to Subconsultants unless otherwise noted.

Consultant shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the Consultant by the County.

Any substitution of Subconsultants must be approved in writing by the County Contract Administrator in advance of assigning work to a substitute Subconsultant.

Consultant or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed Consultant on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Consultant or subconsultant to a subconsultant, Consultant or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

No retainage will be held by the County from progress payments due to Consultant. Consultants and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the County prior written approval. Any violation of these provisions shall subject the violating Consultant or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by Consultant, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

11. Licenses, Permits, Etc. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, obtain or keep in effect at all times during the term of this Contract, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

12. Hold Harmless and Indemnification Contract

12.1 Definitions. For purposes of this Section, "Consultant" shall include Consultant, Its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by

either Consultant or its subcontractors, in the performance of this agreement. "County" shall include County, its officials, officers, agents, employees and volunteers.

- 12.2 **Consultant to Indemnify County.** Where the services to be provided by Consultant under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, defend and hold harmless, the County, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the negligent performance of services under this contract, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the County, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the County, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the County and shall not exceed the Consultant's proportionate percentage of fault as provided for in Civil Code Section 2782.2.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the County, its officers, officials, agents, employees, and volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the County, its officers, officials, employees and volunteers.

Any third-party persons(s) employed by Consultant shall be entirely and exclusively under the direction, supervision and control of Consultant. Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

- 12.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify County for such loss or damage as is caused by the sole negligence, active negligence or willful misconduct of the County. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

- 12.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of County's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.

- 12.5 **Defense Deposit.** The County may request a deposit for defense costs from Consultant with respect to a claim. If the County requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 12.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to County.
- 12.7 **Indemnification by Subcontractors.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subcontractor or any other person or entity involved in the performance of this agreement on Consultant's behalf.
- 12.8 **Insurance Not a Substitute.** County does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 12.9 **Civil Code.** The parties are aware of the provisions of Civil Code 2782.8 relating to the indemnification and the duty and the cost to defend a public agency by a Design Professional and agree that this Section complies therewith.

13. **Standard of Performance** Consultant shall perform all services required pursuant to this Contract in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to County pursuant to this Contract shall be prepared in a professional manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

Consultant's personnel, when on the County's premises and when accessing the County network remotely, shall comply with the County's regulations regarding security, remote access, safety and professional conduct, including but not limited to Nevada County Security Policy NCSP-102 Nevada County External User Policy and Account Application regarding data and access security. Consultant personnel will solely utilize the County's privileged access management platform for all remote access support functions, unless other methods are granted in writing by the County's Chief Information Officer or his/her designee.

Consultant's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. Consultant shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. Consultant shall not be responsible for the acts or omissions of the contractor or other parties on the project.

14. **Prevailing Wage and Apprentices**

To the extent made applicable by law, performance of this Contract shall be in conformity with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, commencing with section 1720 relating to prevailing wages which must be paid to workers employed on a public work as defined in

Labor Code section 1720, et seq., and shall be in conformity with Title 8 of the California Code of Regulations section 200 et seq., relating to apprenticeship. Where applicable:

- Consultant shall comply with the provisions thereof at the commencement of Services to be provided herein, and thereafter during the term of this Contract. A breach of the requirements of this section shall be deemed a material breach of this contract. Applicable prevailing wage determinations are available on the California Department of Industrial Relations website at <http://www.dir.ca.gov/OPRL/PWD>.
- Consultant and all subcontractors must comply with the requirements of Labor Code section 1771.1(a) pertaining to registration of Consultants pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
- Contracts to which prevailing wage requirements apply are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Consultant and subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.
- The County is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.
- No Consultant or Subconsultant may be awarded an agreement containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this agreement, including any subsequent amendments.

The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this agreement by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at County construction sites, at County facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve County projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.

14.1 Payroll Records

a. Each Consultant and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.
2. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.

b. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by County representatives at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:

1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

2. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.

3. The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the County Contract Administrator by both email and regular mail on the business day following receipt of the request.

c. Each Consultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.

d. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by County shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the Consultant or Subconsultant performing the work shall not be marked or obliterated.

e. The Consultant shall inform County of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

f. The Consultant or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the Consultant or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to County, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by County from payments then due. Consultant is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

g. When prevailing wage rates apply, the Consultant is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the County Contract Administrator.

14.2 **Penalty**

a. The Consultant and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the Consultant and any Subconsultant shall forfeit to the County a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR

for the work or craft in which the worker is employed for any public work done under the agreement by the Consultant or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.

b. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the Consultant or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the Consultant or Subconsultant had knowledge of the obligations under the Labor Code. The Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of the agreement.

c. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or Subconsultant.

d. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements:

1. The agreement executed between the Consultant and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.

3. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

4. Prior to making final payment to the Subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.

e. Pursuant to Labor Code §1775, County shall notify the Consultant on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

f. If County determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if County did not retain sufficient money under the agreement to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by County.

14.3 Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty to the County, twenty-five dollars (\$25) for each worker employed in the execution of the agreement by the Consultant or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

a. Employment of Apprentices

1. Where either the prime agreement or the sub-agreement exceeds thirty thousand dollars (\$30,000), the Consultant and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. Consultants and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Consultant and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the agreement work. The Consultant is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

15. **Accessibility** It is the policy of the County of Nevada that all County services, programs, meetings, activities and facilities shall be accessible to all persons, and shall comply with the provisions of the Americans With Disabilities Act and Title 24, California Code of Regulations. To the extent this Contract shall call for Consultant to provide County contracted services directly to the public, Consultant shall certify that said direct Services are and shall be accessible to all persons.

16. **Nondiscriminatory Employment** Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or sexual orientation in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.

The Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.

During the performance of this agreement, Consultant and its subconsultants shall not deny the agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by County to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this agreement by reference and made a part hereof as if set forth in full.

Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the County upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or County shall require to ascertain compliance with this clause.

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

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

The Consultant, with regard to the work performed under this agreement, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

The Consultant shall comply with regulations relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.

Consultant, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the County components of the DBE Program Plan, Consultant, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

17. **Pertinent Non-Discrimination Authorities** During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

18. **Drug-Free Workplace** Senate Bill 1120, (Chapter 1170, Statutes of 1990), requires recipients of state grants to maintain a "drug-free workplace". Every person or organization awarded a contract for the procurement of any property or services shall certify as required under Government Code Section 8355-8357 that it will provide a drug-free workplace.

19. **Political Activities** Consultant shall in no instance expend funds or use resources derived from this Contract on any political activities.

20. **Financial, Statistical and Contract-Related Records:**

20.1 **Books and Records** Consultant shall maintain statistical records and submit reports as required by County. Consultant shall also maintain accounting and administrative books and records, program procedures and documentation relating to licensure and accreditation as they pertain to this Contract. All such financial, statistical and contract-related records shall be retained for five (5) years or until program review findings and/or audit findings are resolved, whichever is later. Such records shall include but not be limited to bids and all supporting documents, original entry books, canceled checks, receipts, invoices, payroll records, including subsistence, travel and field expenses, together with a general ledger itemizing all debits and credits.

20.2 **Inspection** Upon reasonable advance notice and during normal business hours or at such other times as may be agreed upon, Consultant shall make all of its books and records available for inspection, examination or copying, to County, or to the State Department of Health Care

Services, the Federal Department of Health and Human Services, the Controller General of the United States and to all other authorized federal and state agencies, or their duly authorized representatives.

20.3 **Audit** Consultant shall permit the aforesaid agencies or their duly authorized representatives to audit all books, accounts or records relating to this Contract, and all books, accounts or records of any business entities controlled by Consultant who participated in this Contract in any way. All such records shall be available for inspection by auditors designated by County or State, at reasonable times during normal business hours. Any audit may be conducted on Consultant's premises or, at County's option, Consultant shall provide all books and records within fifteen (15) days upon delivery of written notice from County. Consultant shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charge of five percent (5%) or more of the Maximum Contract Price.

Not later than thirty (30) calendar days after issuance of the final audit report, Consultant may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

Neither the pendency of a dispute nor its consideration by County will excuse Consultant from full and timely performance, in accordance with the terms of this agreement.

Consultant and subconsultant agreements, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, an agreement audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. The agreement's cost proposal, and ICR, if applicable, shall be adjusted by Consultant and approved by County Contract Administrator to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the agreement by this reference if directed by County at its sole discretion. Refusal by Consultant to incorporate audit or review recommendations, or to ensure that the federal, County or local governments have access to CPA work papers, will be considered a breach of agreement terms and cause for termination of the agreement and disallowance of prior reimbursed costs.

Consultant's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the Consultant and approved by the County Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the agreement terms and cause for termination of the agreement and disallowance of prior reimbursed costs.

20.4 **Retention of records/audits**

For the purpose of determining compliance with Gov. Code § 8546.7, the Consultant, Subconsultants, and County shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the agreement including, but not limited to, the costs of administering the agreement. All parties, including the Consultant's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the agreement

period and for five (5) years from the date of final payment under the agreement. County, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Consultant, Subconsultants, and the Consultant's Independent CPA, that are pertinent to the agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

21. Termination

- A. A Material Breach, as defined pursuant to the terms of this Contract or otherwise, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to immediately suspend payments hereunder, or terminate this Contract, or both, without notice.
- B. If Consultant fails to timely provide in any manner the services materials and products required under this Contract, or otherwise fails to promptly comply with the terms of this Contract, or violates any ordinance, regulation or other law which applies to its performance herein, County may terminate this Contract by giving **five (5) calendar days written notice to Consultant**.
- C. Either party may terminate this Contract for any reason, or without cause, by giving **thirty (30) calendar days written notice** to the other, which notice shall be sent by registered mail in conformity with the notice provisions, below. In the event of termination not the fault of the Consultant, the Consultant shall be paid for services performed to the date of termination in accordance with the terms of this Contract. Consultant shall be excused for failure to perform services herein if such performance is prevented by acts of God, strikes, labor disputes or other forces over which the Consultant has no control.
- D. County, upon giving **thirty (30) calendar days written notice** to Consultant, shall have the right to terminate its obligations under this Contract at the end of any fiscal year if the County or the State of California, as the case may be, does not appropriate funds sufficient to discharge County's obligations coming due under this contract.
- E. County may temporarily suspend this agreement, at no additional cost to County, provided that Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If County gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this agreement. A temporary suspension may be issued concurrent with the notice of termination.
- F. Notwithstanding any provisions of this agreement, Consultant shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this agreement by Consultant, and County may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due County from Consultant is determined.
- G. In the event of termination, Consultant shall be compensated as provided for in this agreement upon termination, County shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

In the event this Contract is terminated:

1) Consultant shall deliver copies of all writings prepared by it pursuant to this Contract. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

2) County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Contract.

3) County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Contract not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the Contract specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Contract. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

22. **Intellectual Property** To the extent County provides any of its own original photographs, diagrams, plans, documents, information, reports, computer code and all recordable media together with all copyright interests thereto, not the property of Consultant (herein "Intellectual Property"), which concern or relate to this Contract and which have been prepared by, for or submitted to Consultant by County, shall be the property of County, and upon fifteen (15) days demand therefor, shall be promptly delivered to County without exception.
23. **Waiver** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Contract shall not operate as a waiver of any subsequent breach or default by the other party.
24. **Conflict of Interest** Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this Contract. In addition, Consultant agrees that no such person will be employed in the performance of this Contract unless first agreed to in writing by County. This includes prior Nevada County employment in accordance with County Personnel Code.
25. **Entirety of Contract** This Contract contains the entire Contract of County and Consultant with respect to the subject matter hereof, and no other Contract, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Contract, shall be binding or valid.
26. **Alteration** No waiver, alteration, modification, or termination of this Contract shall be valid unless made in writing and signed by all parties, except as expressly provided in Section 21, Termination.
27. **Governing Law and Venue** This Contract is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. The venue for any legal proceedings regarding this Contract shall be the County of Nevada, State of California. Each party waives any Federal court removal and/or original jurisdiction rights it may have.

28. **Compliance with Applicable Laws** Consultant shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.

29. **Additional Consultant Responsibilities**

- A. Consultant will immediately notify County of any active complaints, lawsuits, licensing or regulatory investigations, reports of fraud or malfeasance, or criminal investigations regarding its operations under this Contract. Consultant agrees to work cooperatively with County in response to any investigation commenced by County with regard to this Contract or the clients served herein, including providing any/all records requested by County related thereto.
- B. Consultant shall submit progress reports at least monthly. The report should be sufficiently detailed for County to determine if Consultant is performing to expectations or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered so remedies can be developed.
- C. Consultant's Project Manager shall meet with County Contract Administrator or Project Coordinator as needed to discuss progress on the project(s).

30. **Cost Principles and Administrative Requirements**

- A. The Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The Consultant also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to County.
- D. When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply

31. **Equipment Purchase and other Capital Expenditures**

- A. Prior authorization in writing by County's Contract Administrator shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or Consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in Consultant's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by County's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.

- C. Any equipment purchased with funds provided under the terms of this agreement is subject to the following:
1. Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the agreement, or if the agreement is terminated, Consultant may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County.
 2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

32. Conflict of Interest

During the term of this agreement, the Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this agreement or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this agreement or any ensuing County construction project which will follow.

Consultant certifies that it has disclosed to County any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this agreement. Consultant agrees to advise County of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this agreement. Consultant further agrees to complete any statements of economic interest if required by either County ordinance or State law.

The Consultant hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

The Consultant hereby certifies that the Consultant or subconsultant and any firm affiliated with the Consultant or subconsultant that bids on any construction contract or on any agreement to provide construction inspection for any construction project resulting from this agreement, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

33. Rebates, Kickbacks or other Unlawful Considerations

The Consultant warrants that this agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right, in its discretion, to terminate this agreement without liability, to pay only for the value of the work actually performed, or to deduct from this agreement price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

34. Prohibition of Expending County, State, or Federal Funds for Lobbying

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

No State, Federal, or County appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this agreement, or with the extension, continuation, renewal, amendment, or modification of this agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier sub agreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

35. Debarment and Suspension Certification

The consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant or any person associated therewith in the capacity of owner, partner, director, officer or manager:

Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

Does not have a proposed debarment pending; and

Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Any exceptions to this certification must be disclosed to County. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

36. Contingent Fee

Consultant warrants, by execution of this agreement that no person or selling agency has been employed, or retained, to solicit or secure this agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this agreement without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee

37. Disputes

Prior to either party commencing any legal action under this agreement, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this agreement that is not disposed of by agreement shall be decided by a committee consisting of County's Contract Administrator and the County Director of Public Works who may consider written or verbal information submitted by Consultant.
- B. Not later than thirty (30) calendar days after completion of all work under the agreement, Consultant may request review by County Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this agreement.

38. Inspection of Work

Consultant and any subconsultant shall permit County, the State, and the FHWA if federal participating funds are used in this agreement; to review and inspect the project activities and files at all reasonable times during the performance period of this agreement.

39. Safety

- A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County Safety Officer and other County representatives. Consultant personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, County has determined that such areas are within the limits of the project and are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

- C. Consultant must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

40. Ownership Data

- A. It is mutually agreed that all materials prepared by Consultant under this agreement shall become the property of County upon Consultant's receipt of payment by County for the services rendered pursuant to this contract, and Consultant shall have no property right therein whatsoever. Immediately upon termination and to the extent Consultant is paid for the Services rendered under the contract, County shall be entitled to, and Consultant shall deliver to County, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by Consultant in performing this agreement which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to County which is in Consultant's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this agreement must be approved in writing by County.
- B. Additionally, it is agreed that the Parties intend this to be an agreement for services and each considers the products and results of the services to be rendered by Consultant hereunder to be work made for hire. Consultant acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of County without restriction or limitation upon its use or dissemination by County.
- C. Nothing herein shall constitute or be construed to be any representation by Consultant that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by County for another project or project location shall be at County's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. County may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

41. Claims filed by County's Construction Consultant

- A. If claims are filed by County's construction consultant relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction consultant administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Consultant's personnel that County considers essential to assist in defending against construction consultants' claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this agreement.

- C. Services of Consultant's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to resolve the construction claims.

42. Confidentiality of Data

- A. All financial, statistical, personal, technical, or other data and information relative to County's operations, which are designated confidential by County and made available to Consultant in order to carry out this agreement, shall be protected by Consultant from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by County relating to the agreement, shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.
- C. Consultant shall not comment publicly to the press or any other media regarding the agreement or County's actions on the same, except to County's staff, Consultant's own personnel involved in the performance of this agreement, at public hearings, or in response to questions from a Legislative committee.
- D. Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this agreement without prior review of the contents thereof by County, and receipt of County's written permission
- E. All information related to the construction estimate is confidential and shall not be disclosed by Consultant to any entity, other than County, Caltrans, and/or FHWA. All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of County or except by court order. If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, County has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant releasing the information, including, but not limited to, County's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

43. National Labor Relations Board Certification

In accordance with Public Contract Code §10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

44. Notification

Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

	COUNTY OF NEVADA:	Consultant:
Org. Name	Nevada County Public Works	NORR Associates, Inc.
Address:	950 Maidu Avenue, Suite 170 PO BOX 599002	1631 Alhambra Blvd. Suite 100
City, State, Zip	Nevada City, CA 95959-79002	Sacramento, CA 95816
Attn:	Richard Poole	Matthew Shigihara
Email:	richard.poole@co.nevada.ca.us	matthew.shigihara@norr.com
Phone:	(530) 265-7104	(916) 453-3803

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

Executed as of the day first above stated:

Authority: All individuals executing this Contract on behalf of Consultant represent and warrant that they are authorized to execute and deliver this Contract on behalf of Consultant.

IN WITNESS WHEREOF, the parties have executed this Contract effective on the Beginning Date, above.

COUNTY OF NEVADA:

By: _____ Date: _____

Printed Name/Title: Honorable Susan Hoek, Chair, of the Board of Supervisors

By: _____

Attest: Julie Patterson Hunter, Clerk of the Board of Supervisors

Consultant: NORR Associates, Inc.

By: _____ Date: _____

Name: _____

* Title: _____

By: _____ Date: _____

Name: _____

* Title: _____

****If Consultant is a corporation, this Contract must be signed by two corporate officers; one of which must be the secretary of the corporation, and the other may be either the President or Vice President, unless an authenticated corporate resolution is attached delegating authority to a single officer to bind the corporation (California Corporations Code Sec. 313).***

Exhibits

Exhibit A: Scope of Services

Exhibit B: Schedule of Charges and Payments

Exhibit C: Insurance Requirements

Exhibit D: FTA DBE Requirements

Exhibit E: Third Party Contract Clauses

Exhibit F: Agreement 64GC18-01464

SUMMARY OF CONTRACT

Consultant Name: NORR Associates, Inc.

Description of Services: Design Services – Bus Wash Project

SUMMARY OF MATERIAL TERMS

Max Contract Price: \$242,850	Max Multi-Year Price:
Contract Start Date: 7/1/2022	Contract End Date: 6/30/2023
Liquidated Damages: n/a	

INSURANCE POLICIES

Commercial General Liability	(\$2,000,000)
Automobile Liability	(\$1,000,000)
Worker's Compensation	(Statutory Limits)
Professional Errors and Omissions	(\$2,000,000)

LICENSES AND PREVAILING WAGES

Designate all required licenses: California Professional Engineers License _____

NOTICE & IDENTIFICATION

COUNTY OF NEVADA:

Nevada County
Public Works Department

Address: 950 Maidu Ave, P.O. Box 599002
City, St, Zip Nevada City, CA 95959-7902
Attn: Richard Poole
Email: richard.poole@co.nevada.ca.us
Phone: 530.265.7104

Consultant:

NORR Associates, Inc.

Address: 1631 Alhambra Blvd.
City, St, Zip Sacramento, CA 95816
Attn: Matthew Shigihara
Email: matthew.shigihara@norr.com
Phone: 916.453.3810

Consultant is a: (check all that apply)

- Corporation: Calif., Other, LLC,
Non-Profit Corp Yes No
Partnership: Calif., Other, LLP, Limited
Person: Indiv., DbA, Assn's Other

EDD Worksheet Required

Yes No

EXHIBITS

- Exhibit A:** Scope of Services
- Exhibit B:** Schedule of Charges and Payments
- Exhibit C:** Insurance Requirements
- Exhibit D:** FTA DBE Requirements
- Exhibit E:** Third Party Contract Clauses
- Exhibit F:** Agreement 64GC18-01464

EXHIBIT A SCOPE OF SERVICES

The scope of services proposed for the Project (the “Basic Services”) are:

1. Verification / Predesign

- Kickoff meeting to develop schedule, activities and workplan.
- Site verification.
 - Review of existing documents and site walk, review with County Staff prior plans and environmental analysis.
 - Make recommendation if sampling/testing, mitigation or additional reports are required. For example, percolation testing.
- Review of the Client’s space program requirements. Research bus wash, building, and ancillary equipment. Prepare space plan layout. The space plan will be refined based on future working sessions with you. This concept layout plan will be the basis of our construction documentation.
 - Prepare several bus wash/floor plan options with budget pricing, with one additional revision to the selected preliminary plan.
 - Present final concept plan, materials and colors for Client review and approval.
 - Incorporate Client comments into the design documents.
- Review applicable statutes, regulations and codes to the extent necessary to meet the requirements of the Project.
- The design and subsequent construction shall comply with all applicable provisions of the Nevada County Corporation Yard – Revised Initial Study / Mitigated Negative Declaration (Project Document “NCOC MND”). Although all applicable provisions shall be complied with, particular attention is directed to the lighting and noise requirements.
- NORR shall be responsible for coordinating with county, regional, state, and federal agencies to acquire all required approvals and permits (if any). County will pay any agency fees.
- NORR shall coordinate with and obtain any necessary permits from all relevant utility providers.
- Prepare final concept design documents for Client sign off.
- Topographic/utility survey for the project area defined.
- Civil engineer to perform visual site investigation for utilities.
- Meetings:
 - Up to three design meetings with client
 - Two meetings with Project Manager and Department users.
 - Up to three meetings with County Planning/Building Department staff.
 - Correspondence as needed and conference calls will be scheduled on a bi-weekly basis, or as necessary to facilitate progress.

2. Plans, Specification & Estimates (30/60/90/100%)

Following the Owner's approval of the Concept Plan, the Design Team will prepare the construction documents for the project, in the following general manner:

- The Architect and consultant team will prepare a set of construction documents suitable for obtaining construction permits, bidding of the project, and project construction by a licensed general contractor.
- Construction Documents in general shall include title sheet, code sheet, general notes sheet, floor plans, sections, interior elevations, details, schedules and outline specifications to describe in detail the extent and manner of the project's construction.
- Construction Documents shall also include documentation required for compliance with code requirements for access by the disabled, including base building path of travel documentation.
- Design of any pits/vaults required for the bus wash water recycling/reclamation system shall be designed by the Civil or Structural Engineer and appropriate drawings and specifications shall be provided. Note: Utility pits and vaults shall be specified, pre-engineered products (not custom designed).
- Civil Engineering drawings will confirm and include a site plan layout for grading, drainage, paving, striping, perimeter fence/gates, curbs, sidewalks, gutter design.

- Existing utilities and the utility requirements for this project shall be verified and designed.
 - No new landscaping or irrigation is anticipated.
 - The Structural Engineering drawings will include design for:
 - Foundation footings, slab-on-grade and opening for trench drains
 - Openings to accommodate fans and ventilation.
 - Overhead loads for collateral equipment support and anchorage
 - Equipment anchorage
 - Exterior and interior wall framing
 - Bollards and column protection
 - Mechanical and Plumbing documents will include design for:
 - Calculations and Working Drawings for plumbing design, ventilation and controls.
 - HVAC design for wash building is anticipated to be exhaust/ventilation only.
 - Plumbing design for water wash equipment and hosing down / pressure washing of vehicles.
 - Plumbing design for gas piping as required for bus wash system and hot water pressure washer , and water/hot water design for equipment handwash, eyewash and janitor's sink in wash building. No restrooms are required.
 - Specifications for equipment and testing
 - Electrical documents will include plans, power, data and lighting design to the building and bus wash noting circuiting, light, switches and power design, data port locations as described below.
 - Investigate existing on-site power, determine adequacy for the bus wash design, and design supply as needed.
 - Include new panel and disconnect switch if required
 - Identify circuits that will be needed
 - Prepare panel calculations and working drawings
 - Provide lighting controls as required to meet Energy Code requirements.
 - If required, provide new data outlets. Layout only of devices. It is assumed that the County will provide direction of where cabling will homerun back to. If local telecom cabinet/rack is required in the bus wash, it is assumed that the County to provide power requirements. Electrical documents shall provide power connections only, backboxes for tele/data outlets and pathway for telecom cabling.
 - Provide weatherproof and GFCI receptacles where applicable. Provide weatherproof light switch controls where applicable.
 - No site lighting is included. However, exterior building mounted luminaires shall be included. Photometrics and Title 24 forms for outdoor lighting for the exterior building mounted luminaires are also included.
 - If required, Fire Protection and Alarm will include performance base plans and specifications to modify the existing system to meet current code. The plans will be prepared to for State Fire Marshal review and County plan check review and permitting.
 - Cost Estimator will prepare construction cost estimates at 30%, 60% and 90% milestones.
 - Architect will review the drawings with the Owner and obtain their written approval of the construction documents.
 - The Architect will submit documents to the County for plan check and Architect will answer questions from municipal agencies during the permit application process.
 - Meetings: Three quality control coordination meetings are anticipated for this phase at 30, 60 and 90%. Correspondence as needed and conference calls will be scheduled on a bi-weekly basis.
- ### 3. Plan Check & Bidding Coordination
- Architect shall process the complete Construction Documents, including civil, mechanical, plumbing, electrical, structural and fire sprinkler/alarm documents by consultants, through the agencies having jurisdiction over the work in order to obtain building permit to construct the improvements.
 - Meeting: one agency application and submission meeting. Correspondence as needed and conference calls will be scheduled on a bi-weekly basis.

- Bidding: Answer County/Contractor questions during bidding.

4. Contract Administration (\$10,000 T&M Allowance)

Contract Administration can be provided as T&M at the County's request to review submittals and RFI's. The typical scope of CA services is listed below:

- Correspondence
- Conference Calls
- Review of architectural submittals to verify conformance to the design intent.
- Preparation of documentation concerning changes to the construction documents.
- Notice of Substantial Completion certifying to the best of Architect's knowledge, information and belief, the improvements are substantially complete, and distribute copies to Owner.
- Preparation of a construction punch list noting observed deficiencies in the construction.
- Project Meetings- maximum 6 meeting each, on site with Architect or Engineer and County during construction to clarify or modify Architectural or Engineering plans if needed.
- Distribution of copies of the construction drawings to the general contractor and others, for construction cost bids.

ADDITIONAL SERVICES

Should Additional Services be required in the performance of the work, they shall be provided on either an hourly basis or a pre-approved extra services work order. The Client shall pre-approve any Additional Services prior to commencement of the work.

REIMBURSABLE EXPENSES

Reimbursable expenses include the following actual expenditures included by NORR or its sub-consultants in the interest of the Project:

- Transportation and mileage in connection with the Project.
- Communication, shipping, long distance communication charges, courier, postage and electronic conveyances.
- Reproduction of Instruments of Service, including one hard copy a set of blue line plans a digital set and an AutoCAD set for the client.

SCHEDULE

Preliminary Schedule: Design 7-months, Plan Review 2-months, Construction 10-months

DELIVERABLES

Construction Drawings for Architectural, Supplemental Survey, Civil Engineering, Structural, Mechanical, Electrical, Plumbing, and Fire Protection/Alarm disciplines.

1. Building Code Summary
2. Book Specifications
3. Green Building requirements sheet
4. Civil Plans for Demolition, Grading/Drainage, Septic/Leach Field, Paving
5. Architectural floor plan, reflected ceiling plan and schedules
6. Finish plan and schedules
7. Building sections and exterior elevations.
8. Structural plan, elevation, details and calculations
9. Wall types and details
10. MEP plans, lighting design, single line diagrams, schedules, details, Title 24 calculations.
11. Fire Sprinkler/Alarm performance-based design drawings and specifications
12. Compile drawings for building department plan review and permitting.
13. Review and Prepare agency back check comments and package for resubmittal.
14. Cost Estimates at 30, 60 and 90% milestones.
15. Updated Geotechnical Report.
16. Application and submission of any necessary permits.

If a service is not specifically identified in the Basic Services, it is expressly excluded from NORR’s Basic Services and shall be considered an additional service.

SUB-CONSULTANTS

As part of the Basic Services offered by NORR, certain sub-consulting disciplines have been included in the Basic Fee for each phase of work. NORR’s sub-consultants are listed in the table below:

DISCIPLINE	ENGAGED BY NORR	ENGAGED BY CLIENT
Land Surveyor	X	-
Geotechnical Engineer	X	-
Environmental Consultant	-	X
Traffic Consultant	-	-
Civil Engineer	X	-
Landscape Architect	-	-
Structural Engineer	X	-
Mechanical Engineer	X	-
Electrical Engineer	X	-
Interior Design Consultant	-	-
Cost Consultant	X	-
Building Envelope Consultant	-	-
Security	-	X
Vertical Transportation	-	-
Signage & Graphics	-	-
Fire Protection Systems	X	-
Data/IT Vendor	-	X

With respect to other consultants retained directly by the Client (the “Other Consultants”), NORR’s responsibility for coordination for those Other Consultants shall be limited solely to the incorporation of their design documentation or recommendations into the primary architectural design of the Project.

Where Other Consultants are engaged directly by the Client, they must be retained at the appropriate phase of the design process, as reasonably requested by NORR.

ASSUMPTIONS

The basis of our fee is to prepare architectural, civil, structural, mechanical, electrical and plumbing drawings and specifications, and a construction cost estimate (PS&E) for the new bus wash building in Grass Valley, CA. The PS&E shall include all items and information needed to bid for construction of the new bus wash complete in place and ready for day-to-day operations. This proposal is based on the RFP issued for RFQ No. 14658, reissued November 24, 2021, along with the NCOC plans, as a basis for design. The design team will provide a set of plans to obtain a building permit for the building structure. The plans to include:

- Building Type: Type V – 1 Story
- Approximate dimensions: 55’x60’ - 3,300 SF structure
- LEED Certification: None
- Assume the structure shall be a reinforced CMU structure. If a pre-engineered metal building system is chosen (in the predesign phase), the pre-engineered metal building will be designed by a pre-engineered manufacturer and the Structural Engineer will only design footing and slab on grade with the reactions provided. The Structural fee can then be reduced by \$16,000.
- Approximately 12’ x14’ commercial steel slat overhead doors to allow drive through access through the structure.
- Open interior area(s) for demudding and cleaning of bus interiors.
- Building features a plant/equipment/cleaning-supplies/storage room.

- Fully insulated roof.(to be confirmed)
- Roof level exhaust fans with dampers and roof curbs, sized appropriately for the structure (estimated 6000 cfm).
- Roof and structure able to support all required loads, for example from bus wash system, interior lighting, and collateral loads.
- Interior walls to be cold formed studs and exterior sheathing with FRP to 16'-0" in elevation along perimeter. Tapered columns can be exposed.
- Standard gutters and downspouts
- Entry doors: (3) 3'x7' and (1) 6'x7' with Best locksets and mortise lever hardware
- Site surveying, including utility location, will be completed as needed in support of the design effort.
- Electrical system to support fans, interior LED lighting, exterior lighting at doorways, power as needed for automated wash system equipment and all other required electrical devices and installations needed for the bus wash.
- If required, fire sprinkler and low voltage alarm system will be performance base design with a deferred submittal.
- Verify that utility services for water, power, data/telecom, and sanitary sewer are adequate for purpose. Verify that natural gas supply is adequate to supply the bus wash equipment, hot water pressure washer, and water heater. Assume no additional natural gas or added propane storage is required.
- The design shall cover the complete connection of all required utilities to the bus wash.
- Coordinate any necessary upgrades to existing utilities for the bus wash. County will pay any utility fees required.
- Coordinate any permits needed for utilities (whether upgraded or not). County will pay any utility fees required.
- For all utilities, the design shall cover any required connections, meters and other infrastructure that will be required at the construction stage. County will pay any utility fees required.
- Coordinate with the designer of our Electric Bus Charging Design Project to ensure that the electrical service will have sufficient capacity for both the Bus Wash and electric bus charging equipment.
- Include the specifications for any necessary acceptance testing to be completed during construction for all installed bus wash systems, including but not limited to plumbing, electrical and natural gas systems.
- No HVAC, windows, skylights are anticipated.
- It may be possible to "update" and reissue the prior Geotech report by Holdrege & Kull, dated June 28, 2017. If acceptable to the building department, the optional service for the Geotech cost may be reduced.
- We have assumed that the accessibility requirements for path of travel to public property is compliant with current code and that there will not be any additional accessibility documentation for this building.
- Fees for Plan Check, Permits, Field-testing and inspections as required by the jurisdiction shall be provided by the client.
- NORR will produce CAD drawings in NORR's CAD drafting standards. Other Consultants/Sub-Contractors will produce drawings to their own CAD drafting standards.

Our scope of services for the project shall include architecture, surveying, civil, structural and electrical engineering, mechanical/plumbing engineering and design, and cost estimating. Our deliverables shall be schematic design, design development, construction documentation, plan check submission, permits, bidding support, and meetings.

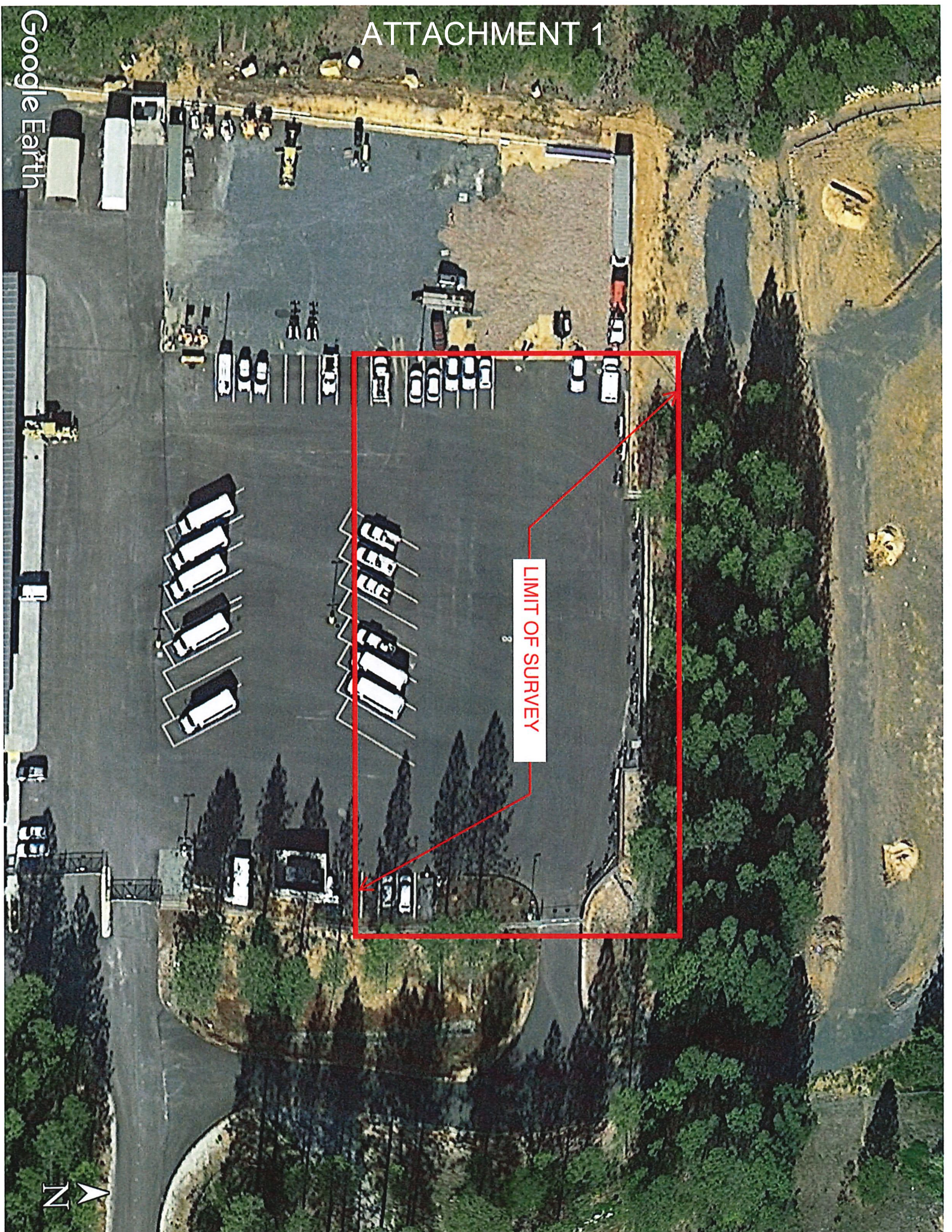
Architectural, Civil, Structural, Mechanical, Plumbing, Electrical and Fire Sprinkler/Alarm design services are limited to those expressly set forth above. See WCE Civil Engineer fee proposal defining project boundary. (ATTACHMENT 1).

If services or deliverables are not specifically listed above they are not considered part of this agreement. Architect shall have no other obligations, responsibility, or deliverables for the project except as agreed to in writing or as provided in the Professional Services Agreement.

The Client will provide their boilerplate specifications for use as the basis of the design specifications.

ATTACHMENT 1

Google Earth



LIMIT OF SURVEY



EXHIBIT B
SCHEDULE OF CHARGES AND PAYMENTS

1. Maximum Limit & Fee Schedule

Consultant's compensation shall be paid at the schedule shown below. Reimbursement of expenses is authorized only for those items listed in Reimbursable Expenses below. All expenses of Consultant, including any expert or professional assistance retained by Consultant to complete the work performed under this contract shall be borne by the Consultant.

The total of all payments made under this Contract shall not exceed the amount shown in Section 2 of the contract.

2. Payment Schedule:

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Fee Schedule/Cost Proposal as described below herein. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee.

The County shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from Consultant on a professional service contract.

If the County fails to pay promptly, the County shall pay interest to the Consultant, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the County shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the County as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to Consultant as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

County is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the agreement and is not required to issue W-2 forms for income and employment tax purposes for any of Consultants assigned personnel. Consultant in the performance of its obligation hereunder, is only subject to the control or direction of the County as to the designation of tasks to be performed and the results to be accomplished.

Consultant will be reimbursed within thirty (30) days upon receipt by County's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the work. Invoices shall detail the work performed on each milestone. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this agreement number and project title. Credits due County that include any equipment purchased under the provisions of Section 31. Equipment Purchase and other Capital Expenditures, must be reimbursed by Consultant prior to the expiration or termination of this agreement.

3. Invoices

Invoices shall be submitted to County in a form and with sufficient detail as required by County. Work performed by Consultant will be subject to final acceptance by the County project manager(s).

Submit all invoices to:

Elizabeth Nielsen
County of Nevada
Transit Services
950 Maidu Ave. STE 170
Nevada City, CA 95959

Elizabeth.Nielsen@co.nevada.ca.us
Phone: (530) 470-2820

Unless otherwise agreed to by County, all payments owed by County to Consultant under this Contract shall be made by Automated Clearing House (ACH). In the event County is unable to release payment by ACH the Consultant agrees to accept payment by County warrant.

FEE FOR SERVICES

The following table outlines the basic fees (the "Basic Fee") for the Basic Services.

Phase	Fee Type	Amount
Predesign	Lump Sum	\$19,150
30, 60, 90, 100% Design	Lump Sum	\$173,660
Plan Check / Bid	Lump Sum	\$6,040
Contract Administration	T&M (allowance)	\$10,000
FEES FOR SERVICES		\$208,850
Design Service Contingency	(allowance)	\$10,000
Wash Equipment Vendor Design Contingency	(allowance)	\$10,000
Reimbursable Expenses	T&M – cost plus 15%	\$12,000
TOTAL		\$240,850

OPTIONAL SERVICES		
Holdrege & Kull	Geotechnical Report	\$14,500
Holdrege & Kull	Percolation Test	\$3,300
Miyamoto	Structural (pre-engineered building)	(\$16,000)

BREAKDOWN by DISCIPLINE (excludes CA allowance, reimbursables and optional services)

Firm	Discipline	PreDesign	30%	60%	90-100%	PC & Bid	Subtotal
NORR	Architecture	\$6,200	\$9,200	\$14,250	\$35,850	\$2,965	\$68,465
Miyamoto	Structural	\$2,000	\$7,000	\$10,000	\$16,000	\$400	\$35,400
WCE	Civil	\$3,000	\$2,850	\$2,850	\$3,800	\$0	\$12,500
WCE	Supplemental Survey	\$5,250					\$5,250
NORR	Mechanical / Plumbing	\$0	\$1,870	\$2,800	\$8,790	\$875	\$14,335
Edge	Electrical	\$1,800	\$1,800	\$4,400	\$10,100	\$900	\$19,000
NORR	Specifications	\$0	\$0	\$0	\$8,000	\$0	\$8,000
SEC	Fire Sprinkler & Alarm	\$900	\$3,400	\$3,400	\$4,050	\$900	\$12,650
LSA	Cost Estimating	\$0	\$4,790	\$9,230	\$9,230		\$23,250
	Fee Totals:	\$19,150	\$30,910	\$46,930	\$95,820	\$6,040	\$198,850

HOURLY RATES

NORR shall set hourly rates for each category of labor on an annual basis. Hourly rates shall be used for billing any Additional Services performed throughout the duration of the Project. The Client shall receive a minimum of 30-days notice prior to any adjustment to the hourly rates.

NORR – Architect/Mechanical	Hourly Rates
Principal Architect	\$225
Senior Project Manager	\$165
Project Manager	\$155
Interior Designer	\$110
Architect	\$155
Production Architect	\$125
Mechanical Engineer (PE)	\$155
Mechanical Designer	\$120
Project Coordinator	\$70
EDGE - Electrical	Hourly Rates
Principal Engineer	\$205
Project Manager	\$185
Electrical Engineer	\$165
Electrical Designer	\$145
Miyamoto International - Structural	Hourly Rates
Principal Structural Engineer	\$250
Associate Principal Structural Engineer	\$200
Senior Project SE	\$180
Project SE	\$150
Staff Engineer	\$125
Designer	\$115
Warren Consulting Engineering – Civil	Hourly Rates
Principal Civil Engineer	\$230.00
Project Manager	N/A
SWPPP Monitoring	\$230.00
Project CE	\$185.00
Civil Designer	\$165.00
Drafter	\$120.00
Field Crew Surveyor	\$210.00
Land Surveyor	\$185.00

REIMBURSABLE EXPENSES

Reimbursable expenses include the following actual expenditures included by NORR or its sub-consultants in the interest of the Project:

- Transportation and mileage in connection with the Project.
- Communication, shipping, long distance communication charges, courier, postage and electronic conveyances.
- Reproduction of Instruments of Service, including one hard copy a set of blue line plans a digital set and an AutoCAD set for the client.

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Coverage shall be at least as broad as:

- (i) **Commercial General Liability CGL:** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- (ii) **Automobile Liability** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage. **(Note – required only if auto is used in performance of work, submit waiver to Risk for approval to waive this requirement)**
- (iii) **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. **(Not required if consultant provides written verification it has no employees).**

(iv) **Professional Liability**

(Errors and Omissions) Insurance appropriate to the Consultant’s profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (i) **Additional Insured Status: The County, its officers, employees, agents, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of the work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 25, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used.)
- (ii) **Primary Coverage** For any claims related to this contract, the **Consultant’s insurance shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the County, its officers, employees, agents, and volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.
- (iii) **Notice of Cancellation** This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Nevada.
- (iv) **Waiver of Subrogation** Consultant hereby grants to County a waiver of any right to subrogation which any insurer or said Consultant may acquire against the County by virtue of the payment of any loss under

such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

- (v) **Sole Proprietors** If Consultant is a Sole Proprietor and has no employees, they are not required to have Workers Compensation coverage. Consultant shall sign a statement attesting to this condition, and shall agree they have no rights, entitlements or claim against County for any type of employment benefits or workers' compensation or other programs afforded to County employees.
- (vi) **Deductible and Self-Insured Retentions** Deductible and Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claims administration, and defense expenses within the retention. The Policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. **(Note – all deductibles and self-insured retentions must be discussed with risk, and may be negotiated)**
- (vii) **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- (viii) **Claims Made Policies** if any of the required policies provide coverage on a claims-made basis: **(note – should be applicable only to professional liability)**
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c. If the coverage is canceled or non-renewed, and not replaced with another **claims-made policy form with a Retroactive Date**, prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.
- (ix) **Verification of Coverage** Consultant shall furnish the County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to County before work begins. However, failure to obtain and provide verification of the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- (x) **Subcontractors** Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- (xi) **Special Risks or Circumstances** County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- (xii) **Conformity of Coverages** If more than one policy is used to meet the required coverages, such as an umbrella policy or excess policy, such policies shall be following form with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.
- (xiii) **Premium Payments** The insurance companies shall have no recourse against the County and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

- (xiv) **Material Breach** Failure of the Consultant to maintain the insurance required by this Contract, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Contract.
- (xv) **Certificate Holder** The Certificate Holder on insurance certificates and related documents should read as follows:

County of Nevada
950 Maidu Ave.
Nevada City, CA 95959

Upon initial award of a contract to your firm, you may be instructed to send the actual documents to a County contact person for preliminary compliance review.

Certificates which amend or alter the coverage during the term of the contract, including updated certificates due to policy renewal, should be sent directly to Contract Administrator.

EXHIBIT D – FTA DBE REQUIREMENTS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND DBE PARTICIPATION GOAL

The Department of Transportation (Caltrans) has set an overall annual DBE goal comprising of both race neutral and race conscious elements to be in compliance with Title 49, Code of Federal Regulations, Part 26 (49 CFR 26). This regulation requires that all recipients of United States Department of Transportation (USDOT), Federal Transit Administration (FTA) federal-aid shall establish an overall annual Disadvantaged Business Enterprises (DBE) goal. Caltrans is required to report to FTA the DBE participation for all federal-aid contracts each year so that the overall annual DBE goal attainment efforts may be evaluated. Caltrans encourages DBE participation in the performance of agreements financed in whole or in part with federal funds.

Bidders and proposers are advised that Caltrans has established a federally mandated overall annual DBE goal comprising both race neutral and race conscious elements to ensure equal participation of DBE groups specified in 49 CFR 26.5. In compliance with 49 CFR 26, Caltrans set a contract goal for DBEs participating in this solicitation expressed as a percentage of the total dollar value of the resultant agreement.

The DBE participation goal for this solicitation is five percent (5%).

To ensure applicable participation of the specified DBEs as defined in 49 CFR 26.5, this solicitation's goal applies to the following certified DBE groups: African Americans, Asian-Pacific Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, or Women. Only DBE participation will count toward the contract goal for this solicitation.

The bidder/proposer awarded the Agreement shall complete and submit ADM-3069, Disadvantaged Business Enterprises Utilization Report with each invoice.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION AND INSTRUCTIONS FOR BIDDERS**A) AUTHORITY AND BIDDER'S RESPONSIBILITY**

This solicitation is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS. Bidders/Proposers (bidder) shall be fully informed of the requirements of the regulations and Caltrans' DBE Program developed pursuant to the regulations. It is the policy of the State of California, Department of Transportation (Caltrans), that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26, be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds. The Bidder should ensure that DBE firms have an opportunity to participate in the performance of this solicitation and shall take all necessary and reasonable steps for this assurance. The bidder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Terms as used in this document:

- 'Caltrans' means 'State of California, Department of Transportation'
- 'Awarding Agency' means the agency that let the contract and subrecipient of Caltrans
- 'Agreement' also means 'Contract'
- 'Bidder' also means 'proposer' or 'offeror'
- 'Work Codes' indicate the types of work DBE firms are certified to perform

It is the bidder's responsibility to make work available to DBEs and select portions of work, services, or materiel needed from the Scope of Work. The required work, services and/or materiel must be relevant to the DBEs work codes to meet the contract goal for DBE participation in this solicitation or provide information to establish, that prior to bidding, the bidder made an adequate Good Faith Effort (GFE) to meet the goal.

To be eligible for award of the Agreement, the bidder shall demonstrate that the contract goal for DBE participation was met or that, prior to bidding, an adequate GFE to meet the goal was made. Preliminary determination of goal attainment or GFE by the bidder will be by the Awarding Agency. Final determination of goal attainment or GFE by the bidder will be at Caltrans' discretion.

Bidder is cautioned that even though its submittal indicates it will meet the stated DBE goal, its submittal should also include its GFE documentation along with DBE goal information to protect its eligibility for award of the Agreement in the event Awarding Agency, in its review, finds that the goal has not been met.

It is the bidder's responsibility to verify DBE certifications.

B) SUBMISSION OF DBE INFORMATION AND PARTICIPATION

In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a GFE to meet the contract goal for DBE participation as established for this Agreement (refer to Section III, DBE Certification Requirements, Section 4). Bidder shall submit the attached form(s).

- ADM-0227f, Disadvantaged Business Enterprise (DBE) Information
- ADM-0312f, Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation. Bidder shall provide sufficient documentation to demonstrate adequate GFEs were made. For disqualification examples, refer to the Instructions to Bidder/Proposer on page 1 of the ADM-0312f.

C) DBE CERTIFICATION REQUIREMENTS

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR 26 and Caltrans' DBE Program developed pursuant to the regulations. Particular attention is directed to the following:

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION AND INSTRUCTIONS FOR BIDDERS

Kform15drmt (Rev. 03/2019) Page 2 of 5

1. A DBE must be a small business firm defined pursuant to Section 3 of the Federal Small Business Act **and** certified through the California Unified Certification Program (CUCP). A DBE firm is a DBE certified through CUCP. In accordance with 49 CFR 26, the DBE must be certified by bid opening date of the Invitation for Bid (IFB), the Request for Proposal (RFP), or the Architectural and Engineering (A&E) Request for Quotations (RFQ), before credit may be considered toward meeting the DBE goal. It is the bidder's (prime contractor's) responsibility to verify that DBEs are certified by accessing the CUCP database.
2. The CUCP database includes DBEs certified from all certifying agencies participating in the CUCP. If a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
3. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity (OBEO) web site at: <http://www.dot.ca.gov/hq/bep/>.
 - Click on the blue DBE Search Click Here button
 - Click on Click To Access DBE Query Form
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen (read about NAICS definitions below)
 - "Start Search", is located at the bottom of the query form,
 - "Civil Rights Home" (OBEO), "Caltrans Home", and "Instructions/Tutorial" links are located on top of the query page.

MUST USE EITHER INTERNET EXPLORER 5.5 OR NETSCAPE 7 (OR GREATER) FOR THIS DATABASE.

Resources to Obtain a List of Certified DBEs for Caltrans Solicitations

Contractors bidding on Caltrans solicitations with a contract goal for DBE participation may contact the DBE supportive services consultant or obtain lists of certified DBEs from the CUCP database referenced above.

NAICS Work Codes and Work Descriptions

The North American Industry Classification System (NAICS) work codes are used to identify the type of work performed by DBEs. You will need to have the NAICS work code numbers before querying. The United States (US) Census Bureau has developed cross-references from Standard Industrial Classification (SIC) codes to the NAICS codes. Please visit the US Census Bureau web site for more information concerning work areas related to NAICS 237310 Highway, Street, and Bridge Construction, at the following location: <http://www.census.gov/epcd/naics02/def/ND237310.HTM>.

How to Obtain a Quarterly List of Certified DBEs without Internet Access

If you do not have Internet access, Caltrans also publishes a quarterly directory of certified DBE firms extracted from the on-line database. A copy of the quarterly directory of certified DBEs may be ordered from the Caltrans' Division of Procurement and Contracts/Materiel and Distribution Branch/Publication Unit by calling (916) 263-0822.

4. In order to be considered a responsible and responsive bidder, the bidder must meet the contract goal and/or make a Good Faith Effort to meet the contract goal for DBE participation established for the Agreement. The bidder can meet this requirement in one of two ways:
 - a. Meet the contract goal and document commitments for participation by DBE firms.
 - b. If the contract goal is not met or is partially met, the bidder must document an adequate GFE.
5. A bidder (**prime contractor**), **who is not a certified DBE**, will be required to document one or a combination of the following:
 - a. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
 - b. Prior to bidding, the bidder made an adequate GFE to meet the contract goal for DBE participation.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION AND INSTRUCTIONS FOR BIDDERSKform15drmt (Rev. 03/2019) Page 3 of 5

6. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
7. A certified DBE bidder not bidding as a joint venture with a non-DBE, is required to document one or more of the following:
 - a. The DBE bidder will meet the goal by performing work with its own forces.
 - b. The bidder will meet the contract goal for DBE participation through work performed by DBE subcontractors, suppliers, or trucking companies.
 - c. Prior to bidding, the bidder made adequate GFEs to meet the contract goal for DBE participation.
8. A DBE joint venture partner must be responsible for specific Agreement items of work, or portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces.
9. The DBE joint venture partner must share in the capital contributions, control, management, risks and profits of the joint venture. The DBE joint venture must attach and submit the joint venture agreement with the ADM 0227F as instructed on page 2 of the form.
10. A DBE must perform a Commercially Useful Function (CUF), pursuant to 49 CFR 26, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible for materiel and supplies to be used on the Agreement for negotiating price, determining quality, and quantity, installing (where applicable), and paying for the material itself.
11. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in its bid/proposal and all DBE subcontractors must be listed in the bid/cost proposal list of subcontractors.
12. Any dollar amount of work, service or supplies proposed for DBE participation can be counted only once. That is, any further subcontracting or spending for DBE work, service or supplies already credited once for DBE participation cannot be counted again.
13. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the goal except that portion of the work to be performed by non-DBE subcontractors.
14. If the bidder performs and documents an adequate GFE to meet the goal, the award cannot be denied on the basis that the bidder failed to meet the goal.

D) CREDIT: MATERIEL – SUPPLIES – TRUCKING COMPANIES**A. CREDIT FOR MATERIEL OR SUPPLIES PURCHASED FROM DBEs WILL BE AS FOLLOWS:**

1. If the materiel or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materiel or supplies will count toward the DBE goal.
2. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materiel, supplies, articles, or equipment required under the Agreement and of the general character described by the Agreement.
3. If the materiel or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materiel or supplies will count toward the DBE goal.
4. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materiel, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock and regularly sold or leased to the public in the usual course of business.
5. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business as

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION AND INSTRUCTIONS FOR BIDDERS

provided in this paragraph if the person both owns and operates distribution equipment for the products.

6. Any supplementing of regular dealers' own distribution equipment shall be a long-term lease Agreement and not on an ad-hoc or Agreement by Agreement basis.
7. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
8. Credit for materiel or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commission charged for assistance in the procurement of the materiel and supplies or fees or transportation charges for the delivery of materiel or supplies required on a job site, provided the fees are reasonable and not excessive as compared with similar fees charged for services. The cost of materiel or supplies is not counted toward the DBE goal in this instance.

B. CREDIT FOR DBE TRUCKING COMPANIES WILL BE AS FOLLOWS:

1. The DBE must manage and supervise the entire trucking operation for which it is responsible on a particular Agreement and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
3. The DBE will receive credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. A lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from being used by others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck.
7. Leased trucks must display the name and identification number of the DBE.

E) USE AND/OR TERMINATION OF PROPOSED DBEs

If awarded the Agreement, the successful bidder must use the DBE subcontractor(s) and or supplier(s) proposed in its bid/proposal.

The Contractor may not substitute, add or terminate a subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval by the Awarding Agency Contract Manager and concurred by Caltrans and only as allowable as specified in the Agreement. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.

Prior to the termination request, the prime contractor **must** notify the DBE, in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection.

The prime contractor must have good cause in which to terminate the DBE firm. A good cause includes:

1. The DBE fails or refused to execute a written contract.
2. The DBE fails or refuses to perform the work consistent with normal industry standards.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION AND INSTRUCTIONS FOR BIDDERSKform15drmt (Rev. 03/2019) Page 5 of 5

3. The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements.
4. The DBE becomes bankrupt or has credit unworthiness.
5. The DBE is ineligible to work because of suspension and debarment.
6. It has been determined that the DBE is not a responsible contractor.
7. The DBE voluntarily withdraws, with written notification, from the contract.
8. The DBE is ineligible to receive credit for the type of work required.
9. The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
10. Or other documented compelling reason.

The Contractor must make an adequate GFE to find another certified DBE subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted or terminated to the extent needed to meet the established contract goal for DBE participation.

The requirement that DBEs must be certified by the bid opening date does not apply to DBE substitutions after award of the Agreement. Substitutions of DBEs after award must be certified at the time of the substitution or addition.

F) AWARD

Award of the Agreement will be in accordance with the respective solicitation.

The bidder awarded the Agreement shall be responsible for implementing the applicable requirements of 49 CFR 26 in performance of the Agreement.

The bidder awarded the Agreement shall complete and submit ADM-3069, Disadvantaged Business Enterprises Utilization Report with each invoice.

Exhibit D

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

ADM-0227f (Rev. 06/2012) Page 1 of 2 (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

PART A – CONTRACTORS INFORMATION (Refer to Instructions on Page 2 of this form. Bidder/Proposer shall ensure all information provided is complete and accurate.)

CONTRACTOR'S BUSINESS NAME		AGREEMENT NUMBER	CONTRACT DOLLAR AMOUNT	DATE
CONTRACTOR'S BUSINESS ADDRESS		CITY		STATE
CONTACT PERSON		BUSINESS PHONE	FAX NUMBER	EMAIL ADDRESS

PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.) Contractor shall attach a copy of the bid (or price quote) from the DBE (on the DBE's Letterhead) for all DBEs listed below.

(1) Prime and Subcontractors: List Name(s) and addresses of all DBEs that will participate in this Agreement:	(2) Area Code & Phone Number	(3) Tier	(4) Description of Work, Service, or Materiel Supplied	(5) DBE or CUCP Certification Number.	(6) Ownership Code	(7) DBE \$ Amount Claimed	(8) % of \$ Value Claimed	(9) Caltrans Use Only %

PART C – FOR CALTRANS USE ONLY (Verification Completed by Civil Rights, Office of Business and Economic Opportunity):

PRINT VERIFIER'S NAME AND TITLE	SIGNATURE	DATE	CIVIL RIGHTS STAMP OF APPROVED
DBE PARTICIPATION <input type="checkbox"/> YES (%) <input type="checkbox"/> NO			

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

AUTHORITY: Title 49, Code of Federal Regulations, Part 26 (49 CFR 26)

INSTRUCTIONS FOR COMPLETING FORM ADM-0227f (Please Type or Print Legibly):

PART A – CONTRACTOR INFORMATION

CONTRACTOR’S BUSINESS INFORMATION: Bidder’s/Proposer’s Business Name, Address, City, State, Zip Code, Contact Person, Business Phone, Fax Number, and Email Address.

Agreement Number: The Agreement number is the same number as the Invitation for Bid (IFB) or Request for Proposal (RFP) number.

CONTRACT DOLLAR AMOUNT: Total dollar amount that Contractor proposes to accomplish the Agreement.

Date: Date this form is completed.

PART B – DBE INFORMATION AND DOCUMENTS

PRIME: Complete if Prime is a certified DBE.

Sub-Contractor: Complete if the Subcontractor(s)/Supplier(s) are certified DBE. Please make and attach additional copies of page 1 if needed. Attach a copy of the bid (or price quote) from the DBE (on the DBE’s Letterhead) for all DBEs listed.

Column 1: Enter the names (includes all certified DBE Prime and Subcontractors) and complete addresses of all certified DBE Contractor/Subcontractor/Supplier(s) that will be used in the Agreement.

Column 2: Enter the area code and phone number of the corresponding certified DBE listed in Column 1.

Column 3: Enter the Contracting Tier number for each DBE correspondingly listed in Column 1: 0 = Prime or Joint Consultant, 1 = Primary Subcontractor, 2 = Subcontractor/Supplier of level 1 Primary Subcontractor.

Column 4: Enter a description that briefly captures the work to be performed or supplies to be provided by each corresponding DBE firm listed in Column 1.

Column 5: Enter the DBE or CUCP Certification Number for the corresponding DBE listed in Column 1. Self-certification is NOT acceptable. DBEs must be certified by the submittal date identified in the IFB or RFP. For more certification and verification information, refer to the IFB’s or RFP’s Notice to Bidders/Proposers Disadvantaged Business Enterprise (DBE) Program and Participation Goal.

Column 6: Enter the correct Ownership Code number below for the corresponding DBE listed in Column B.

- | | | |
|-----------------------|---------------------------------|--------------------|
| 1 = Black American | 4 = Asian-Pacific American | 7 = Woman |
| 2 = Hispanic American | 5 = Subcontinent Asian American | 8 = Other |
| 3 = Native American | 6 = Caucasian | 9 = Not Applicable |

Column 7-8: Enter the dollar and/or percentage (%) of the dollar (\$) value claimed for each corresponding DBE listed in Column 1.

EXAMPLE:

PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.)

(1) List Name(s) and addresses of all DBEs that will participate in this Agreement:	(2) Area Code & Phone Number	Tier	(4) Description of Work, Services, or Materiel Supplied	(5) DBE or CUCP Certification Number.	(6) Ownership Code	(7) DBE \$ Amount Claimed	(8) % of \$ Value Claimed	(9) Caltrans Use Only %
1B Jane Prime Inc., 1234 Jane’s Street, Jane’s City, CA. 04321	(XXX) 000-1111	0	Project management	XXXXXXXXX	7, 5	48,000	48%	
Joe Subcontractor Inc., 4567 Joe’s Street, Joe’s City, CA. 07654	(XXX) 111-0000	1	Design, surveys, environmental testing	000000000000	6	42,000	42%	
Supplier International LLC, 1100 X Street, Supplier’s City, CA. 45670	(111) xxx-0001	2	Survey instruments, testing materials	11111111111111	3	10,000	10%	

ADDITIONAL INFORMATION:

- Form ADM-0312f should be submitted with the ADM-0227f to demonstrate good faith efforts (GFE) AND protect bidder’s/proposer’s eligibility for contract award in the event Caltrans determines the bidder/proposer failed to meet the DBE goal.
- A DBE joint venture partner shall submit the joint venture agreement with the form ADM-0227f.

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 D

STATE OF CALIFORNIA · DEPARTMENT OF TRANSPORTATION

BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312f (REV 06/2012) Page 1 of 4

CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
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BIDDER/PROPOSER INSTRUCTIONS: Submittal of only the Disadvantaged Business Enterprise (DBE) Information/Participation form, ADM-0227f, may not provide sufficient documentation to demonstrate that adequate good faith efforts (GFE) were made by the bidder/proposer. Bidder/proposers prosing goal attainment should always submit documentation for making GFE to protect its eligibility for award should Caltrans, in its evaluation, find that the goal was not met. Examples of disqualification may include but are not be limited to: 1) A DBE subcontractor was not certified by Caltrans or a state or local participating agency that has a reciprocal agreement with Caltrans, by the bid/proposal due date and time; or 2) Bidder/proposer made a mathematical error resulting in failure to meet the goal. Bidder/Proposer must make an adequate GFE to be responsive. When applying for a determination of a GFE when no contract goals have been attained or when only partial goal(s) have been attained, bidders/proposers shall complete this Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation form, ADM-0312f, and submit the requested information below with its bid by the bid due date and time.

Bidder/Proposer is responsible to: (1) ensure information is complete and accurate, and (2) verify DBE certifications.

1. ADVERTISEMENT DOCUMENTATION

List names and dates of each general circulation newspaper, trade paper and minority focused paper or other publication in which a request for DBE participation was placed. Attach a copy of the advertisement or proof of publication.

TITLE OF PUBLICATION	PUBLICATION DATE(S)	TITLE OF PUBLICATION	PUBLICATION DATE(S)

2. DBE DOCUMENTATION

- a. List the names and dates of written notices sent to certified DBE firms soliciting bids for the contract.
- b. List the dates and methods used for following up initial solicitations to determine with certainty whether or not the DBEs were interested.
- c. Attach a copy of any solicitation package, phone records, fax confirmations or solicitation follow-up correspondence sent to DBE firms.
- d. Identify information submitted to the bidder for this solicitation:

Check the appropriate box: IFB RFP RFQ

SOLICITATION

DATE MAILED	DATE PHONED	DATE OF FOLLOW-UP	FOLLOW-UP METHOD PHONE/EMAIL	NAME OF FIRM SOLICITED	CONTACT NAME	PHONE NUMBER

Exhibit D

STATE OF CALIFORNIA · DEPARTMENT OF TRANSPORTATION

BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312f (REV 6/2012) Page 2 of 4

CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
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2. DBE DOCUMENTATION (Continued)

SOLICITATION

DATE MAILED	DATE PHONED	DATE OF FOLLOW-UP	FOLLOW-UP METHOD PHONE/EMAIL	NAME OF FIRM SOLICITED	CONTACT NAME	PHONE NUMBER

3. ITEMS OF WORK

Identify the items of work made available to DBE firms, including, where appropriate, any breakdown of the contract work into economically feasible units to facilitate DBE participation. Bidder/Proposer shall demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

ITEMS OF WORK:

BREAKDOWN OF ITEMS:

Exhibit D

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312f (REV 06/2012) Page 3 of 4

CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
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4. DBE RESPONSES

List the DBE firms that responded or submitted bids/proposals to your solicitation for participation in this contract that were not accepted. Provide a summary of your discussion and/or negotiations with each, the name of the firm selected for that portion of work, and the reasons for your choice. Attach copies of quotes from DBE firms contacted

DBE FIRM NAME	PHONE NUMBER	RESPONDED		SELECTED		GIVE REASON FOR NON-SELECTION AND A SUMMARY OF DISCUSSIONS
		YES	NO	YES	NO	

5. ASSISTANCE TO DBEs – Bonding, Insurance, etc.

Identify efforts to assist DBEs in obtaining bonding, lines of credit, insurance, and/or any technical assistance related to requirements for the work or for plans and specification provided to DBEs.

Exhibit D

BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION

ADM-0312f (REV 06/2012) Page 4 of 4

CONTRACTOR'S NAME	IFB OR RFP OR RFQ NUMBER	DATE
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6. ASSISTANCE TO DBEs – Equipment/Materials, etc.

Identify efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

7. ADDITIONAL DATA

Provide any additional data to support a demonstration of GFE such as contacts with DBE assistance agencies. Identify the names of agencies, organizations, and groups providing assistance in contacting, recruiting, and using DBE firms. Attach copies of requests to agencies and any responses received, i.e., lists, Internet pages, etc.

NAME OF AGENCY/ORGANIZATION	METHODS/DATE OF CONTACT	RESULTS

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 E

THIRD PARTY CONTRACT CLAUSES

**Federal Transit Administration and
California Department of Transportation Required Provisions**

1. Source of Funding:

This contract entered XX/XX/XXXX between County of Nevada
on _____
(DATE) (AWARDING AGENCY)
and NORR Associates, Inc. for
(CONTRACTOR)
Bus Wash Design
(PROJECT)

is being funded with the following fund source(s) and amounts:

FUND SOURCE	AMOUNT
California Department of Transportation, Division of Rail & Mass Transportation	\$500,000

Parties referenced in the following clauses are defined as:

“Awarding Agency” is the subrecipient of the State of California Department of Transportation.

“PROJECT” is the Awarding Agency’s federally supported project.

“CONTRACTOR” or “Consultant” is the third-party vendor who has entered into this third-party contract with the Awarding Agency to provide goods or services directly to the Awarding Agency for the accomplishment of the PROJECT.

“Subagreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

In the case of conflict between these clauses (Exhibit E) and any other clauses of this contract, these provisions shall govern.

EXHIBIT E

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

No Obligation to Third-Parties by use of a Disclaimer

- A. No Federal Government Obligation 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.
- 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 subagreements of third-party contractors and the 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 the FTA.
- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be fully responsible to the Awarding Agency 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 Awarding Agency's obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.
- D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.
- E. Awarding Agency Approval of Subagreements. The Awarding Agency shall approve in writing all proposed Subagreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Subagreements unless the same are approved in writing by the Awarding Agency. Any proposed amendments or modifications to such Subagreements must be approved by the Awarding Agency prior to implementation.

EXHIBIT E

THIRD PARTY CONTRACT CLAUSES

**Federal Transit Administration and
California Department of Transportation Required Provisions**

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. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR 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, and pertaining to the underlying contract or the federally 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 in 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 the FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

- C. The CONTRACTOR agrees to include the above two clauses in each subagreement financed in whole or in part with Federal Assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records

The Awarding Agency, the California Department of Transportation, 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 Contract of audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every subagreement entered into relative to the PROJECT.

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 California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

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Federal Changes, Amendments to State, and Local Laws, Regulations, and Directives

The terms of the most recent amendments 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 the California Department of Transportation provides otherwise in writing.

Civil Rights (Title VI, EEO, & ADA)

During the performance of this Contract, the CONTRACTOR its assignees and successors in interest, agree to comply with all federal statutes and regulations applicable to grantee subrecipients 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. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, 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 from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation any 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. Department of Transportation'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 (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.
- C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work

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performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract 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 Awarding Agency or the California Department of Transportation 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 the information, the CONTRACTOR shall certify to the Awarding Agency of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the Awarding Agency shall:
1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
 2. Cancellation, termination, or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every subagreement, 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 Awarding Agency or the California Department of Transportation 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 directions, the CONTRACTOR may request the Awarding Agency to enter into such litigation to protect the interest of the Awarding Agency, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

Section 504 and Americans with Disabilities Act Program Requirements

The CONTRACTOR will comply with 49 CFR Parts 27, 37, and 38, implementing and Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.

Incorporation of FTA Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with

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other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any California Department of Transportation requests which would cause the California Department of Transportation to be in violation of the FTA terms and conditions. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any Awarding Agency requests which would cause the Awarding Agency to be in violation of the FTA terms and conditions.

Energy Conservation

The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. Section 6321 et seq.

DBE Contract Assurance

The CONTRACTOR, or SUBCONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR or SUBCONTRACTOR shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of [Federal] DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of the Standard Agreement between the STATE and the Awarding Agency, the termination of this contract by the Awarding Agency, or such other remedy the STATE or Awarding Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future bidding as non-responsive.

Awarding Agency shall notify the CALTRANS DBELO in the event the Awarding Agency finds the CONTRACTOR or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business days the finding is made.

DBE Participation Goal

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The contract goal for participation of Disadvantaged Business Enterprises (DBE) for this contract is 10%.

Offerors are required to document sufficient DBE participation to meet the contract goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53 (3)(i)(A). Award of this contract is conditioned on submission of the following:

1. If the offer meets the DBE contract goal the offeror must include with the offer a completed ADM-0227F form.
2. If the offer cannot meet the DBE contract goal the offeror must include with the offer a completed ADM-0312F form that documents the offeror's good faith efforts (GFE) and ADM-0227F form. The Awarding Agency must document concurrence with the offeror's GFE and

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provide a copy of the GFE to Caltrans DRMT Compliance Liaison for additional concurrence prior to contract award.

The CONTRACTOR shall not terminate the DBE subcontractors listed on ADM-0227F without the Awarding Agency's prior written consent and concurrence from the CALTRANS DBELO. The Awarding Agency may provide such written consent only if the CONTRACTOR has good cause to terminate the DBE firm. Before transmitting a request to terminate, the CONTRACTOR shall give notice in writing to the DBE SUBCONTRACTOR of its intent to terminate and the reason for the request. The CONTRACTOR shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the CONTRACTOR shall make good faith efforts (GFE) to find another DBE subcontractor to substitute for the original DBE and immediately notify the Awarding Agency in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.

Continued Compliance

The Awarding Agency shall monitor the CONTRACTOR'S DBE compliance during the life of this contract and submit to the STATE a completed ADM-3069 form in each their request for reimbursement (RFR) packet.

Prompt Payment and Return of Retainage

- A. The Awarding Agency shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

Intelligent Transportation Systems (ITS) National Architecture

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., January 8,

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2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

Additional Termination Provisions

- A. Termination for Convenience (General Provision). When it is in the Awarding Agency's best interest, the Awarding Agency reserves the right to terminate this Contract, 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 closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the Awarding Agency. If the CONTRACTOR has any property in its possession belonging to the Awarding Agency, the CONTRACTOR will account for the same, and dispose of it in the manner the Awarding Agency directs.
- B. Termination for Default (General Provision). If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the Awarding Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Awarding Agency 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 Awarding Agency, 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.

- C. Mutual Termination. The PROJECT may also be terminated if the Awarding Agency 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.

Debarment and Suspension

- 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. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
- B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract 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 and

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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. 12546 and 12689.

- C. Before entering into any subagreements with any subcontractor, 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 awarding agency and its “principals,” as defined at 49 CFR Part 29.
- D. Before entering into any third-party contract exceeding \$25,000.00, 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 subagreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

If Bus Wash Design contract is \$100,000 or more:

Provisions for Resolution of Disputes, Breaches, or Other Litigation

The Awarding Agency 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 Awarding Agency Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The Awarding Agency Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have the opportunity to challenge in writing within ten (10) working days to the Awarding Agency’s Executive Director or his/her designee. If the CONTRACTOR’S challenge is not made within the ten (10) day period, the Awarding Agency Representative’s decision shall become the final decision of the Awarding Agency. The Awarding Agency and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the Awarding Agency 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.

If Bus Wash Design contract is \$100,000 or more:

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. Department of Transportation Regulations, “New Restrictions on Lobbying.” 49 CFR Part 20, if the bid is for an award for \$100,000.00 or more the Awarding Agency will not make any federal assistance available to the CONTRACTOR until the Awarding Agency has received the CONTRACTOR’S certification that the CONTRACTOR has not and will not use federal appropriated funds to pay any person or

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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 office 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 the above two clauses be included in the award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly.

This Contract is a material representation of facts upon which reliance was placed when the Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U.S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.

If Bus Wash Design contract is \$100,000 or more:

Clean Air

- A. The CONTRACTOR agrees 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. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

If Bus Wash Design contract is \$100,000 or more:

Clean Water

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

U.S. Flag Requirements (Fly America)

- A. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subagreements must comply with the "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States of America Flag Carriers," and 41 CFR Section 301-10.131 through 301-10.143.
- B. Project Travel. In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, ("Fly America" Act), 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.

If Bus Wash Design contract is \$100,000 or more:

Contract Work Hours and Safety Standards Act (Applicable to: Construction contracts and, in very limited circumstances, non-construction projects that employ laborers or mechanics on a public work.)

- A. The CONTRACTOR agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 33 and also ensure compliance of its subcontractors; if applicable, CONTRACTOR shall comply with DOL regulations "Safety and Health Regulation for Construction" 29 CFR Part 1926.
- B. No CONTRACTOR or subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at the rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Seismic Safety

The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all work performed under this contract including work performed by a subagreements is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the PROJECT.

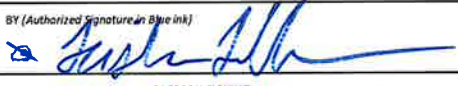
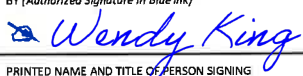
All applicable sections of agreement 64GC18-01464 shall be considered as part of this contract.

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
STANDARD AGREEMENT (02/21/2020)
 DOT-213A (REV 12/2019)

AGREEMENT NUMBER 64GC18-01464	AMENDMENT NUMBER
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- This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY: CALIFORNIA DEPARTMENT OF TRANSPORTATION, DIVISION OF RAIL & MASS TRANSPORTATION
 CONTRACTOR: **County of Nevada Public Works, Transit Services Division**
- The term of this Agreement is:
 FROM: **December 18, 2020** TO: **December 31, 2023**
- The parties agree to comply with the terms and conditions of the following Exhibits, which are by this reference made a part of the Agreement.
 Exhibit A - Project Summary and Scope of Work
 Article I - Project Management and Payment Provisions
 Article II - General Terms and Conditions
 Article III - Special Terms and Conditions

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

CONTRACTOR	For Department of Transportation Use only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) County of Nevada Public Works, Transit Services Division	
BY (Authorized Signature in Blue Ink)  DATE SIGNED 4/29/21	
PRINTED NAME AND TITLE OF PERSON SIGNING Trisha Tillotson, Director of Public Works	
ADDRESS 950 Maidu Avenue, P.O. BOX 599002 Nevada City, CA 95959-7902	
STATE OF CALIFORNIA	
AGENCY NAME Department of Transportation, Division of Rail and Mass Transportation	
BY (Authorized Signature in Blue Ink)  DATE SIGNED 5/11/2021	
PRINTED NAME AND TITLE OF PERSON SIGNING WENDY KING, Chief, Office of Transit Grants and Contracts	
ADDRESS 1120 N Street MS-39, Sacramento, CA 95814	

Item	Chapter	Statute	Appropriation	Fund	PEC	Project ID	Unit	Object	SFY
2660-102-0890(2)	29	2018	19102F	0890	3010065	001900060	3743	049	18/19

Amount encumbered by this document:	\$500,000.00
Prior amount encumbered for this contract:	\$0.00
Total amount encumbered to date:	\$500,000.00

SIGNATURE OF ACCOUNTING OFFICER (Authorized Signature in Blue Ink) 	DATE SIGNED 5-11-21
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FAIN	FAIN Award Date	CFDA	FTA Section	Subrecipient Unique ID	Indirect Cost Rate	De Minimus
CA-2021-006	11/13/2020	20.526	5339 (National)	010979029	N/A	N/A

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 - PROJECT SUMMARY AND SCOPE OF WORK

1. Project Description and Schedule:

Funding Program: 5339 (National)

Hours when PROJECT shall operate: **Start Time:** **End Time**

Days/Dates when PROJECT shall operate:

Location where Service shall be offered: Nevada County

Detailed Description of Work:

Construction Admin/Maint Facility

Contract Projects: ALI Code	A Federal \$	B State \$	C Local \$	A + B + C Line Item Total \$	Toll Credits
1.43.03	\$500,000	NA	\$1,900,000	\$2,400,000	NA

* The standard Federal Share and Local Matching Fund requirements are listed below. The Federal Share and Local Matching Fund requirements may vary from the amounts shown if Toll Credits in lieu of Local Share have been approved in advance by the Grant Administrator and are awarded by the Program Manager. When Toll Credits are awarded, the Effective Federal Share percentage must be calculated by dividing the Federal \$ by Line Item Total \$.

<u>FTA Program</u>	<u>Operating Projects</u>	<u>All Other Projects</u>
5311/5311(f)	55.33% Federal / 44.67% Match	88.53% Federal / 11.47% Match
5310	50.00% Federal / 50.00% Match	80.00% Federal / 20.00% Match
5339	N/A	85.00% Federal / 15.00% Match
CMAQ	88.53% Federal / 11.47% Match	88.53% Federal / 11.47% Match

Performance Period (when expenses may be incurred) and Other Key Project Dates:

Performance Period Start 12/18/2020
Performance End 12/31/2023
Last Date to Amend 9/30/2023
Final Invoice Due 3/31/2024

Caltrans Project Contact:

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

2. **Transportation Services Category:** The Project is in the Transportation Services Category marked "X" below. The parties agree that the provisions of that portion of Article I Section 27 that is correspondingly-lettered to the subsection marked "X" below shall apply to this Agreement.

- A. Operating Assistance (5310, 5311, 5311(f))
- B. Preventive Maintenance (5311, 5311(f))
- C. Planning (5311, 5311(f))
- D. Capital Project (Vehicle/Equipment) (5310)
- E. Capital Project (Vehicle/Equipment) (5311, 5311(f), CMAQ, 5339)
- F. Capital Project (Real Estate Acquisition/Construction) (5311, 5311(f), 5339)
- G. Mobility Management (5310)
- H. Transfer of Used Vehicle/Equipment (5310)
- I. Transfer of Used Vehicle/Equipment (5311, 5311(f), 5339)

3. **Special Warranty Conditions:** If the following statement is marked "X" below, the Project is subject to 49 USC Section 5333(b) Special Warranty, which is applicable to 5311, 5311(f), 5339 and Congestion Mitigation and Air Quality (CMAQ) Programs. If the Project is subject to the Special Warranty, the parties agree that this Agreement shall be subject to the provisions of Exhibit A Section 4, which bears the heading name 49 USC Section 5333(b) Special Warranty for 5311, 5311(f), CMAQ and 5339 Programs.

- Project is subject to 49 USC Section 5333(b) Special Warranty.

4. 49 USC SECTION 5333(b) SPECIAL WARRANTY FOR 5311, 5311(f), CMAQ AND 5339 PROGRAMS

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

B. Name and Address of Subrecipient:

Agency Name: County of Nevada Public Works, Transit Services
Agency Address: Division 950 Maidu Avenue, P.O. Box 599002
Nevada City, CA 95959-7902

C. PROJECT Description:

1.43.03

D. County and Service Area of PROJECT:

Nevada

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

Public Transportation Operators

NA

Labor Organizations (or N/A)

International Union of Operating Engineers

F. The Special Warranty may refer to the CONTRACTOR as a subrecipient (Subrecipient).

G. Because the PROJECT(s) is subject to the Special Warranty, the terms of the United States Department of Labor Nonunion Protective Arrangement (USDOL Nonunion Protective Arrangement), are applicable. The Subrecipient shall be fully knowledgeable of the terms and conditions of the Special Warranty and the USDOL Nonunion Protective Arrangement and agrees to comply with those same terms and conditions for the duration of the PROJECT. The text of the USDOL Nonunion Protective Arrangement is available from the United States Department of Labor. Furthermore, these terms and conditions will be a part of any and all agreements and contracts between or among the Federal Government, the State of California, and the Subrecipient, entered into with respect to the subject PROJECT.

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

ARTICLE I

PROJECT MANAGEMENT AND PAYMENT PROVISIONS

1. The Governor of the State of California has designated the California Department of Transportation (Caltrans) Division of Rail and Mass Transportation (DRMT) as the sole agency to be the Recipient of Federal Transit Administration (FTA) grant programs that are described below. The FTA receives its authority from Chapter 53 of Title 49 of the United States Code (USC).
2. The following terms, when appearing in all capitals within this Agreement, are defined as follows.
 - A. **AGREEMENT:** This Agreement, including all of its Articles, Exhibits and incorporated references, as executed by the parties signing the Agreement.
 - B. **APPLICATION:** The Application for federal assistance filed by the Contractor as a prerequisite to receive the funding awarded under this Agreement. The Application is kept on file by Caltrans DRMT and is hereby incorporated into this Agreement.
 - C. **CONTRACTOR:** The local agency that is party to this Agreement, and may be referred to as a Subrecipient, and that has been granted Federal Transit Administration funds by Caltrans DRMT for the purposes of carrying out the Project described in this Agreement. In certain circumstances, the Contractor may be referred to as an Awarding Agency.
 - D. **PROJECT:** Transportation services, as marked in Exhibit A and further described in Article I, which are performed by the Contractor and funded by FTA grant funds under the terms of this Agreement.
 - E. **STATE:** The State of California's Department of Transportation, Division of Rail and Mass Transportation, a governmental subdivision of the State of California.
 - F. **SUBCONTRACTOR:** A third-party subrecipient or subawardee that performs work related to this Project for the Contractor. Federally-required clauses in this Agreement that apply to the Contractor also apply to subrecipients and/or subawardees of the Contractor. In some cases, the clause must appear verbatim in the document governing the subaward. A Subcontractor is subject to all federal requirements that apply to the Contractor.
3. The STATE participates in a number of federal programs, which include the following programs, which are identified in 49 USC Chapter 53.
 - A. **FTA Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities (5310 Program).** The 5310 Program is discretionary, providing grant funding for the provision of transportation services meeting the special needs of seniors and/or persons with disabilities for whom mass transportation services are otherwise unavailable, insufficient, or inappropriate. Eligible applicants are private nonprofit corporations, private for-profit corporations and public agencies. Applications are scored and prioritized for funding. The terms and conditions in FTA Circular 9070.1G "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions", dated July 7, 2014, (5310 Circular) and any later revision thereto, are expressly incorporated herein for any project funded by the 5310 Program.
 - B. **FTA Section 5311 Formula Grants for Rural Areas (5311 Program).** The 5311 Program funds projects in rural areas for the purposes of planning, public transportation capital projects, operating costs, job access reverse commute projects, and/or the acquisition of public transportation service. Available funds are determined based on an FTA formula that includes population and transit service miles. Eligible subrecipients may include states and local governmental authorities, nonprofit organizations, tribal governments, and operators of public transportation or intercity bus service that receive FTA grant funds indirectly through a Recipient. Intercity bus projects are funded from a subprogram of the 5311 Program. The 5311(f) Subprogram is discretionary, with applications scored and prioritized for funding. Private for-profit operators of transit services or intercity bus services may participate in the 5311(f) Subprogram as third-party contractors for Recipients or as Subrecipients. The terms and conditions in FTA Circular 9040.1G "Formula Grants for Rural Areas: Program Guidance and Application Instructions", dated November 24, 2014, (5311 Circular) and any later revision thereto are expressly incorporated herein for any project funded by the 5311 Program or the 5311(f) Subprogram. Unless stated otherwise in this AGREEMENT, any reference herein to the 5311 Program applies to the 5311(f) Subprogram.
 - C. **Congestion Mitigation and Air Quality Program (CMAQ Program).** CMAQ Program funds that are transferred from the Federal Highway Administration (FHWA) to FTA to use for transit projects are subject to the program requirements that are applicable to the Section 5311 program. Prior to project selection and programming, projects eligible for funding from the CMAQ Program must meet certain criteria set by FHWA. Refer to FHWA's Interim Program Guidance, dated November 12, 2013, (CMAQ Circular), which is available at the following website:

- https://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/2013_guidance/cmaq2013.pdf.
- D. FTA Section 5339 Bus and Bus Facilities Program (5339 Program). The purpose of the 5339 Program is to provide funding to eligible agencies for the purchase of capital bus and bus-related projects that support the continuation and expansion of public transportation services. Funding is discretionary and applications are scored to determine funding priority. Eligible subrecipients include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income. The terms and conditions in FTA Circular 5100.1 "Bus and Bus Facilities Formula Program: Guidance and Application Instructions, dated May 18, 2015, (5339 Circular) and any later revision thereto are expressly incorporated herein for any project funded by the 5339 Program.
4. This AGREEMENT is subject to the Fixing America's Surface Transportation Act (FAST Act) (Federal Transportation Funding Law) (<https://www.transit.dot.gov/FAST>).
5. This AGREEMENT is governed by numerous policies and guidance documents issued by the United States Department of Transportation (USDOT) and FTA. The CONTRACTOR agrees to comply with all federal agreements and policy guidance related to the programs, including, but not limited to, the following:
- A. USDOT Master Agreement (26), dated October 1, 2019, (USDOT Master Agreement) and any later revision thereto.
- B. FTA Circular 4220.1F, "Third-Party Contracting Guidance," November 1, 2008, as revised through March 18, 2013, (Third-Party Contracting Circular) and any later revision thereto.
- C. FTA Circular 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients" dated October 1, 2012, (Title VI Circular) and any later revision thereto.
- D. FTA Circular 5010.1E, "Award Management Requirements" dated March 21, 2017, as revised through July 16, 2018, (Award Management Circular) and any later revision thereto.
- E. "FTA Project and Construction Management Guidelines" published March 2016, (Project and Construction Management Guidelines), an advisory handbook published by USDOT.
- F. Fiscal Year 2020 Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements dated October 1, 2019.
6. This AGREEMENT is governed by the Caltrans State Management Plan (SMP), dated June 2019, which is available at the Caltrans DRMT website (<https://dot.ca.gov/programs/rail-and-mass-transportation/state-management-plan>).
7. The CONTRACTOR has been designated by the STATE as an eligible applicant under 49 USC Chapter 53 Section 5310, 5311, or 5339. The CONTRACTOR is proposing transportation services (hereafter called the PROJECT) that are eligible for assistance under the applicable Section of 49 USC Chapter 53.
8. The CONTRACTOR's APPLICATION for a grant under 49 USC Chapter 53 has been certified to the FTA by the STATE as having met all the statutory and administrative requirements for project approval. The purpose of this AGREEMENT is to implement the approved PROJECT.
9. The CONTRACTOR's scope of work shall be as described in Exhibit A of this AGREEMENT and the APPLICATION for federal assistance, which is on file with the STATE and which is hereby expressly incorporated into this AGREEMENT.
10. The CONTRACTOR agrees to provide transportation services that meet the specific requirements and intent of the applicable Program described in 49 USC Chapter 53, which is providing the funding for this PROJECT and with the APPLICATION.
11. The CONTRACTOR agrees to complete the defined PROJECT described in the APPLICATION, which adopts all of the terms and conditions of this AGREEMENT.
12. The CONTRACTOR assures and certifies that private for-profit transit operators have been afforded a fair and timely opportunity to participate to the maximum extent feasible in the planning and provision of the proposed transportation services.
13. Transportation services under this AGREEMENT shall be provided for a minimum of 20 hours per week.
14. It is the parties' intention that grant funds will be available for timely expenditure, commencing with the State fiscal year when this AGREEMENT is executed. In the event that funds are not appropriated for the purpose of this AGREEMENT in an amount sufficient to allow the encumbrance of grant funds in accordance with this section, the parties agree that this AGREEMENT will terminate at the end of the State fiscal year for which funds have been encumbered. The CONTRACTOR's obligations under this AGREEMENT shall remain in effect until the PROJECT is completed under the terms of this AGREEMENT. Upon closeout of this AGREEMENT, any unreimbursed funds will revert as described in Article I and no further invoices shall be paid to CONTRACTOR.
15. Any 5311 Program funds, exclusive of 5311(f) Program funds, awarded for the PROJECT cannot be carried over more

- than one (1) year by the CONTRACTOR.
16. Invoices shall be submitted no more frequently than once per month for the PROJECT.
 17. Invoices shall be submitted through the STATE's current Electronic Grants Management (EGM) system. At the time of this AGREEMENT, the STATE's designated EGM system was BlackCat Transit, its successors or assigns. This reference to the EGM System extends to any other replacement system the STATE may designate.
 18. The full PROJECT invoice, showing both Federal Share and Local Share, shall be submitted by CONTRACTOR to the STATE for review and approval prior to payment. The STATE verifies PROJECT costs and payments made to ensure that funding shares are reported accurately for the Federal Financial Report (SF-425) that the STATE must file pursuant to the award of federal grants.
 19. Invoices shall meet all the requirements of this AGREEMENT and be itemized in a manner consistent with the budget for the PROJECT as found in the APPLICATION. Appropriate backup documentation to support all PROJECT costs to be reimbursed shall be included. Appropriate documents may include, but are not limited to, purchase orders, signed invoices for materials, supplies and equipment, and for travel describing the purpose of travel as it pertains to the PROJECT, classifications of employees performing PROJECT work, hourly rates, and identification of work to be reimbursed for the payment period, indirect costs (only if permitted by the STATE under Article I), and subcontractor costs itemized similarly to those of the CONTRACTOR. CONTRACTOR's certification that goods or services purchased have been received and accepted shall accompany the invoice. Proof of payment made to the vendor or a copy of the method of payment must be submitted by the CONTRACTOR. Proof of payment includes bank statements or cancelled checks showing check number and "Paid in Full" or CONTRACTOR accounting records showing the transaction.
 20. The CONTRACTOR's invoices and the vendor's invoices shall be consistent internally and with any purchase order applicable to the PROJECT and shall include a breakdown of equipment unit costs, sales tax, registration fees, and any other items procured with said purchase orders, including items and costs not reimbursable under this PROJECT and any items not subject to sales tax. The latter includes "items and materials when used to modify a vehicle for physically handicapped persons" that are exempt from sales tax under California Revenue and Taxation Code Section 6369.4.
 21. Only work performed or goods or services that are received during the Performance Period dates in Exhibit A are eligible for reimbursement. Invoices shall show dates when work was performed or goods or services were received.
 22. Eligibility for reimbursement of costs for the PROJECT shall be determined as follows.
 - A. For Public Agencies and Commercial Organizations, the net PROJECT cost and allowable individual items of PROJECT cost shall be determined in conformance with Code of Federal Regulations (CFR) 48, Federal Acquisition Regulations (FAR) Chapter 1 Part 31 "Contract Cost Principles and Procedures", 2 CFR Part 225 (formerly Office of Management and Budgets (OMB) Circular A-87) "Cost Principles for State, Local, and Indian Tribal Governments", FAR Chapter 1 Subpart 31.2, "Contracts with Commercial Organizations," and other applicable regulations, circulars, or memoranda that may be issued by FTA and with the SMP.
 - B. For Non-Profit Agencies, the net PROJECT cost and eligibility of individual items of PROJECT cost shall be determined in conformance with CFR Part 48, FAR Chapter 1 Part 31, 2 CFR Part 230 (formerly OMB Circular A-122) "Cost Principles for Non-Profit Organizations", and other applicable regulations, circulars, or memoranda that may be issued by the FTA and with the SMP.
 23. Direct and Indirect Costs.
 - A. The CONTRACTOR shall comply with 2 CFR Part 225 or 2 CFR Part 230 (as determined in Article I. Section 18) and certifies that all direct costs (and indirect costs, if permitted by STATE) billed are allowable. All direct costs, even for PROJECT administration activities, must be adequately supported with proper documentation.
 - B. For Public Agencies only, in all programs except the 5310 Program, indirect costs may be approved for reimbursement at the discretion of the STATE and Program Manager. If allowed, indirect costs must be supported by an approved Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal (ICRP). The CONTRACTOR shall obtain approval of the CONTRACTOR's CAP from the STATE's Independent Office of Audits and Investigations prior to submitting any invoices for reimbursement for the PROJECT. Indirect charges incurred prior to STATE's approval of the CAP or ICRP are not an allowable expense.
 - C. Under no circumstances are indirect costs an allowable expense for a 5310 Program Project.
 24. Payment for services satisfactorily provided, work satisfactorily performed or goods received under this AGREEMENT shall be made on a reimbursement basis and in arrears only for actual eligible costs.
 25. Incomplete or disputed invoices shall be returned unpaid to the CONTRACTOR for correction. Corrected invoices must be resubmitted to STATE prior to the payment of the invoice.
 26. Upon STATE's review and acceptance of an undisputed invoice by the STATE, the STATE agrees to reimburse the

- CONTRACTOR for eligible costs. Reimbursement will be made at the rate of Federal Share percentage shown in Exhibit A, up to the total amount of Federal Share. The Federal Share percentage may vary if the STATE has authorized the use of Transportation Development (Toll) Credits in lieu of required matching Local Share as described in Exhibit A.
27. Final invoice shall be submitted to the STATE as stipulated in Exhibit A. If a Final Invoice Date is not specified in Exhibit A, a final invoice shall be submitted no later than ninety (90) days after the expiration of this AGREEMENT.
 28. Project Closeout.
 - A. For all programs, any remaining balance/cost savings shall be returned to STATE for redistribution or reallocation. The redistribution or reallocation shall be in conformance with the following conditions:
 1. Rules of the program as described in the SMP, except that savings attributable to a project in the 5311 Program may be redistributed or reallocated in either the 5311 Program or the 5311(f) Subprogram;
 2. The federal apportionment which was utilized to fund the PROJECT;
 3. Consistent with the requirements of the federal grant which obligated the funds;
 4. In compliance with all Federal Transportation Improvement Plan (FSTIP) requirements.
 - B. Upon successful completion of the PROJECT or upon termination of this AGREEMENT by the STATE, the parties shall determine the amount of compensation, if any, to be repaid by the CONTRACTOR to STATE in order to avoid any STATE liability to FTA due to payments erroneously made to the CONTRACTOR in excess of the total PROJECT amount eligible for Federal reimbursement.
 29. The CONTRACTOR's scope of work shall be as described in Exhibit A of this AGREEMENT and the CONTRACTOR's application for federal assistance.
 30. The CONTRACTOR agrees to perform this PROJECT in accordance with all of the terms and conditions of this AGREEMENT and the APPLICATION pertaining to this PROJECT.
 31. The parties agree that only the following subsection of Article I Section 31 that matches the correspondingly-lettered subsection marked with an "X" in Exhibit A Section 2 Transportation Services Category shall apply to this AGREEMENT.

A. Operating Assistance (5310, 5311, 5311(f))

1. Operating Assistance costs eligible for reimbursement under this AGREEMENT are costs directly related to system operations and may include fuel, oil, salaries and fringe benefits for drivers, dispatchers, maintenance employees, mechanics and administrative staff whose duties are directly related to this PROJECT, and licenses.
2. The CONTRACTOR's geographic area that will be served by the transportation program shall be as described in Exhibit A of this AGREEMENT and the APPLICATION.
3. The PROJECT period for which transit operational expenses are eligible for reimbursement under this AGREEMENT is the Performance Period as specified in Exhibit A.
4. Subcontracts for third-party services, including Third-Party Operating, are considered Local Procurements. As such, any subcontract or subaward contemplated by CONTRACTOR must be reviewed and approved by the STATE prior to the CONTRACTOR beginning any procurement-related activities including, but not limited to, award, renewal or amendment.
5. Whenever a CONTRACTOR conducts a Local Procurement, the following provisions are applicable.
 - a. CONTRACTOR shall request and obtain the STATE's written approval of the procurement prior to ordering a vehicle or other equipment. The request shall be made in accordance with procedures promulgated by the STATE and on forms provided by the STATE.
 - b. If the Local Procurement is deemed to be in full compliance with federal requirements, the STATE shall issue written approval of the Local Procurement to the CONTRACTOR.
 - c. Reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle or other equipment has been received by the CONTRACTOR.
 - d. All reimbursement requests shall be submitted to the STATE through its EGM system.
 - e. Any such Local Procurement shall:
 - i. Be consistent with the approved bid award listed in Exhibit A of this AGREEMENT.
 - ii. Be consistent with the documentation submitted by the CONTRACTOR with its request for review of the Local Procurement by the STATE.
 - iii. Include a reference to the STATE's contract number assigned to this AGREEMENT.
6. If the PROJECT is funded by the 5310 Program and includes capital costs of contracting, allowable expenses may include depreciation and interest on facilities and equipment, as well as other capital costs such as preventive maintenance. Under the capital cost of contracting, only privately-owned assets are eligible. Any capital assets that have any remaining federal interest in them, or items purchased with state or local government assistance shall not be capitalized, nor shall costs incurred delivering services ineligible for FTA assistance, such as charter or school bus service. Detailed information regarding the capital cost of contracting is available in the 5310 Circular.

B. Preventive Maintenance (5311, 5311(f))

1. Preventive Maintenance activities consist of routine revenue and non-revenue vehicle inspection and maintenance for bus operations including: inspecting revenue vehicle components on a scheduled preventive maintenance basis (e.g., engine and transmission, fuel system, ignition system, chassis, body-exterior and interior, electrical system, lubrication system, trolleys, pantographs and third rail shoes, trucks, braking system, air-conditioning system); performing minor repairs to the above-listed revenue vehicle components; changing lubrication fluids; replacing minor repairable units of the above-listed revenue vehicle components; making road calls to service revenue vehicle breakdowns; towing and shifting revenue vehicles to maintenance facilities; rebuilding and overhauling repairable components; performing major repairs on revenue vehicles on a scheduled or unscheduled basis.
2. For the purpose of carrying out the PROJECT, the labor, associated administrative, and incidental costs pursuant to this AGREEMENT shall not exceed the estimated cost specified in Exhibit A.
3. The PROJECT Period for which Preventive Maintenance expenses are eligible for reimbursement under this AGREEMENT is the Performance Period as specified in Exhibit A.
4. The request(s) for reimbursement shall certify that the CONTRACTOR has paid wages and salaries and shall list the various salary and other accounts to which the grant funds will be applied. Upon receipt of these invoices, the STATE shall reimburse the CONTRACTOR up to the percentage of total PROJECT costs as specified in Exhibit A, but not to exceed the amount encumbered in this AGREEMENT.
5. The STATE's obligations to compensate the CONTRACTOR under the terms of this AGREEMENT shall terminate upon payments of the CONTRACTOR's invoice(s) for the FTA allowable activities, supplies, materials, wages, salaries, and services required to preserve or extend the functionality and serviceability of the asset in a cost-effective manner.
6. Subcontracts for third-party services, including Preventive Maintenance, are considered Local Procurements. As such, any subcontract or subaward contemplated by CONTRACTOR must be reviewed and approved by the STATE prior to the CONTRACTOR beginning any procurement-related activities including, but not limited to, award, renewal or amendment.
7. Whenever a CONTRACTOR conducts a Local Procurement, the following provisions are applicable.
 - a. CONTRACTOR shall request and obtain the STATE's written approval of the procurement prior to executing a contract pursuant to this PROJECT with a third party. The request shall be made in accordance with procedures promulgated by the STATE and on forms provided by the STATE. If the Local Procurement is deemed to be in full compliance with federal requirements, the STATE shall issue written approval of the Local Procurement to the CONTRACTOR.
 - b. Reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle or other equipment has been received by the CONTRACTOR.
 - c. All reimbursement requests shall be submitted to the STATE through its EGM system.
 - d. Any such Local Procurement shall:
 - i. Be consistent with the approved bid award listed in Exhibit A of this AGREEMENT.
 - ii. Be consistent with the documentation submitted by the CONTRACTOR with its request for review of the Local Procurement by the STATE.
 - iii. Include a reference to the STATE's contract number assigned to this AGREEMENT.

C. Planning (5311, 5311(f))

1. Planning activities must be directed specifically at the needs of rural areas in the state and be included in the Planning Work Program. Eligible activities support efforts to:
 2. Develop transportation plans and programs,
 3. Plan, engineer, design and evaluate a public transportation project, and
 4. Conduct technical studies relating to public transportation.
5. The Period for which PROJECT expenses are eligible for reimbursement under this AGREEMENT is the Performance Period as specified in Exhibit A.
6. Subcontracts for third-party services, including Planning, are considered Local Procurements As such, any subcontract or subaward contemplated by CONTRACTOR must be reviewed and approved by the STATE prior to the CONTRACTOR beginning any procurement-related activities including, but not limited to, award, renewal or amendment.
7. Whenever a CONTRACTOR conducts a Local Procurement, the following provisions are applicable.
 - a. CONTRACTOR shall request and obtain the STATE's written approval of the procurement prior to executing a contract pursuant to this PROJECT with a third party. The request shall be made in accordance with procedures promulgated by the STATE and on forms provided by the STATE.
 - b. If the Local Procurement is deemed to be in full compliance with federal requirements, the STATE shall issue written approval of the Local Procurement to the CONTRACTOR.
 - c. Reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle or other equipment has been received by the CONTRACTOR.
 - d. All reimbursement requests shall be submitted to the STATE through its EGM system.
 - e. Any such Local Procurement shall:
 - i. Be consistent with the approved bid award listed in Exhibit A of this AGREEMENT.
 - ii. Be consistent with the documentation submitted by the CONTRACTOR with its request for review of the Local Procurement by the STATE.
 - iii. Include a reference to the STATE's contract number assigned to this AGREEMENT.

D. Capital Project (Vehicle/Equipment) (5310)

1. Maximum vehicle funding limits shall be set by the STATE and shall apply to nonprofit and public agencies without prejudice. Purchase order requirements are further detailed in Article III. The Federal Share for all vehicle procurements shall be as shown in Exhibit A.
2. The Period for which PROJECT expenses are eligible for reimbursement under this AGREEMENT is the Performance Period as specified in Exhibit A.
3. The CONTRACTOR agrees to operate the equipment funded and made available through the PROJECT within the service area as described in Exhibit A.
4. This is a 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).
5. Public Agencies may purchase Vehicles using any one of the following three methods.
 - a. CONTRACTOR may request that the STATE purchase the PROJECT vehicle on its behalf, in which case the provisions regarding deposit of Local Share in paragraph 12 below shall apply.
 - b. CONTRACTOR may purchase vehicles directly from a State-approved Contract.
 - c. CONTRACTOR may purchase vehicles through its own procurement procedures. CONTRACTOR must obtain prior written authorization from the STATE when utilizing its own procurement procedures. Authorization shall be requested in accordance with the STATE's designated procedures.
6. Nonprofit Agencies may purchase Vehicles using either of the following two methods.
 - a. CONTRACTOR may request that the STATE purchase the PROJECT vehicle on its behalf, in which case the provisions regarding deposit of Local Share in paragraph 12 below shall apply.
 - b. CONTRACTOR may purchase vehicles through its own procurement procedures. Nonprofit Agencies that procure vehicles in this way must receive prior written authorization from the STATE.
7. Any Vehicle(s) purchased by the STATE for a Nonprofit Agency, shall be from a STATE-approved Contract.
8. The following provisions regarding Local Share apply to any CONTRACTOR, whether a Public Agency or a Non-Profit Agency, for whom the STATE is purchasing a vehicle or other equipment.
 - a. Unless Transportation Development (Toll) Credits in lieu of Local Share have been authorized by the STATE, CONTRACTOR shall deposit the Local Share amount and any amount designated as Additional Local Share in Exhibit A into an escrow account at the financial institution designated by the STATE for this purpose. No further billing or payment is required of the CONTRACTOR.
 - b. The escrow deposit shall be made within 90 days after execution of this AGREEMENT by the STATE or 90 days following notification by the STATE of the necessity of an escrow deposit. Detailed instructions for making this deposit will be provided to the CONTRACTOR by the STATE.
 - c. Vehicles or other equipment shall not be procured by the STATE, on behalf of the CONTRACTOR, until the deposit of the CONTRACTOR's Local Share into escrow has been verified by the STATE.
 - d. In the event a balance due is owed to the CONTRACTOR for any unused portion of the Local Share, the CONTRACTOR shall request a refund from Caltrans in writing. Caltrans will initiate the refund process with the designated financial institution.
 - e. Per the 5310 Program Circular, the Local Share may be derived from Federal programs that are eligible to be expended for transportation from programs other than USDOT programs except for funds from USDOT Federal Lands Highway Program.
9. The CONTRACTOR shall be responsible for 100% of all costs which exceed the approved Federal Share amount specified in Exhibit A. In no event shall the STATE be obligated to contribute STATE funds toward the cost of the PROJECT.

10. **Timely Commencement of Local Procurement Activities.** After receiving written approval from the STATE, CONTRACTOR shall initiate Local Procurement in a timely manner. For a Vehicle purchase, CONTRACTOR shall conduct the procurement in accordance with the schedule currently on file with the STATE and approved by the Program Manager. For the purchase of Other Equipment, CONTRACTOR shall purchase approved PROJECT equipment within three months of AGREEMENT execution. If the purchase is for on-board equipment for a new Vehicle, the purchase shall be made within three (3) months of Vehicle acceptance. If the equipment is not purchased within the designated timeframe, the CONTRACTOR may be subject to contract termination provisions described in Article II.
11. **Required Documents for Reimbursement.** Upon receipt of complete documentation for the procurement and of the DBE Actual Payment Form, the STATE will reimburse the CONTRACTOR for the Federal Share in arrears.
12. **Evidence of Insurance.** Before delivery of a vehicle(s) to the CONTRACTOR, the CONTRACTOR shall furnish to the STATE 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 before the expiration date of the certificate. At any time that such evidence of insurance has not been provided, the STATE shall have the immediate right to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.
13. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Article II is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this AGREEMENT and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting, until the STATE affirmatively releases its lien interest. The STATE's release of its lien may be conducted in the STATE's EGM system.

E. Capital Project (Vehicle/Equipment) (5311, 5311(f), 5339, CMAQ)

1. New PROJECTs for equipment or new vehicles shall not be designated as "used" by Federal Trade Commission Agency 16 CFR Part 455.1(d)(2) or California Vehicle Code Section 100-680.
2. CONTRACTOR agrees to operate the equipment funded and made available through the PROJECT within the service area as described in Exhibit A and the APPLICATION.
3. The STATE's obligations to compensate the CONTRACTOR under the terms of this AGREEMENT shall terminate upon the STATE's reimbursement of CONTRACTOR's invoice(s) for FTA-allowable portions of PROJECT costs. Reimbursements will only be allowed after execution of this AGREEMENT.
4. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Article II is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this AGREEMENT and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting, until the STATE affirmatively releases its lien interest. The STATE's release of its lien may be conducted in the STATE's EGM system.
5. Public Agencies may purchase Vehicles using any one of the following three methods.
 - a. CONTRACTOR may request that the STATE purchase the PROJECT vehicle on its behalf, in which case the provisions regarding deposit of Local Share in paragraph 12 below shall apply.
 - b. CONTRACTOR may purchase vehicles directly from a State-approved Contract.
 - c. CONTRACTOR may purchase vehicles through its own procurement procedures. CONTRACTOR must obtain prior written authorization from the STATE when utilizing its own procurement procedures. Authorization shall be requested in accordance with the STATE's designated procedures.
6. Any Vehicle(s) purchased by the STATE for a Public Agency shall be from a STATE-approved Contract.
7. The following provisions regarding Local Share apply to any CONTRACTOR for whom the STATE is purchasing a vehicle or other equipment.
 - a. Unless Transportation Development (Toll) Credits in lieu of Local Share have been authorized by the STATE, CONTRACTOR shall deposit the Local Share amount and any amount designated as Additional Local Share in Exhibit A into an escrow account at the financial institution designated by the STATE for this purpose. No further billing or payment is required of the CONTRACTOR.
 - b. The escrow deposit shall be made within 90 days after execution of this AGREEMENT by the STATE or 90 days following notification by the STATE of the necessity of an escrow deposit. Detailed instructions for making this deposit will be provided to the CONTRACTOR by the STATE.
 - c. Vehicles or other equipment shall not be procured by the STATE, on behalf of the CONTRACTOR, until the deposit of the CONTRACTOR's Local Share into escrow has been verified by the STATE.
 - d. In the event a balance due is owed to the CONTRACTOR for any unused portion of the Local Share, the CONTRACTOR shall request a refund from Caltrans in writing. Caltrans will initiate the refund process with the designated financial institution.

F. Capital Project (Real Estate Acquisition/Construction) (5311, 5311(f), 5339)

1. For Real Estate Acquisition, the CONTRACTOR must perform each of the procedures below pursuant to the Award Management Circular, 2 CFR Part 200, 49 CFR Part 24 Subpart B, and the FTA Master Agreement.
 - a. The conduct of Hazardous Waste Site Assessments before acquiring real property.
 - b. The conduct of an independent appraisal by a certified appraiser.
 - c. The requirement for a review appraisal of the initial appraisal.
 - d. FTA review and concurrence requirements related to the CONTRACTOR's offer to buy the property.
 - e. If the CONTRACTOR is leasing the property, incidental use of acquired real property as a means to supplement transit revenues.
 - f. Disposition of excess real property by sale, lease, donation, transfer to other programs, or other conveyance methods.
 - g. The requirement to prepare an excess property utilization plan for all real property no longer used for its original purpose.
2. For Construction Projects, CONTRACTOR must submit a Plans, Specifications, and Estimate (PS&E) Checklist. CONTRACTOR shall certify that the PROJECT was designed and prepared for advertisement in accordance with applicable sections regarding "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" in 2 CFR Part 200, the Third-Party Contracts Circular, "Construction Management and Oversight" section of the 5311 Circular, the FTA "Projects and Construction Management Guidelines", and the FTA "Best Practices Procurement Manual".
3. The CONTRACTOR assures and certifies that the PROJECT complies with regulations of 23 CFR Part 771 regarding environmental impact and related procedures.
4. CONTRACTOR understands and agrees that all documents relating to this PROJECT may be reviewed by FTA and/or STATE in order to verify the PS&E certification. CONTRACTOR also understands and agrees that if deficiencies are found in subsequent reviews, the following actions may be taken:
 - a. Where minor deficiencies are found, PS&E Certification for future projects may be conditionally approved or not accepted until the deficiencies are corrected.
 - b. Where deficiencies are of such magnitude as to create doubt that the policies and objectives of applicable federal and state laws will not be accomplished by the PROJECT, federal funding may be withdrawn at the discretion of the Office Chief of Federal Transit Grants Programs.
5. For the purpose of carrying out the PROJECT, the Real Estate Acquisition/Construction PROJECT is to be purchased and/or constructed, at costs not to exceed the estimated cost specified in Exhibit A.
6. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Article II is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this AGREEMENT and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting, until the STATE affirmatively releases its lien interest. The STATE's release of its lien may be conducted in the STATE's EGM system.

G. Mobility Management (5310)

1. The CONTRACTOR agrees to complete the defined Mobility Management PROJECT described in the APPLICATION, which is on file with the STATE and which is subject to all the terms and conditions of this AGREEMENT.
2. All Mobility Management PROJECTs require a Detailed Implementation Plan as a part of the Project Application. The Detailed Implementation Plan, as submitted, is hereby made a part of this PROJECT. The tasks described in the Detailed Implementation Plan shall be implemented by the CONTRACTOR pursuant to this AGREEMENT at costs not to exceed the estimated cost specified in the Detailed Implementation Plan and in Exhibit A.
3. Invoices for all Mobility Management PROJECTs shall be itemized in accordance with the Detailed Implementation Plan and shall incorporate PROJECT progress, including dates of service, tasks partially or fully completed, and hours worked together with copies of the equipment vendor's invoices and the CONTRACTOR's purchase orders.
4. Subcontracts for third-party services, including Planning, are considered Local Procurements. As such, any subcontract or subaward contemplated by CONTRACTOR is subject to the provisions of Article II Section 46. Bid or Proposal and Third-Party Contract Award of this AGREEMENT.
5. Whenever a CONTRACTOR conducts a Local Procurement, the following provisions are applicable.
 - a. CONTRACTOR shall request and obtain the STATE's written approval of the procurement prior to executing a contract pursuant to this PROJECT with a third party. The request shall be made in accordance with procedures promulgated by the STATE and on forms provided by the STATE.
 - b. If the Local Procurement is deemed to be in full compliance with federal requirements, the STATE shall issue written approval of the Local Procurement to the CONTRACTOR.
 - c. Reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle or other equipment has been received by the CONTRACTOR.
 - d. All reimbursement requests shall be submitted to the STATE through its EGM system.
 - e. Any such Local Procurement shall:
 - i. Be consistent with the approved bid award listed in Exhibit A of this AGREEMENT.
 - ii. Be consistent with the documentation submitted by the CONTRACTOR with its request for review of the Local Procurement by the STATE.
 - iii. Include a reference to the STATE's contract number assigned to this AGREEMENT.

H. Transfer of Used Vehicle/Equipment (5310)

1. The STATE will evaluate potential transfer need for vehicle/equipment on a case-by-case basis. The CONTRACTOR will submit the following information for the State to make its determination:
 - a. Project Description and Justification for Funding Request (Replacement or Expansion);
 - b. Proposed Service and Operating Plan (including map of service area);
 - c. Existing Transportation Services (current fleet);
 - d. Proposed Transportation Services; and
 - e. Signed Certifications and Assurances.
2. In the event the CONTRACTOR's submitted information conflicts with any terms or conditions of this AGREEMENT after the STATE has agreed to a vehicle/equipment transfer, this AGREEMENT shall supersede the CONTRACTOR's submitted information.
3. The CONTRACTOR agrees to perform the PROJECT to provide transportation services primarily to seniors and persons with disabilities, including their incidental baggage, and to persons accompanying the seniors or persons with disabilities in accordance with the terms and conditions of this AGREEMENT and the CONTRACTOR's application for federal assistance.
4. The CONTRACTOR shall always use the PROJECT exclusively and in conformity with the PROJECT description for as long as the equipment is needed for the PROJECT.
5. Vehicles may not be transferred without prior written approval from the STATE.
6. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Article II is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this AGREEMENT and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting, until the STATE affirmatively releases its lien interest. The STATE's release of its lien may be conducted in the STATE's EGM system.

I. Transfer of Used Vehicle/Equipment (5311, 5311(f), 5339)

1. The CONTRACTOR shall always use the PROJECT equipment exclusively and in conformity with the PROJECT Scope of Work in Exhibit A and the PROJECT Description.
2. Vehicles may not be transferred without prior written approval from the STATE.
3. The STATE has evaluated and approved the transfer for vehicle/equipment based on the CONTRACTOR's request containing the following information.
 - a. Project Description and Justification for Funding Request (Replacement or Expansion)
 - b. Existing Transportation Services (current fleet)
 - c. Proposed Transportation Services
 - d. Signed Certifications and Assurances
 - e. Board Resolutions of Both Parties participating in the transfer
4. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Article II is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this AGREEMENT and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting, until the STATE affirmatively releases its lien interest. The STATE's release of its lien may be conducted in the STATE's EGM system.

ARTICLE II
GENERAL TERMS AND CONDITIONS

1. **Subrecipient.** For the purpose of this AGREEMENT, the CONTRACTOR is the Subrecipient as referenced in the Federal Transportation Funding Law and the applicable Program Circular. As a Subrecipient of FTA funds the CONTRACTOR agrees to comply with the federal statutes, regulations, executive orders, directives and administrative requirements which relate to applications made to and grants received from FTA, including but not limited to, the USDOT FTA Master Agreement and the FTA Circular for the 5310 Program, the 5311 Program and/or the 5339 Program.
2. **Budget Contingency Clause.**
 - A. The CONTRACTOR agrees that it will provide funds in an amount sufficient, together with the grant, to assure payment of those actual total net PROJECT costs. The funds provided shall include sufficient funds from other eligible sources to provide the PROJECT local matching requirements in accordance with the Federal Transportation Funding Law.
 - B. It is mutually agreed that if the State Budget Act or the Federal Transportation Funding Law of the current year and/or any subsequent years covered under this AGREEMENT does not appropriate sufficient funds for the program, this AGREEMENT shall be of no further force and effect. In this event, the STATE shall have no liability to pay any funds whatsoever to CONTRACTOR or to furnish any other considerations under this AGREEMENT and CONTRACTOR shall not be obligated to perform any provisions of this AGREEMENT.
 - C. If funding for any fiscal year is reduced or deleted by the State Budget Act or the Federal Transportation Funding Law for purposes of this program, the STATE shall have the option to either cancel this AGREEMENT with no liability occurring to the STATE or offer an amended Agreement to CONTRACTOR that reflects the reduced amount.
3. **State of California Prompt Payment and Return of Retainage Provisions.**
 - A. All payments to the CONTRACTOR shall be made in accordance with California Government Code (GC), Chapter 4.5, commencing with Section 927, which is known as the California Prompt Payment Act. If an authorized disbursement is not made within the thirty (30) calendar-day departmental limit stipulated by the California Prompt Payment Act, interest penalties may be payable to the CONTRACTOR.
 - B. Unless the approved PROJECT is for Construction, the CONTRACTOR shall not hold retainage (i.e. withhold retention) from any subcontractor. The STATE shall not hold retainage from any CONTRACTOR.
 - C. If a dispute arises regarding Construction PROJECTs only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC), Section 10262.5 or Division 2, Part 2, Chapter 1 Article of the California Business and Professions Code (BPC), as applicable.
 - D. The CONTRACTOR must pay third-party contractors within 30 days for satisfactory performance of work related to this Agreement. In the case of progress payments, the CONTRACTOR must pay third-party contractors within 7 days of receipt of each undisputed progress payment from the STATE, unless the PROJECT is for Construction. In the case of a Construction PROJECT only, the CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this AGREEMENT no later than 30 days after the CONTRACTOR's receipt of payment for that work from the STATE. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this AGREEMENT is satisfactorily completed.
 - E. Federal Prompt Payment and Retainage requirements as described in Section 57 of this Article also apply to this AGREEMENT. If there is any conflict between the California Prompt Payment Act and the Federal Prompt Payment and Retainage requirements, the more stringent requirements shall apply.
4. **Approval.**
 - A. Except as provided herein, this AGREEMENT is of no force or effect until signed by both parties and approved by the STATE.
 - B. The STATE reserves the right to sign and approve the AGREEMENT provided however, the commencement of work shall not be authorized until the expenditure of federal funds has been authorized by the FTA for a specific Federal fiscal year or a pre-award expenditure authority approved by the STATE. The CONTRACTOR may not commence performance until federal authorization has been obtained.
 - C. It is mutually understood between the parties that this AGREEMENT, for the mutual benefit of both parties, may

- have been written before ascertaining the availability of congressional or legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the AGREEMENT were executed after the determination was made.
- D. This AGREEMENT is valid and enforceable only if sufficient funds are made available to the STATE by the United States Government or the California State Legislature for the purpose of this program. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this AGREEMENT in any manner.
 - E. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this AGREEMENT shall be amended to reflect any reduction in funds.
 - F. State Law. This AGREEMENT shall be interpreted according to the laws of the State of California, except as to those provisions where federal law shall apply; as to those provisions where federal law applies, the rules, regulations, statutes and executive orders of the federal government shall be applicable. If 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 and appropriate changes and/or modifications; and the CONTRACTOR shall proceed, as soon as is possible, with PROJECT.
 - G. No issuance of a CONTRACT or amendments to a CONTRACT will occur until the STATE has received proof that the PROJECT has been programmed and is in an approved FSTIP.
5. Enforcement/Remedies for Non-Compliance and/or Breach of Contract. 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 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.
 - D. Withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from remaining grant balance and/or future apportionments, or any other funds due CONTRACTOR from the Federal Trust Fund or any other sources of funds.
 - E. Take any other remedies that may be legally available.
 6. Timeliness. Time is of the essence in this AGREEMENT. CONTRACTOR shall return the signed AGREEMENT to the STATE within 90 calendar days after issuance. In the event this AGREEMENT is not signed and returned within 90 days of issuance, the PROJECT identified in Exhibit A of this AGREEMENT may be withdrawn and cancelled at the discretion of the STATE.
 7. Amendment. No amendment or alteration of the terms of this AGREEMENT shall be valid unless submitted in writing, signed by the parties and approved as required. This AGREEMENT may be amended in writing, by mutual consent of the parties, on a case-by-case basis where warranted. The request for an Amendment must be made in writing to the Program Manager no less than sixty (60) days before the AGREEMENT's Expiration Date shown in Exhibit A. If an Amendment is issued by STATE, the Amendment shall be signed and returned by the CONTRACTOR prior to the expiration of the AGREEMENT currently in force, but in no instance more than 90 calendar days after issuance of the proposed amendment. If CONTRACTOR does not sign and return the Amendment within the allowed period for execution, the PROJECT may be either withdrawn or cancelled at the discretion of the STATE.
 8. No Oral Understanding or Agreement. No oral understanding or agreement not incorporated in this AGREEMENT is binding on any of the parties.
 9. Assignment. This AGREEMENT is not assignable by the CONTRACTOR, either in whole or in part, without the consent of the STATE in the form of a formal written amendment.
 10. Independent Contractor. The CONTRACTOR, and the agents and employees of the CONTRACTOR, in the performance

of this AGREEMENT, shall act in an independent capacity and not as officers or employees or agents of the STATE.

11. **Antitrust Claims.** By signing this AGREEMENT, the CONTRACTOR hereby certifies that if services or goods covered by this AGREEMENT are obtained by means of a competitive bid, the CONTRACTOR shall comply with the requirements of the California Government Code (GC) Sections set out below.
 - A. GC Sections 4550 through 4554 regarding antitrust claims contain the following definitions:
 1. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the STATE or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to BPC Section 16750(c).
 2. GC Section 4550 defines a "public purchasing body" as the STATE or the subdivision or agency making a public purchase.
 - B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (BPC Chapter 2, commencing with Section 16700 of Part 2 of Division 7), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Per GC Section 4552, such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.
 - C. Per GC Section 4553, if an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the awarding body or public purchasing body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the awarding body or public purchasing body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
 - D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and either 1) the assignee has not been injured thereby, or 2) the assignee declines to file a court action for the cause of action, per GC Section 4554.
12. **Child Support Compliance Act.** For any AGREEMENT in excess of \$100,000, the CONTRACTOR acknowledges in accordance with PCC Section 7110, that:
 - A. The CONTRACTOR recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code; and
 - B. The CONTRACTOR, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
13. **Unenforceable Provision.** If 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.
14. **Priority Hiring Considerations.** If this AGREEMENT includes services in excess of \$200,000, the CONTRACTOR shall give priority consideration in filling vacancies in positions funded by the AGREEMENT to qualified recipients of aid under the California Welfare and Institutions Code Section 11200, in accordance with PCC Section 10353.
15. **State Management Plan (SMP).** The STATE is designated by the Governor of the State of California to administer the FTA Federal Transit grant programs. The implementation and administration of the FTA programs are outlined in the SMP. Should there be a discrepancy between the SMP and this AGREEMENT, the AGREEMENT shall govern.
16. **Annual FTA Certification and Assurances.** As requested by the STATE, the CONTRACTOR annually must complete and submit to the STATE the Annual Certifications and Assurances for Federal Transit Administration Assistance Programs, the Certifications and Assurances Checklist, and the Signature Page as published by the FTA.

17. Buy America. The CONTRACTOR shall comply with the Buy America requirements of 49 USC Section 5323(j) and 49 CFR Part 661 for all procurements of steel, iron and manufactured products used in PROJECT. Buy America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000). Separate requirements for rolling stock are set out at 49 USC Section 5323(j)(2)(c) and 49 CFR Part 661.11.
18. U.S. Flag Requirements.
 - A. Shipments by Ocean Vessel. For third-party contracts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subcontractors must comply with 46 USC Section 55303 and 46 CFR Part 381, "Cargo Preference-U.S. Flag Vessels."
 - B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subcontractors must comply with the 49 USC Section 40118, which may be cited as the "Fly America Act," "Use of United States Flag Air Carriers," and 41 CFR Parts 301-10.131 through 301-10.143.
 - C. Project Travel. In accordance with 49 USC Section 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.
19. Accounting Records. The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures 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.
20. Vehicle Operator Licensing. The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration (FMCSA) regulations and the California Vehicle Code including, but not limited to, the requirement that all vehicle operators have a valid State of California driver's license, including any special operator license that may be necessary for the type of vehicle operated.
21. Audit Requirements. The CONTRACTOR shall be responsible for meeting the audit requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 1201. The required audit reports shall be submitted to the State Controller with a copy to STATE in conformance with the compliance guidelines issued by the California Department of Finance. The cost of audits made in accordance with the provisions of 2 CFR Part 200 is an allowable charge to this PROJECT.
22. 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 any subcontract or subaward as a result of this AGREEMENT.
23. Examination of Records. The STATE, the Caltrans' Independent Office of Audits and Investigations, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions. Copies thereof shall be furnished by CONTRACTOR upon request. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the STATE or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information. The CONTRACTOR shall include a clause to this effect in every subcontract entered into relative to the PROJECT.
24. Examination of Accounting. The CONTRACTOR's accounting system and billing procedures are subject to audit by the STATE prior to contract award, and accounting records pertaining to work performed and costs billed to the STATE are subject to audit for a period of three (3) years from the date of final payment under this AGREEMENT. If the CONTRACTOR fails to retain records such as employee time cards, payroll records, travel records, equipment time and cost records, billings from subcontractors, material and equipment suppliers' records that are sufficient to permit audit

verification of the validity of costs charged to the STATE, the CONTRACTOR will be liable for reimbursement to the STATE of all unsubstantiated billings.

25. Reporting Forms. The CONTRACTOR shall furnish the STATE with any additional reports or data that may be required by FTA or other federal agencies. Such information will be submitted on forms provided by the STATE.
26. Debarment and Suspension. The CONTRACTOR agrees as follows:
- A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 USC Section 6101 note; and U.S. DOT regulations on Debarment and Suspension and 49 CFR Part 29.
 - B. Unless otherwise permitted by FTA, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-agreement of any amount with a party identified in the "U.S. General Services Administration's (U.S. GSA) System for Award Management (<https://www.sam.gov>) List of Parties Excluded from Federal procurement or Non-Procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.
 - C. In accordance with 2 CFR Part 1200 and OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective subrecipient, third-party contractor or subcontractor containing information about the debarment and suspension status and other specific information of that contractor and its principals before award of a third-party contract or subcontract at any tier of \$25,000 or more.
27. Compliance with Federal Statutes. During the performance of this AGREEMENT, the CONTRACTOR, its assignees and successors in interest, agree to comply with all Federal statutes and regulations applicable to grantee recipients under 49 USC Chapter 53, including, but not limited to the following:
- A. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC Subsection 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC Subsection 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C Subsection 12132, and federal transit law at 49 USC Section 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations FTA may issue.
 - B. Equal Employment Opportunity (EEO). The following equal employment opportunity requirements apply to the underlying contract.
 - 1. Race, Color, Creed, National Origin, Religion, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC Subsection 2000e, and federal transit laws at 49 USC Section 5332, the CONTRACTOR agrees to comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Part 60 et seq., (which implement Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC Subsection 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - 2. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC Section 623 and federal transit law at 49 USC Section 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - 3. Disability. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC Section

12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

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

- directors or appropriate governing entity or official(s) responsible for policy decisions, reviewing and approving the Title VI Program.
10. Additional information as specified in Chapters IV, V, and VI of the Title VI Circular depending on whether the CONTRACTOR is a transit provider, nonprofit or public agency.
- G. Sanctions for Noncompliance. In the event of the CONTRACTOR's noncompliance with any provision of Civil Rights requirement in this AGREEMENT, the STATE shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to the following.
1. Withholding of payments to the CONTRACTOR under the AGREEMENT.
 2. Assessing of sanctions
 3. Assessing of liquidated damages.
 4. Disqualifying CONTRACTOR from future bidding as non-responsible.
- H. Incorporation of Provisions. The CONTRACTOR shall include the provisions of the foregoing Sections A through E and Section G in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontractor or procurement as the STATE or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the STATE to enter into such litigation to protect the interest of the STATE. In addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.
28. Disadvantaged Business Enterprise (DBE). The CONTRACTOR agrees to the following:
- A. Comply with 49 CFR Part 26 "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs," and cooperate with the STATE with regard to utilization of DBEs, using best efforts to ensure that DBEs shall have a level playing field when competing for subcontracted work under this AGREEMENT.
 - B. Prior to beginning PROJECT work, the CONTRACTOR shall complete and sign a DBE Implementation Agreement form to be provided by the STATE. The completed DBE Implementation Agreement must be returned to the STATE no later than the date that this AGREEMENT is executed. A DBE Implementation Agreement must be completed annually.
 - C. Report twice annually on DBE participation in CONTRACTOR's contracting opportunities, commitments, awards, and actual payments.
 - D. In accordance with 49 CFR Part 26.53(f)(1)(i), the CONTRACTOR shall not terminate a DBE subcontractor without the prior written approval of the substitute DBE from the STATE by either the Resident Engineer (RE), the Contract Manager, or the Caltrans DBE Liaison Officer (DEBELO). A CONTRACTOR that terminates a DBE subcontractor must make a good faith effort to find a replacement DBE subcontractor to perform at least the same amount of work under the contract to meet the contract goal established for the work. The good faith effort shall be documented and submitted to the STATE within a reasonable time after obtaining approval by the STATE to terminate an existing DBE as required by 49 CFR Part 26.53(g). Failure to obtain written consent from the STATE prior to terminating a DBE subcontractor shall be a material breach of this contract.
 - E. CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any federally-assisted contract or in the administration of its DBE program. The CONTRACTOR's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this AGREEMENT. Upon notification to the recipient of its failure to carry out its approved program, the STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC Section 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC Section 3801 et seq.).
 - F. The CONTRACTOR and its subcontractors shall make available, upon request of the STATE, a copy of all DBE subcontracts. The CONTRACTOR must ensure its third-party contractors and subcontractors also comply with these requirements.
 - G. The "Federal Transit Administration Disadvantaged Business Enterprise Program Plan 2019" prepared by Caltrans applies to this AGREEMENT.
29. Section 504 and Americans with Disabilities Act Program Requirements (ADA). The CONTRACTOR will comply with 49

CFR Parts 27, 37 and 38, which implement the ADA and Section 504 of the Rehabilitation Act of 1973 (29 USC Section 794), as amended. The CONTRACTOR must ensure its third-party contractors operating public transportation service comply with these requirements.

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

1. Using an official position for private gain;
 2. Giving preferential treatment to any particular person;
 3. Losing independence or impartiality; and/or
 4. Adversely affecting the confidence of the public or local officials in the integrity of the program.
- E. Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision-making process relevant to the AGREEMENT, or for one (1) year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed contract at any time during the 12-month period prior to that employee's separation from State service.
- F. Neither the CONTRACTOR nor any of its employees, suppliers or subcontractors shall enter into any contract, subcontract, or arrangement in connection with the PROJECT or any property included or planned to be included in the PROJECT, in which any member, officer, or employee of the CONTRACTOR or its subcontractors, 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 the STATE of such interest, the STATE may waive the conflict of interest, provided that the officer or employee shall not participate in any action by the CONTRACTOR or the locality relating to such contract, subcontract, or arrangement.
- G. The CONTRACTOR shall insert in all contracts entered into in connection with the PROJECT or with any property included or planned to be included in any PROJECT, and shall require its contractors to insert in each of their subcontracts, the following provision:
"No member, officer, or employee of the CONTRACTOR or of the locality during the PROJECT term or for one year thereafter shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof."
- H. The provisions of this subsection shall not be applicable to any agreement between the CONTRACTOR and its fiscal depositories or to any agreement for utility services, whose rates are fixed or controlled by a governmental agency.
36. Lobbying.
- A. If the CONTRACTOR's PROJECT exceeds \$100,000, the CONTRACTOR agrees that it will not use federal assistance funds to support lobbying, in accordance with 31 USC Section 1352 and 49 CFR Part 20, "New Restrictions on Lobbying". FTA will not make any federal assistance available to the CONTRACTOR until the STATE has received the CONTRACTOR's certification that the CONTRACTOR has not and will not use federally-appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal grant, cooperative agreement or other federal award from which funding for the PROJECT is originally derived.
- B. If any funds other than federally-appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," to the STATE.
- C. The CONTRACTOR shall require that the following certification language be included in the award documents for all subawards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000 and that all subrecipients shall certify and disclose accordingly.
"This certification is a material representation of facts upon which reliance was placed when this AGREEMENT was made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by 31 USC Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."
37. Program Fraud and False or Fraudulent Statements or Related Acts.
- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC Section 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to

- be made pertaining to that underlying agreement or the FTA-assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed, in whole or in part, with federal assistance originally awarded by FTA under the authority of 49 USC Section 5307, the Federal Government reserves the right to impose the penalties of 18 USC Section 1001 and 49 USC Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. The CONTRACTOR agrees to include the above two clauses in each subcontract, whether partly or wholly financed with federal assistance provided by FTA. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who is subject to the provisions.
38. Drug-Free Workplace. The CONTRACTOR certifies by signing this AGREEMENT that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with GC 8355 et seq. The CONTRACTOR is required to include the language of this certification in award documents for all sub-awards at all tiers (including subcontracts, contracts under grants, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any subrecipient at any tier, or their employees, perform a safety-sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor at any tier, each affected subrecipient at any tier, and their employees with 49 USC 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.
39. Charter Service Operations. The CONTRACTOR agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR Part 604 Subpart B. Any charter service provided under one of the exceptions must be incidental, meaning it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on Federally-assisted equipment) of providing the service. The CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR Part 604 apply to this AGREEMENT, and any violation of this AGREEMENT may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.
40. School Bus Operations. Pursuant to 49 USC Section 5323(f) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will:
- A. Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 USC Section 5323(f) and implementing regulations, and
- B. Comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment or facilities acquired with federal assistance awarded by FTA. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR Part 605 apply to any school transportation agreement, and a violation of this AGREEMENT may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.
41. Use of \$1 Coins. As applicable, and to comply with Section 104 of the Presidential \$1 Coin Act of 2006, 31 USC Section 5112(p), the CONTRACTOR must ensure that FTA assisted property that requires the use of coins or currency in public transportation service or supporting service be fully capable of accepting and dispensing \$1 coins.
42. Protection of Animals. The CONTRACTOR must ensure that all third-party contractors providing services involving the use of animals must comply with the Animal Welfare Act, 7 USC Section 2131 et seq. and Department of Agriculture regulations, "Animal Welfare", 9 CFR Subchapter A, Parts 1,2,3, and 4.

43. Termination Clauses.

- A. Termination for Convenience. When it is in the STATE's best interest, the STATE reserves the right to terminate this AGREEMENT, in whole or in part, at any time by providing a ten (10) day written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the STATE. If the CONTRACTOR has any property in its possession belonging to the STATE, the CONTRACTOR will account for the same, and dispose of it in the manner the STATE directs.
- B. Termination for Default.
1. In the case of a default or a material breach of this contract, the STATE may exercise any or all of the remedies enumerated in Article II Section 5 or Article II Section 56 Subsection B Paragraph 1, as applicable.
 2. 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 within twelve (12) months of execution of this AGREEMENT, or that the CONTRACTOR is otherwise not complying with the terms of this AGREEMENT. Termination shall be by written notice specifying the reason for termination and giving the CONTRACTOR thirty (30) days to correct the default. The STATE shall be the sole judge as to whether the CONTRACTOR's corrective measures are adequate. If the CONTRACTOR fails to remedy the breach or default or any of the terms, covenants, or conditions of this AGREEMENT to the STATE's satisfaction, the STATE shall have the right to terminate the AGREEMENT without any further obligation to the CONTRACTOR. Any such termination for default shall not preclude the STATE from also pursuing all available remedies against the CONTRACTOR.
 3. The STATE may terminate this contract upon finding that the CONTRACTOR is not operating the PROJECT equipment in accordance with the PROJECT description in Exhibit A of this AGREEMENT, or that the CONTRACTOR is otherwise not complying with the terms of this contract. Termination shall be by written notice specifying the reason for termination and giving the CONTRACTOR thirty (30) days to correct the default. The STATE shall be the sole judge as to whether the CONTRACTOR's corrective measures are adequate. If the CONTRACTOR fails to remedy to the STATE's satisfaction the breach or default of any of the terms, covenants, or conditions of this contract, the STATE shall have the right to terminate the contract without any further obligation to the CONTRACTOR. Any such termination for default shall not preclude the STATE from pursuing all available remedies against CONTRACTOR and its sureties for said breach or default. If this AGREEMENT is subject to termination for default, the STATE reserves the right to seize vehicles or equipment procured under this AGREEMENT.
 4. CONTRACTOR shall remit to the STATE the proportional amount of current market value that exceeds \$5,000 per unit at the time of disposition of PROJECT equipment, which shall be based on the Federal Share percentage of funds paid by CONTRACTOR under this AGREEMENT. Fair market value shall be deemed to be the value of the PROJECT equipment as determined by a competent appraisal at the time the equipment is withdrawn from use.
 5. CONTRACTOR shall return the equipment to the STATE in the same condition as when received by the CONTRACTOR, except for reasonable wear and tear resulting from its use. The parties shall thereupon determine the amount of compensation, if any, to be paid by the CONTRACTOR to the STATE in order to avoid any State liability to FTA or to others.
- C. Period of Performance Extension. If it is later determined by the STATE that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, and after determining a new delivery of performance schedule, the STATE may allow the CONTRACTOR to continue work or treat the termination as a termination for convenience.
- D. Mutual Termination. The PROJECT may also be terminated if the STATE and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

44. Disputes. The STATE and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes arising under this AGREEMENT informally. If the dispute persists, the CONTRACTOR shall submit a written demand for a decision regarding the dispute to the STATE's authorized representative for this AGREEMENT or his or her designee. The STATE's authorized representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have an opportunity to challenge the STATE's authorized representative's

determination but must make that challenge in writing within ten (10) working days to the STATE's Chief, Office of Federal Transit Grants or his/her designee. If the CONTRACTOR challenge is not made within the ten (10) day period, the STATE's authorized representative's original written decision shall become the final decision of the STATE. The STATE and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the STATE's Chief, Office of Federal Transit Grants or his/her designee shall be final, conclusive and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

45. Procurement.

- A. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the CONTRACTOR agrees that it will comply with the requirements of 49 USC Section 5323(h)(2) by refraining from using any Federal assistance funds awarded by the STATE on behalf of the FTA to support procurements using exclusionary or discriminatory specifications.
- B. For all procurements of commodities, property, supplies, equipment or services under an FTA assisted grant, the CONTRACTOR shall provide full and open competition and comply with the procurement requirements set forth in 49 USC Section 5325(a), applicable third-party procurement requirements of 49 USC Chapter 53, 49 USC Section 5325(b) to award a third-party contracting using a competitive procurement process, and other procurement requirements of Federal laws in effect now or as amended to the extent applicable. The CONTRACTOR shall prepare a bid or proposal package, including equipment and material specifications or a scope of work.
- C. Purchases over the federal micro-purchase threshold, or similar local threshold, which result in a third-party contract without an ongoing period of performance, shall be procured through a purchase order. Purchase orders shall contain all applicable federal third-party contract clauses. Upon request for reimbursement, the CONTRACTOR shall submit a copy of the purchase order to the STATE.
- D. The CONTRACTOR agrees that it may not use FTA assistance to support its procurements unless there is satisfactory compliance with federal laws and regulations. In accordance with applicable USDOT third-party procurement regulations at 2 CFR Part 1201 and the provisions of the Third-Party Contracting Circular, the following provisions apply to all procurements:
 1. To state clearly that the final contract award to any bidder or proposer requires prior written approval by the STATE and that procurement solicitations are consistent with the PROJECT description identified in Exhibit A.
 2. To comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 USC Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements. Also, to include all required Federal procurement provisions in each subcontract financed in whole or in part with Federal assistance provided by FTA.
 3. For all contracts and subcontracts financed with Federal assistance, to comply with cargo preference requirements of 46 USC Section 1241 and 46 CFR Part 381 when contracts involve equipment, materials, or commodities which may be transported by ocean vessels.
 4. In accordance with 49 USC Section 5325(e)(1), in the procurement of rolling stock, may not enter into a multi-year contract to purchase additional rolling stock and replacement parts with options exceeding five (5) years after the date of the original contract.
 5. To comply with 49 USC Section 5325(f), agrees that any third-party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
 6. To comply with the requirements of 49 USC Section 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.
 7. To comply with the requirements of 49 USC Section 5318(c) and (e) and FTA regulations, "Bus Testing", 49 CFR Part 665, including the certification that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or before authorizing final acceptance of that bus, that model of bus will have been tested at the Altoona Bus Research and Testing Center. The CONTRACTOR must obtain the final testing report and provide a copy of the report to the STATE.
 8. To require each bidder to certify that it has complied with 49 CFR Part 26, which requires each transit vehicle manufacturer to submit a certification that it has complied with FTA's DBE requirements.
 9. In subcontracts exceeding \$100,000, to comply with all applicable standards, orders, or regulations issued

pursuant to the Clean Air Act, as amended, 42 USC Section 7401 et seq. and federal Clean Water Act, as amended, 33 USC Section 1251 et seq. CONTRACTOR agrees to report and require each third-party contractor or subcontractor at any tier of the PROJECT to report any violation of these requirements resulting from any PROJECT implementation activity of a third-party contractor, subcontractor, or itself to FTA and the appropriate U.S. EPA Regional Office.

10. To comply with the mandatory energy standards and policies of the STATE's energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 USC Section 6201 et seq., and perform an energy assessment for any building constructed, reconstructed or modified with federal assistance.
11. To comply with mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act of 1975 (Public Law 94-163, 89 Statute 871, enacted December 22, 1975).
12. To the extent applicable, agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 USC Section 517(d), 23 USC Section 512, including any notes thereto, and 23 CFR Parts 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., and any other implementing directives FTA may issue at a later date, except to the extent the FTA determines otherwise in writing. Third-party contracts involving ITS must comply with Federal requirements.
13. In accordance with 40 CFR Part 85, "Control of Air Pollution from Mobile Sources," 40 CFR Part 86, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," and 40 CFR Part 600, "Fuel Economy of Motor Vehicles, the CONTRACTOR must include provisions in all third-party contract for procurement of rolling stock to ensure compliance with applicable Federal air pollution control and fuel economy regulations.
14. For PROJECTs designated as experimental, development, or research work, the CONTRACTOR must comply with patent and rights in data requirements in accordance with 37 CFR Part 401. The STATE and Federal government reserve a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and reserves the right to grant authority to others. The CONTRACTOR also agrees to include these requirements in each subcontract funded under the PROJECT.
15. CONTRACTOR shall refer to FTA "Best Practices Procurement Manual" for additional procurement guidance on procurement processes and any omissions applicable to the PROJECT. The CONTRACTOR's failure to comply with all mandates shall constitute a material breach of this AGREEMENT.
16. CONTRACTOR must comply with 2 CFR Part 225 or 2 CFR Part 230, as applicable, in determining whether PROJECT costs are allowable or unallowable. Where applicable, CONTRACTOR must comply with cost principles of FAR Chapter 1 Subpart 31.2.
17. CONTRACTOR must have written protest procedures describing its pre-bid/pre-proposal, post proposal, and post-award procedures. CONTRACTOR shall disclose the CONTRACTOR's protest procedures and the STATE's appeal process to all bidders. All CONTRACTOR's protest decisions must be dated and in writing. A protester must exhaust all administrative remedies with the CONTRACTOR before pursuing an appeal with the STATE. An appeal to the STATE must be filed no more than ten (10) calendar days from the date of the CONTRACTOR's protest decision, as evidenced by postmarked date. Reviews of protests by the STATE will be limited to:
 - a. CONTRACTOR's failure to have or follow its own protest procedures.
 - b. CONTRACTOR's failure to review a complaint or protest.
 - c. Violations of federal or state law or regulation.
18. Construction or Facility Improvement Contracts, including those issued to Third-Parties.
 - a. Davis-Bacon Act (contracts over \$2,000.00). In accordance with 49 USC Section 5333(a) and the implementing regulations of 29 CFR Part 5, the CONTRACTOR shall comply with the employee protection requirements of the Davis-Bacon Act for construction activities exceeding \$2,000 performed in connection with the PROJECT. The Davis-Bacon Act applies to contracts in excess of \$2,000 for construction, alteration, or repair of public buildings or public works and requires the inclusion of a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the U.S. Secretary of Labor.
 - b. Bonding. For contracts or subagreements exceeding \$100,000, the following bonding requirements must be included.

- i. Bid guarantee from each CONTRACTOR equivalent to five percent (5%) of the bid price
 - ii. Performance bond on the part of the CONTRACTOR for 100 percent (100%) of the contract price
 - iii. Payment bond in the amount of either fifty percent (50%) of the contract price if the contract price is not more than \$1 million dollars, or forty percent (40%) of the contract price if the contract price is more than \$1 million dollars
 - c. Copeland Anti-Kickback Act. For contracts or subagreements exceeding \$100,000 and in accordance with 18 USC Section 874 Copeland "Anti-Kickback" Act, 29 CFR Part 3 "Contractors and subcontractors on Public Building or Public Work Financed in part by Loans or Grants from the United States," the CONTRACTOR and subcontractor are prohibited from requiring, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled.
 19. Seismic Safety. The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all work performed under this contract, including work performed under a subagreement, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the PROJECT.
 20. Recycled Products. The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.
46. Bid or Proposal and Third-Party Contract Award. All procurement documents including, but not limited to, oral or written quotations, purchase orders, bid or proposal solicitation documents, CONTRACTOR's proposed third-party vendor selection documents, third-party contract modification or amendment documents, request for non-competitive bid, and use of assigned options (i.e. piggybacking) must be reviewed and approved by the STATE prior to the award of the third-party contract. No third-party contract awards of any type shall be made without prior written approval from the STATE. No third-party contract modifications of any type shall be made without prior written approval from the STATE. No exercise of optional periods of performance (Option Years) shall be made without prior written approval from the STATE. The CONTRACTOR, or procurement agent acting on its behalf, shall prepare the bid or proposal documents, solicit and receive competitive bids or proposals, evaluate the bids or proposals received, and select the lowest price compliant bid for award.
- A. The CONTRACTOR, or procurement agent acting on CONTRACTOR's behalf, shall forward to the STATE, at least twenty (20) business days prior to the release of the bid solicitation, a copy of the bid solicitation document, proposed third-party contract, independent cost estimate, and bidders list.
 - B. At least twenty (20) business days prior to contract award, the CONTRACTOR, or procurement agent acting on CONTRACTOR's behalf, shall forward to the STATE a copy of the proposed third-party contract, verification of the incorporation of FTA-required third-party contract clauses, proof that the bid or proposal was publicly advertised, list of all bids, proposals, or price quotations received, a copy of the selected bid or proposal, copy of the bids or proposals where prices were lower than the selected vendor's, an explanation of the basis for selecting the selected vendor and for rejecting lower bids, if any. In the case of a single bid, sole source, or negotiated price contract, this explanation shall include a statement by the CONTRACTOR that the price is fair and reasonable and that the basis for that determination is consistent with guidance in the Third-Party Contracting Circular.
 - C. At least twenty (20) business days prior to third-party contract modification or amendment implementation, the CONTRACTOR, or procurement agent acting on CONTRACTOR's behalf, shall forward to the STATE a copy of the proposed modification or amendment.
 - D. All third-party contracts, subcontracts and contract modifications, and exercising of Option Years funded under the PROJECT shall include essential elements including, but not restricted to, parties, price or rate of compensation, scope of work, contract timeline, contract termination and other legal considerations.
 - E. CONTRACTOR shall perform a cost or price analysis in connection with every procurement action funded under the PROJECT, including contract modifications and exercise of Option Years. Before receiving bids or proposals, CONTRACTOR must make independent cost estimates to determine price reasonableness.
47. FTA Regulations, Policies, Procedures and Directives. The CONTRACTOR shall at all times comply with all applicable FTA

regulations, policies, procedures and directive, including, without limitation, those listed directly or by reference in the USDOT FTA Master Agreement between the STATE and FTA, as they may be amended or revised from time to time, during the term of this AGREEMENT. The CONTRACTOR's failure to so comply shall constitute a material breach of this AGREEMENT. In the event any portion, term, condition or provision of this AGREEMENT should be deemed illegal or in conflict with the laws of the State of California or with federal law or otherwise be unenforceable, the remaining portion, terms, conditions or provisions shall not be affected thereby.

48. Incorporation of FTA Terms. The provisions in this AGREEMENT include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the AGREEMENT. All contractual provisions required by the USDOT, as set forth in the Third-Party Contracting Circular are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this AGREEMENT. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any STATE requests which would cause the STATE to be in violation of these Standard Terms and Conditions.
49. 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.
50. 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. The 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 the STATE. The CONTRACTOR shall notify the STATE, within ten (10) working days of any loss or damage, including accident, fire, vandalism, theft, to the PROJECT.
51. Useful Life Standard. In accordance with the Award Management Circular and consistent with the SMP, the following Useful Life Standard (ULS) shall determine when PROJECT property will no longer be subject to monitoring and reporting requirements. CONTRACTOR will be released from the monitoring and reporting requirements after the STATE has approved CONTRACTOR's request for disposition of PROJECT property through the STATE's EGM system. While age and mileage are the primary criteria used to determine the useful life of vehicles, this determination is based on the date the vehicle or other equipment was put into active service, not the actual model year of the vehicle. These criteria are subject to review by the 5310, 5311, or 5339 Program Manager, as applicable, if either factor is less than the value shown below.

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

52. Property Ownership and Relinquishment.

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

53. 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.

54. 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 CONTRACTOR.
- C. The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California, Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).
- D. The STATE, its officers, employees, and agents shall be named as additional insured.
- E. The STATE is designated as the Loss Payee for claims of damage to the insured vehicle(s).
- F. The STATE will not be responsible for any premiums or assessments on the policy.
- G. The CONTRACTOR, and/or third-party subcontractor, shall furnish to the STATE, before delivery of the PROJECT vehicle(s) to the CONTRACTOR, a certificate of insurance issued by a company licensed to write such insurance in California.
- H. Prior to the annual insurance policy expiration date, the CONTRACTOR shall furnish to the STATE a new certificate of insurance or other written evidence of insurance satisfactory to the STATE. At any time that such evidence of

insurance has not been provided, the STATE shall have the immediate right to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.

- I. The CONTRACTOR shall provide the STATE at least thirty (30) day notice of cancellation or material change of the vehicle insurance policy.
 - J. Public Agency or For-Profit CONTRACTORS. The following terms apply to all CONTRACTORS who are defined as a Public Agency or For-Profit entity, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:
 1. Property Damage: The CONTRACTOR shall place property damage per occurrence (combined single limit), whether the property of one or more claimants, in an amount not less than one million five hundred thousand dollars (\$1,500,000) for property damage liability in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) for property damage liability combined in respect to vehicles with seating capacity of sixteen (16) or more.
 2. Bodily Injury: The CONTRACTOR shall place bodily injury per occurrence (combined single limit) in an amount not less than one million five hundred thousand dollars (\$1,500,000) in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) in respect to vehicles with seating capacity of sixteen (16) or more.
 3. Vehicle Physical Damage: The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California, Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).
 - K. Non-Profit Agencies: The following terms apply to all CONTRACTORS who are defined as a non-profit agency, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:
 1. Property Damage: The CONTRACTOR shall place property damage per occurrence (combined single limit), whether the property of one or more claimants, in an amount not less than one million dollars (\$1,000,000) for property damage liability in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) for property damage liability in respect to vehicles with seating capacity of sixteen (16) or more.
 2. Bodily Injury: The CONTRACTOR shall place bodily injury per occurrence (combined single limit) in an amount not less than one million dollars (\$1,000,000) in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) for bodily injury in respect to vehicles with seating capacity of sixteen (16) or more.
 3. Vehicle Physical Damage: The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the STATE. This insurance shall include a provision designating the State of California, Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).
55. 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.
56. 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. In particular, the following clauses regarding DBE Contract Assurance, DBE Participation Goal, Continued Compliance and Prompt Payment and Return of Retainage clauses apply to this AGREEMENT and shall be included in every subcontract or subaward made by the CONTRACTOR.
1. **DBE Contract Assurance.** The CONTRACTOR, or SUBCONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR or SUBCONTRACTOR shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of [Federal] DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of the Standard Agreement between the STATE and the Awarding Agency, the termination of this contract by the Awarding Agency, or such other remedy the STATE or Awarding Agency deems appropriate, which may include, but is not limited to:
 - a. Withholding monthly progress payments;
 - b. Assessing sanctions;
 - c. Liquidated damages; and/or
 - d. Disqualifying the CONTRACTOR from future bidding as non-responsive.
 2. **DBE Participation Goal.** This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The contract goal for participation of Disadvantaged Business Enterprises (DBE) for this contract is [XX]%. Offerors are required to document sufficient DBE participation to meet the contract goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53 (3)(i)(A). Award of this contract is conditioned on submission of the following:
 - a. If the offer meets the DBE contract goal, the offeror must include a completed ADM-0227F form.
 - b. If the offer does not meet the DBE contract goal, the offeror must include a completed ADM-0312F form that documents the offeror's good faith efforts (GFE) and ADM-0227F form.
 - c. The contractor shall not terminate the DBE subcontractors listed on ADM-0227F without the Awarding Agency's prior written consent and concurrence from the DBELO. The Awarding Agency may provide such written consent only if the contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The contractor shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the contractor shall make good faith efforts (GFE) to find another DBE subcontractor to substitute for the original DBE and immediately notify the Awarding Agency in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.
 - d. Awarding Agency shall notify the Caltrans DBE Liaison Officer (DBELO) in the event the Awarding Agency finds the CONTRACTOR or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business days the finding is made.
 3. **Continued Compliance.** The Awarding Agency shall monitor the Contractor's DBE compliance during the life of this contract and submit to the state a completed ADM-0369 form in each their request for reimbursement (RFR) packet.
- C. **No Federal Government Obligations to Third Parties.** The CONTRACTOR agrees that, absent of the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in, or approval of, any solicitation or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.
- D. **Obligations on Behalf of the STATE.** The CONTRACTOR shall have no authority to contract for or on behalf of the STATE or to incur obligations on behalf of the STATE.

- E. STATE Approval of All Third-Party Contracts. The STATE shall approve in writing all proposed third-party contract agreements, Memoranda of Understanding, Intergovernmental Agreements, or similar documents relating to the performance of this 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.
57. Federal Prompt Payment and Return of Retainage.
- A. The Awarding Agency shall comply with 49 CFR Part 26.29 and ensure the contractor pay its subcontractors performing work satisfactorily completed related to this contract no later than seven (7) days after the contractor's receipt of payment for work from the Awarding Agency.
 - B. Unless the approved project is for Construction, the contractor shall not hold retainage (withhold retention) from any subcontractor. The state shall not hold retainage from any contractor.
 - C. If a dispute arises regarding Construction projects only, the contractor may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
 - D. The contractor is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than seven (7) days after the contractor's receipt of payment for that work from the State. In addition, the contractor is required to return any retainage payment to any subcontractor within seven (7) days after the subcontractor's work related to this Agreement is satisfactorily completed.
58. Narrowband Migration. The CONTRACTOR must comply with the Federal Communications Commission Public Notice DA09-2589 deadline for private land mobile radio services in the 150-174 MHz and 421-512 MHz bands which will migrate to narrowband (12.5 kHz or narrower) technology effective January 1, 2013.
59. Indemnification. Neither the 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 the STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CONTRACTOR and/or its agents, employees, and representatives under this AGREEMENT.
60. DBE Forms Referenced Herein. Forms ADM-0312F and ADM-0227F that are named in Section 56 are maintained, used and supplied by the STATE. CONTRACTOR shall use and complete these forms as directed by the STATE. The STATE shall determine the schedule for reporting of required DBE information and the submittal of these DBE forms.

ARTICLE III
SPECIAL TERMS AND CONDITIONS

1. **Purchase Order.** Upon approval by the STATE of a procurement award, the CONTRACTOR (or procurement agent acting on CONTRACTOR's behalf) may issue a purchase order for the PROJECT. Each purchase order shall be consistent with the approved bid award listed in Exhibit A, be consistent with Billing and Payment instructions listed in Article I of this AGREEMENT and include a reference to the STATE's contract number as assigned to this AGREEMENT.
2. **Disposition.** The disposition of the PROJECT and any PROJECT-related equipment or property shall be made in accordance with 49 USC Chapter 53, the applicable Program Circular, and the SMP. Disposition requests are generally submitted through the STATE's EGM system.
3. **Release of Title.** While the STATE is lienholder of a vehicle, CONTRACTOR is obligated to provide periodic reporting as described in Article III, even if the PROJECT's ULS has been exceeded. When the ULS has been achieved, the STATE shall remain the lien holder for vehicles or equipment until all steps in the Disposition process described in the preceding section are completed. The STATE solely determines whether the ULS has been achieved. ULS requirements are enumerated in Article II. The STATE may base its determination upon PROJECT mileage, PROJECT age or a combination of both. Upon determining the ULS has been achieved, the STATE shall release title to the CONTRACTOR. CONTRACTOR shall keep either PROJECT or proceeds from the sale of PROJECT in its public transportation program.
4. **Complementary Paratransit Service.** Any CONTRACTOR providing complementary paratransit service, certifies that it submitted to the STATE an initial plan for compliance with the complementary paratransit service provision by January 26, 1992, as required by 49 CFR Part 37, and has provided the STATE annual updates to its plan, as required by 49 CFR Part 37 Section 139(j).
5. **Reporting Requirements.** The CONTRACTOR must submit the following reports. Reporting shall be submitted no later than the date set by the STATE and submitted in a format designated by the STATE. The STATE may require reports be submitted through its EGM system. Late, inaccurate or non-reporting may result in the withholding of reimbursements and/or grounds for termination of the PROJECT or of this AGREEMENT.
 - A. **Federal Funding Accountability and Transparency Act (FFATA) Reporting.** CONTRACTOR on its own behalf and for any of its Subcontractors shall comply with the requirements of FFATA, as required by the FFATA Public Law 109-282, 31 U.S.C. 6101. If requested to do so by the STATE, CONTRACTOR shall submit required information by the date determined by the STATE to allow the STATE to timely fulfill its reporting obligations under FFATA.
 - B. **Milestone Reporting and Current Schedule.** The CONTRACTOR shall submit an annual report of progress made on the PROJECT no later than thirty (30) days after the close of the annual federal reporting period of October 1 through September 30. Milestone Reports are due no later than October 30. The STATE collects information regarding current PROJECT schedule, contemplated schedule changes and the reasons for such changes.
 - C. **Final Reporting.** The CONTRACTOR shall submit a final PROJECT report documenting final PROJECT costs. This report shall be in the format provided by the STATE, which may be available through the STATE's EGM system. For 5310 Program, this report shall include a narrative on PROJECT outcomes and a discussion of any program performance measures referenced in the APPLICATION.
 - D. **Program Specific Required Reports.**
 1. **5311 Program (including 5311(f) and CMAQ) and 5339 Program: National Transit Data (NTD) Reporting.** CONTRACTOR annually shall submit their NTD data in a timely manner as directed by the STATE. This requirement applies to all subrecipients that also receive FTA 5307 funds.
 2. **5311 Program Operating Assistance Projects: Drug and Alcohol Management Information System (DAMIS) Reporting.** CONTRACTOR shall submit their DAMIS data annually, as required by FTA.
 3. **5310 Program Capital and Mobility Management Projects: Bi-Annual Reporting.** The CONTRACTOR shall submit a Bi-Annual Report of vehicle/equipment usage, progress made on mobility management activities, or progress made on Local Procurement activities after each federal reporting period. The federal reporting periods run from October 1 through March 31; and from April 1 through September 30. Bi-Annual reports are due no later than April 30 and October 30 of each calendar year.
 4. **5310 Operating Assistance Reporting: Annual Reporting.** The CONTRACTOR shall submit an annual report of

progress made on the PROJECT no later than thirty (30) days after the close of the annual federal reporting period of October 1 through September 30. Annual reports are due no later than October 30.

6. Liability Insurance. In addition to Article II Section 53 Insurance, the following provisions shall also apply.
- A. The CONTRACTOR is responsible for any deductible or self-insured retention contained within the insurance program.
 - B. Coverage must be in force for the complete term of this AGREEMENT. If insurance expires during the term of the AGREEMENT, a new certificate must be received by the STATE at least ten (10) days after the expiration of this insurance. This new insurance must still meet the terms of this AGREEMENT.
 - C. In the event CONTRACTOR fails to keep in effect at all times the specified insurance coverage, the STATE may, in addition to any other remedies it may have, terminate this AGREEMENT upon the occurrence of such event, subject to the provisions of the AGREEMENT.
 - D. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the STATE.
 - E. Public Agency or For-Profit CONTRACTORS. The following terms apply to all CONTRACTORS who are defined as a Public Agency or For-Profit entity, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:
 - 1. Commercial General Liability, of which the liability limits shall be at least:
 - a. \$2,000,000 for each occurrence (combined single limit for bodily injury and property damage).
 - b. \$2,000,000 aggregate for products liability completed operations.
 - c. \$4,000,000 general aggregate. This general aggregate limit shall apply separately to the CONTRACTOR's work under this AGREEMENT.
 - d. \$15,000,000 umbrella or excess liability. For Projects over \$25,000,000 only, an additional \$10,000,000 umbrella or excess liability (for a total of \$25,000,000). Umbrella or excess policy shall include products liability completed operations coverage and may be subject to \$15,000,000 or \$25,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
 - 2. The STATE, including its officers, directors, agents, and employees, shall be named as additional insured under the Commercial General Liability policy with respect to liability arising out of or connected with work or operations performed by or on behalf of CONTRACTOR under this AGREEMENT.
 - 3. The policy shall stipulate that the insurance afforded the additional insured shall apply as primary insurance. Any other insurance or self-insurance maintained by the STATE will be excess only and shall not be called upon to contribute with this insurance.
 - F. Non-Profit Agencies. The following terms apply to all CONTRACTORS who are defined as a non-profit agency, regardless if they are providing the service as the prime CONTRACTOR or subcontractor:
 - 1. Commercial General Liability, of which the liability limits shall be at least:
 - a. \$2,000,000 for each occurrence (combined single limit for bodily injury and property damage).
 - b. \$2,000,000 aggregate for products completed operations.
 - c. \$4,000,000 general aggregate. This general aggregate limit shall apply separately to the CONTRACTOR's work under this AGREEMENT.
 - d. \$5,000,000 umbrella or excess liability. For Projects over \$25,000,000 only, an additional \$10,000,000 umbrella or excess liability (for a total of \$15,000,000). Umbrella or excess policy shall include products liability completed operations coverage and may be subject to \$5,000,000 or \$15,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
 - 2. The STATE, including its officers, directors, agents, and employees, shall be named as additional insured under the Commercial General Liability policy with respect to liability arising out of or connected with work or operations performed by or on behalf of CONTRACTOR under this AGREEMENT.
 - 3. The policy shall stipulate that the insurance afforded the additional insured shall apply as primary insurance. Any other insurance or self-insurance maintained by the STATE will be excess only and shall not be called upon to contribute with this insurance.

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