

1. 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**

2. The term of this Agreement is:

FROM: **December 18, 2020** TO: **December 31, 2023**

3. The parties agree to comply with the terms and conditions of the following Exhibits, which are by this reference made a part of the Agreement.


Exhibit A - 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	
PRINTED NAME AND TITLE OF PERSON SIGNING		
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	
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
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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.

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/cmog/policy_and_guidance/2013_guidance/cmog2013.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 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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