

**PLACER COUNTY**  
**PROCUREMENT SERVICES DIVISION**  
*on behalf of the*  
**DEPARTMENT OF PUBLIC WORKS**



**BOOK 1 OF 3**

**NOTICE TO CONTRACTORS,  
INSTRUCTIONS TO BIDDERS, AND DRAFT CONTRACT**

*for*

**TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART)  
CNG FUELING FACILITY UPGRADES**

**LOCATED IN TRUCKEE, CA**

**PROJECT NO. PJ02379**

**CONTRACT NO. 001339**

**FEDERAL TRANSIT ADMINISTRATION NO. CA-95-x193-02**

**BID NO. 20481**

FOR USE IN CONNECTION WITH AMENDED STANDARD SPECIFICATIONS DATED 2022, STANDARD PLANS DATED 2022, REVISED STANDARD PLANS AND SPECIFICATIONS DATED 2022, AND LABOR SURCHARGE AND EQUIPMENT RATES OF THE CALIFORNIA DEPARTMENT OF TRANSPORTATION INSOFAR AS THE SAME MAY APPLY AND IN ACCORDANCE WITH THE SPECIAL PROVISIONS.

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**PLACER COUNTY  
TAHOE TRUCKEE AREA REGIONAL TRANSIT(TART)  
CNG FUELING FACILITY UPGRADES  
CONTRACT NO. 001339  
FEDERAL TRANSIT ADMINISTRATION NO. CA-95-x193-02  
BID NO. 20481**

**TABLE OF CONTENTS**

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
NOTICE TO CONTRACTORS .....	5
INSTRUCTIONS TO BIDDERS .....	8
LOCATION MAP .....	14
CONTRACT DOCUMENTS.....	15
DRAFT CONTRACT.....	15
DRAFT CERTIFICATION LABOR CODE SECTION 1861 .....	96
DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION AND PARTICIPATION SCHEDULE .....	97
LETTER OF INTENT – DBE COMMITMENT.....	99
BOND FOR LABOR AND MATERIALS .....	100
BOND OF FAITHFUL PERFORMANCE.....	102

- END TABLE OF CONTENTS -

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## **NOTICE TO CONTRACTORS**

**NOTICE IS HEREBY GIVEN** that sealed bids will be received by the County of Placer (“County”) at the Office of Procurement Services prior to **11:00A.M., February 6, 2024**, for furnishing all labor, material, tax, transportation, equipment, and services necessary for the following project:

### **TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART) CNG FUELING FACILITY UPGRADES BID NO. 20481, F.T.A. NO. CA-95-x193-02**

Bids must be received by the County of Placer’s Bids&Tenders website not later than the date and time stated above and will be opened immediately after said time. Any bids received after the time specified shall be returned unopened.

**NTC-1.** Description of Work: Placer County fuels its Tahoe-based CNG fleet of buses and light duty vehicles with an ANGI manufactured duplex skid mounted CNG package with two Hurricane 50 HP 75 SCFM Compressors – Model CNG 75 compressors in a single skid enclosure. This unit was installed at the Tahoe Regional Transit (TART) yard in December of 2003. The compressors have been overhauled and replaced completely two times each, including within the last several years. Currently compressor A has 19,246 hours and compressor B has 24,552 hours as of December 1, 2023. The gas dryer is a Xebec Type HRBNGX twin tower automatic regeneration dryer enclosed in a separate enclosure from the compressor skid. There are four CNG storage vessels with a total storage capacity of 48,000 scf. A single dual hose fast fill dispenser is located under the fueling canopy alongside a diesel dispenser. There are three single hose time fill posts with breakaway NGV1 Type 1 nozzle located in the yard in outside bus parking stalls. This project is to add the following equipment to match the existing equipment. 1. A third 75 cfm compressor. 2. Two additional CNG storage vessels, and 3. Two additional time-fill fueling stanchions. It should be noted that the new compressor will be delivered in a factory installed skid, and will need to be removed prior to placement in the existing enclosure. The enclosure is designed to be accessed for this purpose, but should be left in the same condition upon completion.

The County has estimated cost of the Work to be: **Six Hundred and Sixty Thousand Dollars (\$660,000)**. The Number of Working Days for this project is **30**.

**Placer County has established a 3% goal Disadvantaged Business Enterprise (DBE) goal for this Contract.** Proposers are encouraged to obtain DBE participation for this contract. In April of 2009 Placer County adopted the California Department of Transportation (Caltrans) Implementation Agreement as a requirement to receive federal funding for projects. This established Placer County’s DBE Goal and Methodology providing for a Race-Conscious (RC) and Race-Neutral goal program. On June 22, 2012, the Department of Transportation announced a change to the Caltrans Disadvantaged Business Enterprise (DBE) Program. Contract goals for federally funded projects authorized on or after July 1, 2012, must include ALL DBE groups and any other groups whose members are certified as socially and economically disadvantaged.

As recipients of Federal Transit Administration, Placer County must comply with all federal regulations, and make every effort to encourage and assist in the outreach and participation of DBE firms. The goal of the program is to ensure non-discrimination and create a level playing field in which DBEs can compete fairly for Federal Transit Administration-assisted contracts. The current DBE Program includes a Race-Conscious component (RC DBE Program) that will require race-conscious contract specific goals to be incorporated into all DOT-funded consultant and construction contracts. Race-Conscious contract goals and Good Faith Efforts will be required as part of the program compliance and will include ALL certified DBEs.

**NTC-2. Obtaining Contract Documents:** Official copies of the Contract Documents for bidding may be downloaded free of charge at the following link: <https://placer.bidsandtenders.net>.

All questions concerning this project or the Contract Documents shall be submitted online via Bids&Tenders and must be received by the Office of Procurement Services on or before the bid opening date. The County makes no assurances that questions received within five (5) calendar days of the bid opening date will be answered prior to bid opening.

**NTC-3. Construction License:** The successful bidder must possess at all times a valid **Class A General Engineering Contractor License issued by the State of California** or a combination of the following classes: C-8 Concrete Contractor, , D-56 Trenching Contractor, D-40 Service Station Equipment, and all other classes required by the categories and types of work included in this contract at the time of the bid award. The Contractor shall be properly licensed from contract award through Contract acceptance.

The Work is subject to the payment of not less than prevailing wages under California Labor Code Section 1770 et seq. The work is subject to compliance monitoring and enforcement by the Department of Industrial Relations. No contractor or subcontractor may be awarded a contract for public work on a public works project awarded on or after April 1, 2015 unless registered with the Department of Industrial relations pursuant to Labor Code section 1725.5. Additional information regarding prevailing wage and CMU requirements is available at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm> and <https://www.dir.ca.gov/dlse/cmu/cmu.html>.

**NTC-4. Proposal Guarantee:** All bids must be sealed and accompanied by cash, cashier's check, certified check, or Bid Bond made payable to the County in the sum of not less than ten percent (10%) of the amount of the bid. For the purposes of this Section, "the amount of the bid" does not include alternates, if any.

The cash, cashier's check, certified check or a bond on the form included in the Contract Documents shall be given as a guarantee that the successful bidder will enter into a written contract within ten (10) days after being requested to do so and will be considered as the stipulated amount of liquidated damages in the event the bidder is unable to or refuses to execute a contract for the work. Upon an award to the successful Bidder, the security of unsuccessful bidders shall be returned in a reasonable period of time.

**NTC-5. Submission of Proposals:** Bids will be received by the County of Placer Office of the Purchasing Manager prior to the date and time referenced above, immediately after which time they will be publicly opened and read at said address. Bidders are strongly encouraged to submit their bids online in the Bid&Tenders system. Bids which are submitted in hard copy format shall be submitted in sealed envelopes addressed to the County of Placer Office of Procurement Services, 2964 Richardson Drive, Auburn, CA 95603 and shall identified on the outside of the parcel by the project name and bid number. Faxed, e-mailed, or electronic bid responses will be rejected.

Bids shall be made upon the form(s) provided in the bid documents. No bidder may withdraw its bid for a period of **Sixty (60) days** after the time set for the opening of bids.

**NTC-6. Award:** The Contract, if it is awarded, shall be awarded to the lowest base bid from a responsible bidder whose proposal complies with the specified requirements. The award of Contract will be made by the Placer County Board of Supervisors. The Contractor shall execute and return the Contract, with the required bonds and insurance certificate, within ten (10) calendar days after notice of award.

**NTC-7. Rejection of Bids:** The County reserves the right to reject any or all bids. The County reserves the right to waive any minor or immaterial irregularities in the bids.

**NTC-8. Bonds:** The successful bidder shall be required to furnish both a payment bond in an amount equal to one hundred percent (100%) of the Contract price and a faithful performance bond in an amount equal to one hundred percent (100%) of the Contract price on the form set forth in the Contract Documents.

**NTC-9. Substitution of Securities: NTC-9. Substitution of Securities:** Bidders are hereby notified that the successful bidder may substitute securities for any monies withheld by County to insure performance of Contract pursuant to Public Contracts Section 22300. This section provides that the Contract may elect to receive 100 percent of payments due under the Contract from time to time, without retention from any portion of the payment by the Owner, by depositing eligible securities of equivalent value with the Owner or qualified escrow agent in accordance with the provisions of Public Contract Code Section 22300(e).

By order of the Placer County Board of Supervisors, January 9<sup>th</sup> 2024.

## INSTRUCTIONS TO BIDDERS

**IB-1. Introduction:** Each bid shall be fully in accordance with the Contract Documents. Contract Documents are available as stated in the Notice to Bidders. These instructions are intended to assist the bidder with the preparation of a bid for the work, but the bidder shall remain solely responsible for the submission of a fully responsive bid. See Section 2 “Bidding” of the Standard Specifications.

**IB-2. Local Conditions:**

- (a) See sections 2-1.07 “Job Site and Document Examination” and Section 2-1.06 “Bid Documents” of the Standard Specifications.
- (b) The bidder shall carefully examine the site of the work contemplated and the Contract Documents. The submission of a proposal shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and quantities of work to be performed and the materials to be furnished, and as to the requirements of the Contract Documents.
- (c) The availability or use of information described in this Section or the special conditions is not to be construed in any way as a waiver of the provisions of this Section. The bidder is cautioned to make such an investigation and examination as it deems necessary to satisfy itself as to conditions to be encountered in the performance of the work and, with respect to possible local material sources, the quality and quantity of material available from such property and the type and extent of processing that may be required in order to produce material conforming to the requirements of the Contract Documents.
- (d) The quantities of work or material stated in the unit price items of the Bidding Schedule are given only as a basis for the comparison of bids, and the County does not represent or warrant that the actual amount of work or material will correspond therewith, but reserves the right to increase or decrease the quantity of any unit price item of the work as may be deemed necessary or expedient.
- (e) Each bidder shall inform itself of, and the bidder awarded the Contract shall comply with, Federal, state and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and similar subjects.

**IB-3. Form of Bid**

- (a) Bids shall be submitted only on the forms attached to this bid solicitation on Bids&Tenders™. The bidder shall state in words and figures the price bid for the work, or the price bid for each unit item of work and the unit item totals, as the case may be.

Blank spaces in the bid shall be properly completed. The language and form of the bid must not be changed and no additions shall be made to the items mentioned therein. Unauthorized conditions, limitations or provisions attached to a bid shall render the bid nonresponsive. If erasures, interlineations or other changes appear on the form, each erasure, interlineation or change must be initialed by the person signing the bid. Alternative bids will not be considered unless specifically provided for in the Bid Proposal Form.

- (b) Bids will be considered only from persons licensed as required under applicable provisions of the Contractors License Law (Business and Professions Code, Section 7000, et seq.) and rules and regulations adopted pursuant thereto. Each bidder shall insert its type of contractor's license, license number, and other requested information in the place provided in the bid.

**IB-4. Interpretation of Contract Documents:** Any explanation desired by the bidders regarding the meaning or interpretation of any of the Contract Documents must be requested in writing on Bids&Tenders™ with sufficient allowance of time for receipt of reply before the time set for opening of bids. Any such explanations or interpretations will be made in the form of addenda to the documents and will be furnished to all bidders. No representative of the County is authorized to give oral explanations or interpretations of Contract Documents, and a submission of a bid constitutes agreement by the bidder that it has placed no reliance on any such oral explanation or interpretation. However, the County may, upon inquiry by bidder, orally direct the bidder's attention to specific provisions of the Contract Documents which cover the subject of the inquiry. **The County makes no assurances that questions received within five (5) calendar days of the bid opening date will be answered.**

**IB-5. Addenda:** See "Instructions" section of this bid in Bids&Tenders™

**IB-6. Prevailing Wages:** The Work is subject to the payment of not less than prevailing wages under Labor Code Section 1770 et seq. Bidders are hereby notified that the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the Work under the contract which will be awarded to the successful bidder. Copies are on file and available at <http://www.dir.ca.gov/dsr/DPeWageDetermination.htm>. Bidders are further notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Further information on Compliance Monitoring Unit requirements can be found at <https://www.dir.ca.gov/dlse/cmu/cmu.html>.

No contractor or subcontractor may be listed on a bid proposal for a public works project submitted on or after March 1, 2015 unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5, with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a).

No contractor or subcontractor may be awarded a contract for public work on a public works project awarded on or after April 1, 2015 unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

Contractor agrees to comply with all related provisions of the Labor Code, including but not limited to, the provisions of Labor Code Section 1775 relating to the payment of prevailing wages, Section 1777.5 relating to the employment of apprentices and Section 1811-1813 relating to the payment of Overtime.

See Section 7-1.02K "Labor Code" of the Standard Specifications.

The federal minimum wage rates for this Contract as determined by the United States Secretary of Labor are available at <https://beta.sam.gov/>. Addenda to modify the Federal minimum wage rates, if necessary, will be issued to plan holders. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar

classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The Department will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate, which most closely approximates the duties of the employees in question.

**IB-7. Alternates:** N/A

**IB-8. List of Subcontractors:** See "List of Subcontractors" section of this bid in Bids&Tenders™.

**IB-9. Substitutions:** Complete the List of Proposed Substitutions form in Bids&Tenders™. Pursuant to Public Contract Code Section 3400, the following substitutions are proposed as "Equals" for those set forth in the Contract. All data substantiating the proposed substitutions shall be submitted to the County upon request.

**IB-10. Submissions of Bids:** The instructions in this section are applicable to hard copy submissions only. Refer to the Bids&Tenders™ instructions for submitting electronic bid submissions. **The Country strongly encourages bidders to submit electronic bid submissions in lieu of hard copy bid submissions.** Bids shall be made upon the form(s) provided in the bid documents. Mailed or hand-delivered bids must be received by the County prior to the Bid Closing date and time as set forth in the Bid Solicitation in Bids&Tenders™. Hard copy bids shall be submitted in sealed envelopes addressed to the Office of Procurement Services, 2964 Richardson Drive, Auburn, CA 95603 and shall identify the work by the project name and number. Bidders are responsible to see that their bids are submitted at the time and place named for the opening of bids.

Bidders, their representatives, and other interested parties are invited to be present at the bid opening.

**IB-11. Required Documents:** All bidders must submit the required bid documents and affidavits described in the Bid. Bidder's failure to include all of the foregoing documents may render his/her bid nonresponsive and may be cause for rejection of the bid.

**IB-12. Bid Security:** See "Security Instructions" section of this bid in Bids&Tenders™ for Bid Security requirements.

**IB-13. Discrepancies:** In the event of a discrepancy between words and figures on a bid item, words shall prevail. In the event of a discrepancy between a price bid for a unit item and the unit item total, the price bid for the unit item shall prevail.

**IB-14. Relief of Bidders:** Attention is directed to the Public Contract Code Sections 5100-5107 concerning relief of bidders. In particular, attention is directed to the requirements therein that if the bidder claims a mistake was made in its bid, the bidder shall provide the county with written notice of the alleged mistake within five days after the bid opening.

**IB-15. Withdrawal of Bid:** No bid may be withdrawn for sixty (60) days after the time set for the bid closing. See "Instructions" section of this bid in Bids&Tenders™.

**IB-16. Award of Contract – Protests:** The County reserves the right to accept or reject any and all

bids and to waive any minor or immaterial irregularity in any bid. Contract awards exceeding the specified threshold described in the Procurement Policy will be made by the Board of Supervisors.

The Contract, if it is awarded, will be awarded to the lowest responsive and responsible bidder whose bid complies with the requirements set forth herein. The lowest bidder shall be the bidder submitting the lowest price for the work as specified. In the case of a lump sum bid, the lowest price for the work shall be the lowest lump sum price bid, excluding all alternates. In the case of a unit item bid, the lowest price for the work shall be the additive total of the price bid on each unit item total, as calculated by the County. Bidders are informed that protests as to the award of the contract are subject to the provisions of Section 5.0 of the Placer County Procurement Policy which is available at this link: <https://www.placer.ca.gov/1416/Procurement-Policy>. Placer County will use email to notify bidders of the decision of the County on the award of this Bid. Therefore, it is essential that bidders identify one or more contact persons on the Bid Proposal Form who have frequent access to email. The County will not be responsible for delivery failure of email due to firewalls, spam filters, or individuals' failure to retrieve email messages. The County will not attempt to re-deliver any messages which fail due to no fault of the County.

**IB-17. Contract Bonds:** The successful bidder shall furnish both a Performance Bond and a Payment Bond (hereinafter collectively "Bonds") in the full amount of the Contract on the forms provided in the Contract Documents.

The Bonds shall be obtained from an admitted surety, which is licensed by the State of California to act as surety upon bonds and undertakings and which maintains in this State at least one office for the conduct of its business. The surety shall furnish reports as to its financial condition from time to time upon request by the County.

In the event of any conflict between the terms of the Contract and the terms of the Bonds, the terms of the Contract shall control and the Bonds shall be deemed to be amended thereby.

**IB-18. Substitution of Securities for Monies Withheld:** Bidders are hereby notified that the successful bidder may substitute securities for any **monies** withheld by County to insure performance of the Contract pursuant to Public Contracts Section 22300. This section provides that the Contractor may elect to receive 100 percent of payments due under the Contract from time to time, without retention from any portion of the payment by the Owner, by depositing eligible securities of equivalent value with the Owner or qualified escrow agent in accordance with the provisions of Public Contract Code Section 22300(e).

**IB-19. Execution of Contract:** See Section 3 "Contract Award and Execution" of the Standard Specifications and Section 3 "Contract Award" of the Special Provisions. The successful bidder will be notified in writing by the County of the award of the Contract. The successful bidder will be required to execute and return the Contract, together with the Performance and Payment Bonds, and the required insurance endorsements to the County following receipt of such Notice of Award in the timeframe indicated in Section 3-1.18 of the Special Provisions. Failure to do so shall be cause for forfeiture of the Bid Security which shall be retained as liquidated damages, and it is agreed that the bond sum is a fair estimate of the amount of damages that the County will sustain by reason of such failure. The County will promptly determine whether such Contract, Bonds and insurance are as required by the Contract Documents, and upon such determination will forward a copy of the Contract and a Notice to Proceed with the work to the successful bidder. IN the vent of a failure of the lowest responsible bidder to sign and return the Contract with acceptable Bonds and insurance as prescribed herein, the County may, at its

discretion, choose to re-bid the Contract or to award the Contract to the next lowest responsible bidder, until the Contract is re-bid or awarded.

**IB-20. Time of Completion – Liquidated Damages:** The Number of Working Days for this project is **30** See the Draft Contract, Section 8 “Prosecution and Progress” of the Standard Specifications and Section 8-1.10C of the Special Provisions.

**IB-21. Escrow of Bid Documents:** Upon the request of the County, the successful bidder shall submit all documentation used by the Contractor and sub-contractors in arriving at the bid upon which the Contract was awarded (“Bid Documentation”). The Bid Documentation shall include, but not be limited to any documents, pictures, or writings which relate to, arise out of, or constitute in any way notes, memoranda, phone logs, subcontractor and material estimates, computations, or the like used by, compiled by, or drafted by the Contractor or its agents or sub-contractors in arriving at its bid for the Project. The Bid Documentation shall remain with the County and may be referenced by either party in the event that a claim or a dispute arises from the performance by the Contractor of the Work.

**IB-22. General Health Measures and Conduct:** The successful bidder/Contractor shall be solely responsible for ensuring that the Contractor’s employees or sub-contractors are physically capable of performing the services described herein on County premises. The Contractor shall take all necessary measures to ensure that the Contractor’s employees and sub-contractors receive sufficient training regarding contagious and infectious diseases and preventative measures to be taken within the workplace to protect the Contractor’s employees and sub-contractors from exposure to or exposing others (including but not limited to County personnel and the public) to contagious and infectious diseases. Should the County or the Contractor observe any of their employees or sub-contractors exhibiting symptoms of a contagious and/or infectious disease (including but not limited to COVID-19) either prior to or during the performance of services on County premises, the Contractor shall immediately take measures to minimize or prevent exposure to County employees and/or the public consistent with government guidance and best practices. Such removal shall not be considered a basis for employee’s claim for compensation or damages against the County, or any of its officers or agents. The employee shall not return to work on County premises until Contractor determines that the situation is resolved.

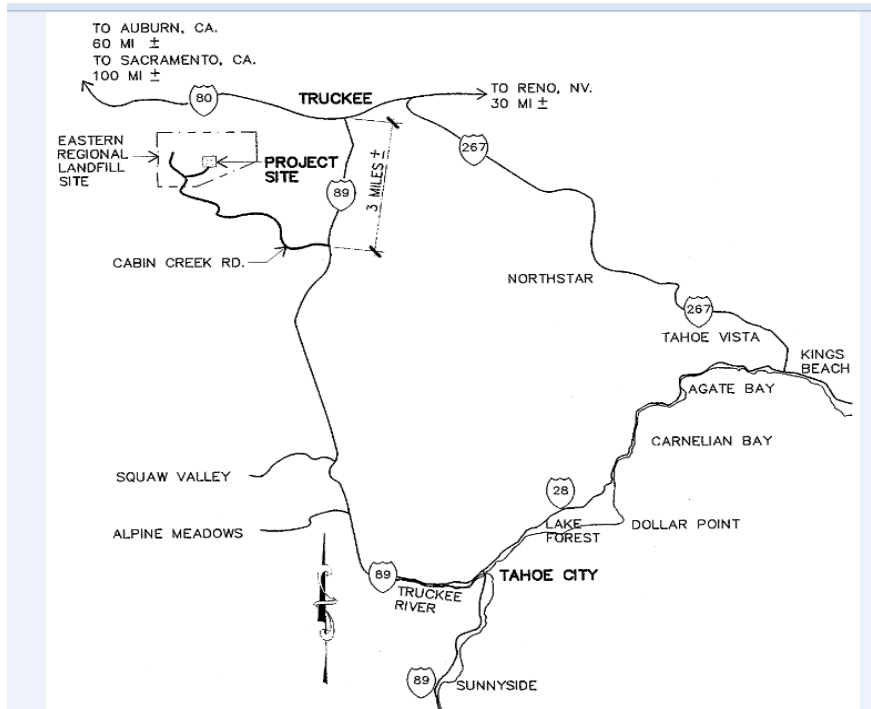
**IB-23 Bid Item List:** Utilize the Bid Item List on the Bids&Tenders™ website to complete your bid. When an item of work is designated as (F) or (P-F) in the Bid Item List, the estimate quantity shall be the final pay quantity. When an item of work is designated as (P) or (P-F) in the Engineer’s Estimate, then that item is subject to partial payment as materials furnished but not incorporated in the work. The Department does not adjust the unit price for an increase or decrease in the bid item quantity of items indicated by a (W) in the bid list.

The quantities shown in the Bid Item List are approximate only, being given as a basis for comparison of bids, and the Department of Public Works does not express or by implication agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary, or advisable by the Engineer.

**IB-24 Forms to be Submitted with Bid:** Complete and submit the required forms provided on the Bids&Tenders™ website for a responsive bid. Failure to include all of the required forms may render your bid non-responsive. The County reserves the right to reject any or all bids and to waive any irregularities in bids. Complete the list of forms that are provided on the Bids&Tenders™ website. Upload the signed documents and submit them for a responsive bid.

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# VICINITY MAP



# LOCATION MAP



## CONTRACT DOCUMENTS

The following documents are for information only and are not to be completed with the bid.

DRAFT CONTRACT  
NO. 001339

STATE OF CALIFORNIA  
COUNTY OF PLACER  
DEPARTMENT OF PUBLIC WORKS

## CONSTRUCTION CONTRACT

THIS CONTRACT is made on the date set forth below, by and between the COUNTY OF PLACER, a political subdivision of the State of California (hereinafter "COUNTY"), and \_\_\_\_\_, (A type in business form and state of license i.e., A California Corporation, hereinafter "CONTRACTOR"). The COUNTY and CONTRACTOR for the consideration hereinafter mentioned agree as follows:

### ARTICLE 1: SCOPE OF WORK

**CONTRACTOR agrees to furnish all work, labor, tools, materials, transportation, equipment, services, and other means of construction necessary to construct and complete in a good and workmanlike manner and substantial manner, those certain improvements as called for, and in the manner designated in, and in strict conformity with Contract No. 001339, Federal Transit Administration No. CA-95-x193-02 entitled: TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART) CNG FUELING FACILITY UPGRADES Project, hereafter "PROJECT", in compliance with the Contract Documents as described in Article 3.**

- 1.2. CONTRACTOR understands and agrees that the work, labor, tools, materials, transportation, equipment, incidentals, services and other means of construction for the Project shall be furnished and the work performed as required in the Contract Documents under the sole direction and control of CONTRACTOR, and subject to the inspection and approval of the COUNTY, or its representatives.

### ARTICLE 2: CONTRACT PRICE

- 2.1. The County agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of \_\_\_\_\_ (\$) \_\_\_\_\_ subject to additions and deductions as provided in the Contract Documents.

### ARTICLE 3: CONTRACT DOCUMENTS

- 3.1. The complete Contract consists of the following documents, to wit:
- Notice to Bidders
  - Executed Bid, including the Bidder's Bond
  - Construction Contract
  - Project Plans for this Project

**Bid No. 20481 -**  
TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART) CNG FUELING FACILITY UPGRADES - BID BOOK 1  
CONTRACT NO. 001339, F.T.A. NO. **CA-95-x193-02**

Special Provisions for this Project  
Caltrans Standard Specifications, dated 2022  
Revised Standard Specifications for this Project  
Caltrans Standard Plans, dated 2022  
Equipment Rental Rates and General Prevailing Wage Rates of the State of California,  
Department of Transportation, and where applicable, Federal wage rates and Section 7-  
1.11 of the California Department of Transportation Standard Specifications, Federal  
Laws for Federal-aid Contracts  
Executed Performance Bond  
Executed Payment Bond

- 3.2. Any and all obligations of the COUNTY and the CONTRACTOR are fully set forth and described in the above documents. All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all said documents. The documents comprising the complete Contract are sometimes collectively referred to as the Contract Documents.

#### **ARTICLE 4: CHANGED CONDITIONS**

- 4.1. Differing Site Conditions
- 4.1.a During progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
- 4.1.b Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
- 4.1.c No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
- 4.1.d No contract adjustment will be allowed under this clause for any effects caused on unchanged work.
- 4.2. Suspensions of Work Ordered by the Engineer
- 4.2.a If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

- 4.2.b Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the contract is warranted.
- 4.2.c No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.
- 4.2.d No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.
- 4.3. Significant Changes in the Character of Work
- 4.3.a The Engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.
- 4.3.b If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work.
- 4.3.c If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
- 4.3.d The term "significant change" shall be construed to apply only to the following circumstances:

When the character of the work as lathered differs materially in kind or nature from that involved or included in the original proposed construction; or

When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

## **ARTICLE 5: BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES**

- 5.1. The Contractor shall begin work within 15 calendar days after the contract has been approved by the attorney appointed and authorized to represent the County of Placer. This work shall be diligently prosecuted to completion before the expiration of **30 WORKING DAYS** beginning on the fifteenth calendar day after approval of the contract.

- 5.2 The Contractor shall pay to the County of PLACER the sum of **\$3,000 per day**, for each and every calendar day delay in finishing the work in excess of the number of working days prescribed above.

#### **ARTICLE 6: INDEMNITY & HOLD HARMLESS**

- 6.1. The COUNTY, and all officers, agents, employees, outside parties hired to inspect and/or design the work, and volunteers thereof connected with the work, including but not limited to, the Director and the Engineer, shall not be answerable or accountable in any manner: for the loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person, either worker or the public; or damage to property from any cause which may have been prevented by CONTRACTOR or his or her workers or anyone employed by him/her.
- 6.2. CONTRACTOR shall be responsible for any liability imposed by law and for injuries to or death of any person including, but not limited to, workmen and the public, or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time prior to its completion and final acceptance.
- 6.3. The CONTRACTOR shall indemnify and save harmless the COUNTY, and all officers, employees, or outside parties hired to inspect and/or design the work and volunteers thereof connected with the work, including but not limited to, the Director and the Engineer, from all claims, suits, or actions of every name, kind, and description brought forth on or on account of injuries to or death of any person, including but not limited to, workmen and the public or damage to property resulting from the performance of the contract except as otherwise provided by statute. The duty of CONTRACTOR to indemnify and save harmless include the duties to defend as set forth in Civil Code Section 2778.
- 6.4. With respect to third-party claims against the CONTRACTOR, the CONTRACTOR waives any and all rights to any type of express or implied indemnity against the COUNTY, its officers, or employees.
- 6.5. It is the intent of the parties that the CONTRACTOR shall indemnify and hold harmless the COUNTY, its officers, employees and agents, from any and all claims, suits, or actions as set forth above, regardless of the existence or degree of fault or negligence on the part of the COUNTY, the CONTRACTOR, the subcontractor or employee of any of these, other than the active negligence of the COUNTY, its officers and employees.

#### **ARTICLE 7: INSURANCE**

- 7.1. CONTRACTOR shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A:VII.
- 7.2. Worker's Compensation and Employers Liability Insurance:
- Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than the following:
- One Million dollars (\$1,000,000) each accident for bodily injury by accident
- One Million dollars (\$1,000,000) policy limit for bodily injury by disease
- One Million dollars (\$1,000,000) each employee for bodily injury by disease

If there is an exposure of injury to PROVIDER's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice: "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

Waiver of Subrogation: The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the CONTRACTOR.

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers Compensation insurance. Certificates of Compensation shall be filed forthwith with the COUNTY upon demand.

7.3. General Liability Insurance:

7.3.a Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONTRACTOR, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for: premises, operations; products and completed operations; contractual liability insuring the obligations assumed by PROVIDER in this Agreement; broad form property damage (including completed operations); explosion, collapse, and underground hazards; personal injury liability and

7.3.b Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limits, where applicable, shall apply separately to CONTRACTOR'S work under the Contract. One of the following forms is required: Comprehensive General Liability; Commercial General Liability (Occurrence); or Commercial General Liability (Claims Made).

7.3.c If CONTRACTOR carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal Injury Liability of:

- \$2,000,000 each occurrence
- \$4,000,000 aggregate

7.3.d If CONTRACTOR carries a Commercial General Liability (Occurrence) policy:

1. The limits of liability shall not be less than:

- \$2,000,000 each occurrence (combined single limit for bodily injury and property damage)
- \$2,000,000 for Personal Injury Liability
- \$2,000,000 for Products-Completed Operations
- \$4,000,000 General Aggregate

**Bid No. 20481 -**

TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART) CNG FUELING FACILITY UPGRADES - BID BOOK 1  
CONTRACT NO. 001339, F.T.A. NO. CA-95-x193-02

2. If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be \$4,000,000.

7.3.e Special Claims Made Policy Form Provisions:

CONTRACTOR shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

The limits of liability shall not be less than:

- \$2,000,000 each occurrence (combined single limit for bodily injury and property damage)
- \$2,000,000 for Personal Injury Liability
- \$4,000,000 aggregate for Products-Completed Operations
- \$4,000,000 General Aggregate

The insurance coverage provided by CONTRACTOR shall contain language providing coverage up to one (1) year following the completion of the Contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a Claims Made Policy.

7.4. Conformity of Coverages:

- 7.4.a. If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies, or all shall be Claims Made Liability policies if approved by the COUNTY as noted above. In no case shall the types of coverages be different.

7.5. Additional Requirements:

- 7.5.a. Premium Payments: The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.
- 7.5.b. Policy Deductibles: The CONTRACTOR shall be responsible for all deductibles in all of CONTRACTOR'S insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.
- 7.5.c. CONTRACTOR'S Obligations: CONTRACTOR'S indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.
- 7.5.d. Verification of Coverage: CONTRACTOR shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Bid No. 20481 -**

TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART) CNG FUELING FACILITY UPGRADES - BID BOOK 1  
CONTRACT NO. 001339, F.T.A. NO. **CA-95-x193-02**

7.5.e Material Breach: Failure of the CONTRACTOR to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

7.6. Endorsements:

7.6.a Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

"The County of Placer, and its officers, agents, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

"The insurance provided by the CONTRACTOR, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."

"This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

7.7. Automobile Liability Insurance:

7.7.a CONTRACTOR shall provide Automobile Liability insurance covering bodily injury and property damage in an amount no less than Two Million dollars (\$2,000,000) combined single limit for each occurrence.

7.7.b Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

7.8. Professional Liability Insurance (Errors & Omissions)

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than \$1,000,000.

7.9. Pollution Liability

Contractor shall purchase and thereafter maintain, so long as such insurance is available on a commercially reasonable basis, Pollution Liability insurance in the amount of \$1,000,000 covering liability arising from the sudden and accidental release of pollution on the Facility Site.

## **ARTICLE 8: PRECEDENCE IN CONFLICTING DOCUMENTS**

8.1. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said CONTRACTOR, then this instrument shall control and nothing herein shall be considered as acceptance of the said terms of said proposal conflicting herewith.

## **ARTICLE 9: BOND REQUIREMENTS**

- 9.1. CONTRACTOR shall furnish both a Faithful Performance Bond and a Payment Bond (hereinafter collectively "Bonds") in the full amount of the Contract on the forms provided by the COUNTY. COUNTY shall retain the Performance Bond for a one-year guarantee period from the date of the COUNTY'S acceptance of the work.
- 9.2. The bonds shall be obtained from a California admitted surety that is licensed by the State of California to act as surety upon bonds and undertakings and which maintains in this State at least one office for the conduct of its business. The surety shall furnish reports as to its financial condition from time to time upon request by COUNTY.
- 9.3. In case of any conflict between the terms of the Contract and the terms of the Bonds, the terms of the Contract shall control and the Bonds shall be deemed to be amended thereby.
- 9.4. CONTRACTOR agrees to obtain the consent of the surety, if required, to any change, extension of time, alteration, or addition to any of the terms of the Contract Documents.

#### **ARTICLE 10: COMPLIANCE WITH LAWS**

- 10.1. CONTRACTOR is an independent contractor and shall, at its sole cost and expense comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work, obtain all necessary permits (unless specifically stated elsewhere in the Contract Documents to be obtained by COUNTY) and licenses therefore, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all Federal and State taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries or any remuneration paid to CONTRACTOR'S employees, whether levied under existing or subsequently enacted laws, rules or regulations. CONTRACTOR shall also pay all property tax assessments on materials or equipment used until acceptance by COUNTY. If any discrepancy or inconsistency is discovered in any of the Contract Documents in relation to any such law, rule, ordinance, regulation, order or decree, the CONTRACTOR shall forthwith report the same to the COUNTY in writing.
- 10.2. Without limitation, materials furnished and performance by CONTRACTOR hereunder shall comply with Safety Orders of the Division of Industrial Safety, State of California, Federal Safety regulations of the Bureau of Labor, Department of Labor; and any other applicable state or federal regulations.
- 10.3. CONTRACTOR, upon request, shall furnish evidence satisfactory to COUNTY that any or all of the foregoing obligations have been or are being fulfilled. CONTRACTOR warrants to COUNTY that it is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the work, and that it has, or will have, throughout the progress of the work, the necessary experience, skill, and financial resources to enable it to perform this Contract.
- 10.4. CONTRACTOR is required to ensure that material safety data sheets (MSDS's) for any material requiring a MSDS pursuant to any federal or state law are available in a readily accessible place on the Project premises. CONTRACTOR is also required to insure (a) the proper labeling of any substance brought onto the Project premises by CONTRACTOR or any subcontractors or material suppliers, and (b) that the person(s) working with the material, or within the general area of the material, are appropriately informed about the hazards of the substance and follow proper handling and protection procedures.

10.5. CONTRACTOR is required to comply with Health & Safety Sections 25249 et seq. (Prop. 65), which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer.

10.6. Title VI Assurances

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.

Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate and shall set forth what efforts CONTRACTOR has made to obtain the information.

Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- Withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
- Cancellation, termination or suspension of the Agreement, in whole or in part.

Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub- procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

10.6.a. US DOT Order 1050.2A:

During the performance of this contract, the CONTRACTOR, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with

**Bid No. 20481 -**

TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART) CNG FUELING FACILITY UPGRADES - BID BOOK 1  
CONTRACT NO. 001339, F.T.A. NO. **CA-95-x193-02**

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### 10.7. Use of United State-Flag Vessels

The CONTRACTOR agrees-

- (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carries, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (2) To Furnish within 20 days following the date of loading for shipments originating within the United State or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

#### 10.8. Buy America

Furnish steel and iron materials to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the steel and iron were melted and manufactured. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending,

**Bid No. 20481 -**

TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART) CNG FUELING FACILITY UPGRADES - BID BOOK 1  
CONTRACT NO. 001339, F.T.A. NO. **CA-95-x193-02**

- grinding, and drilling) or chemical composition;
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

#### **ARTICLE 11: PROGRESS SCHEDULE**

- 11.1. The CONTRACTOR shall submit within ten (10) days (or as specified in the Special Provisions for this Project) after execution of the Contract a detailed work schedule or schedules that details the actions of the CONTRACTOR and Subcontractors working at the Site in accordance with the requirements specified in Special Provisions. This schedule(s) shall show the dates at which the CONTRACTOR will start and complete the several parts of the work and shall conform to the completion time specified in the Contract. The COUNTY may submit comments on the work schedule. Acceptance of the schedule by COUNTY shall not constitute approval of the Plan by CONTRACTOR for completion of the work.
- 11.2. The CONTRACTOR shall review and, if necessary, revise the progress schedule at least once a month or as specified in the Special Provisions for this Project. In any event, the CONTRACTOR shall submit a current schedule to the Engineer at the Engineer's request at any time during the Contract period.
- 11.3. No progress payments will be made for any work performed until a satisfactory schedule has been submitted and approved by the Engineer. An updated schedule shall be required from the CONTRACTOR if the project falls ten (10) working days behind schedule. For delays or portions of delays for which the CONTRACTOR is responsible, no payment will be made or time extension allowed for increase in work force, equipment, and working hours needed to put the Project on schedule.

#### **ARTICLE 12: PROMPT PAYMENT PROVISIONS**

- 12.1. Prompt payment provisions in accordance with Section 20104.50 of the Public Contract Code shall apply to this contract.
- 12.2. If COUNTY fails to make a progress payment within thirty (30) days after receipt of an undisputed and properly submitted payment request from CONTRACTOR, COUNTY shall pay interest to CONTRACTOR equivalent to 0.833% per month (10% per annum).
- 12.3. COUNTY shall review each payment request as soon as practicable after receipt to determine whether the payment request is proper. Any payment request determined to be an improper payment request shall be returned to CONTRACTOR as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

- 12.4. Prompt Progress Payments to Subcontractors:

The prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed

**Bid No. 20481 -**

TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART) CNG FUELING FACILITY UPGRADES - BID BOOK 1  
CONTRACT NO. 001339, F.T.A. NO. **CA-95-x193-02**

amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

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

12.5 Prompt Payment of Funds Withheld To Subcontractors:

No retainage will be held by the Agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

12.6. Prompt Payment from the Agency to the Contractors:

The Agency shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the Agency fails to pay promptly, the Agency shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the Agency shall act in accordance with both of the following: 1. Each payment request shall be reviewed by the Agency as soon as practicable after receipt for the purpose of determining that it is a proper payment request. 2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

**ARTICLE 13: ANTITRUST CLAIM ASSIGNMENT**

- 13.1. In entering into a Public Works contract or a subcontract to supply goods, services, or materials pursuant this Contract, the CONTRACTOR and all subcontractors shall offer and agree to assign to COUNTY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials

pursuant to the Contract or any subcontract. This assignment shall be made and become effective at the time the COUNTY tenders final payment to CONTRACTOR, without further acknowledgment by the parties.

#### **ARTICLE 14: PREVAILING WAGES**

- 14.1. The State general prevailing wage rates determined by the Director of Industrial Relations are hereby made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.
- 14.2. CONTRACTOR acknowledges that it has examined the prevailing rate of per diem wages as established by the California Director of Industrial Relations. The CONTRACTOR agrees to pay workers not less than the applicable prevailing rate of per diem wages, as set forth in these requirements and Labor Code section 1770 et seq. CONTRACTOR agrees specifically to comply with the provisions of Labor Code sections 1720, 1773.3, 1776, and 1777.5, as well as Section 7-1.02K of the Department of Transportation Standard Specifications and these Contract Documents.
- 14.3. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

#### **ARTICLE 15: SEVERABILITY.**

- 15.1. Nothing contained in the Contract Documents shall be construed to require the commission of any act contrary to law. Should a conflict arise between any provisions contained herein and any present or future statute, law, ordinance, or regulation contrary to which the parties have no legal right to contract or act, the latter shall be curtailed and limited but only to the extent necessary to bring it within the requirements of the law. If such curtailment or limitation is not possible, the affected provision shall be of no force and effect. Except as previously mentioned, such illegality shall not affect the validity of this Contract.

#### **ARTICLE 16: COMPLETE AGREEMENT**

- 16.1. These Contract Documents supersede any and all agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Contract acknowledges that no representation by any party, which is not embodied herein, or any other agreement, statement, or promise not contained in these Contract Documents shall be valid and binding.

#### **ARTICLE 17: INTERPRETATION**

- 17.1. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Contract with legal counsel, and/or has the requisite

experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Contract.

- 17.2. In case of a controversy or dispute between the parties concerning the provisions herein, this document shall be interpreted according to the provisions herein and no presumption shall arise concerning the draftsmanship of such provision.

#### **ARTICLE 18: GOVERNING LAW**

- 18.1. This Contract is subject to the laws and jurisdiction of the State of California. Venue for any legal proceeding brought in conjunction with this Contract shall be the Superior Court of the County of Placer, State of California. Contractor waives any federal court removal and/or original jurisdiction rights it may have pursuant to any applicable law.

#### **ARTICLE 19: BID RIGGING**

BID RIGGING The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

#### **ARTICLE 20: PROHIBITION OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT AND SERVICES**

In response to significant national security concerns, the agency shall check the prohibited vendor list before making any telecommunications and video surveillance purchase because recipients and subrecipients of federal funds are prohibited from obligating or expending loan or grant funds to:

- Procure or obtain;
- Extend or renew a contract to procure or obtain; or
- Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

The prohibited vendors (and their subsidiaries or affiliates) are:

- Huawei Technologies Company;
- ZTE Corporation;
- Hytera Communications Corporation;
- Hangzhou Hikvision Digital Technology Company;
- Dahua Technology Company; and
- Subsidiaries or affiliates of the above-mentioned companies.

In implementing the prohibition, the agency administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.



**ARTICLE 21: BID ITEMS LIST (BASE BID)**

**COPY OF BID ITEM LIST  
TAHOE TRUCKEE AREA REGIONAL TRANSIT (TART)  
CNG FUELING FACILITY UPGRADES  
(NOT TO BE USED FOR BIDDING PURPOSES)**

<b>Bid Item #</b>	<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Qty.</b>	<b># Unit Cost</b>	<b>\$ Total Cost</b>
1	Mobilization	Furnish and install one (1) new, unused, and unrefurbished CNG ANGI model NG50E Compressor and appurtenances	Each	1		
2		Furnish and install two (2) new, unused, and unrefurbished CNG storage cylinders and appurtenances	Each	2		
3		Furnish and install two (2) new unused, and unrefurbished time-fill dispensers and appurtenances	Each	2		
4		Electrical equipment and system programming	LS	1		
5		Civil work (trenching, patching, signage)	LS	1		
6		Manufacturer start up and special qualified third-party inspection and testing	LS	1		

# BID ITEM LIST

NAME OF CONTRACTOR  
Name of Contractor

NAME OF COMPANY  
Name of Company

**Federally Required and Other Model Contract Clauses**

**A.1 ACCESS TO RECORDS AND REPORTS .....A-3**

**A.2 BONDING REQUIREMENTS .....A-5**

**A.3 BUS TESTING..... A-14**

**A.4 BUY AMERICA REQUIREMENTS ..... A-16**

**A.5 CARGO PREFERENCE REQUIREMENTS..... A-19**

**A.6 CHARTER SERVICE ..... A-21**

**A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT ..... A-23**

**A.8 CIVIL RIGHTS LAWS AND REGULATIONS..... A-24**

**A.9 DISADVANTAGED BUSINESS ENTERPRISE (DBE) ..... A-28**

**A.10 EMPLOYEE PROTECTIONS..... A-37**

**A.11 ENERGY CONSERVATION ..... A-41**

**A.12 FLY AMERICA ..... A-42**

**A.13 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION ..... A-45**

**A.14 LOBBYING RESTRICTIONS ..... A-47**

**A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES ..... A-49**

**A.16 PATENT RIGHTS AND RIGHTS IN DATA..... A-50**

**A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES .... A-53**

**A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS  
..... A-54**

**A. 19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS ..... A-56**

**A.20 RECYCLED PRODUCTS..... A-58**

**A.21 SAFE OPERATION OF MOTOR VEHICLES ..... A-59**

**A.22 SCHOOL BUS OPERATIONS ..... A-61**

**A.23 SEISMIC SAFETY ..... A-63**

**A.24 SUBSTANCE ABUSE REQUIREMENTS..... A-64**

**A.25 TERMINATION..... A-69**

**A.26 VIOLATION AND BREACH OF CONTRACT..... A-75**

## **A.1 ACCESS TO RECORDS AND REPORTS**

49 U.S.C. § 5325(g)

2 C.F.R. § 200.333

49 C.F.R. part 633

### **Applicability to Contracts**

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

### **Flow Down**

The record keeping and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Access to Records and Reports**

- a. **Record Retention**. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. **Retention Period**. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3)

years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

## A.2 BONDING REQUIREMENTS

2 C.F.R. § 200.325

31 C.F.R. part 223

### Applicability to Contracts

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has **not** been made, the following minimum requirements apply:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### Flow Down

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

### Model Clauses/Language

There is no required language for bonding requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

## **Bond Requirements**

### **Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such guaranty shall be equal to \$\$\$\$ or X% of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the RECIPIENT reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of RECIPIENT.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of the RECIPIENT, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent RECIPIENT'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense RECIPIENT for the damages occasioned by default, then the undersigned bidder agrees to indemnify RECIPIENT and pay over to RECIPIENT the difference between the bid guarantee and RECIPIENT'S total damages so as to make RECIPIENT whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

### **Performance Guarantee**

A Performance Guarantee in the amount of 100% of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the RECIPIENT within ten (10) business days from Contract execution. The RECIPIENT requires all

Performance Bonds to be provided by a fully qualified surety company acceptable to the RECIPIENT and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. RECIPIENT may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The RECIPIENT may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the RECIPIENT if:

1. A bank in good standing issues it. The RECIPIENT will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The RECIPIENT is identified as the Beneficiary.
5. It is in an amount equal to **100%** of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of this Agreement.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the RECIPIENT and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

**Payment Bonds**

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

**Sample Bond Certifications**

**Performance Guarantee Certification**

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

\_\_\_\_\_ Performance Bond

\_\_\_\_\_ Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Performance Bond**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*(insert full name and address and legal title of Contractor)*

as Principal, hereinafter called Contractor, and

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*(insert full name and address or legal title of Surety)*

as Surety, hereinafter called Surety, are held and firmly bound unto RECIPIENT as Obligee, hereinafter called Authority, in the amount of Dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated **XXXXXX, XX**, 2024, entered into a contract with the RECIPIENT for Contract No. \_\_\_\_\_, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the RECIPIENT.

Whenever Contractor shall be, and is declared by the RECIPIENT to be in default under the Contract, the RECIPIENT having performed RECIPIENT'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms

and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the RECIPIENT elects, upon determination by the RECIPIENT and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the RECIPIENT to Contractor under the Contract and any amendments thereto, less the amount properly paid by the RECIPIENT to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the RECIPIENT or the heirs, executors, administrators or successors of the RECIPIENT.

Signed and sealed this \_\_\_\_\_ day of \_\_ 20\_\_.

WITNESS

PRINCIPAL

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (Title)

WITNESS

SURETY

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (Title)

**Attach hereto proof of authority of officers or agents to sign bond.**

**Irrevocable Stand-By Letter Of Credit Certificate**

The undersigned states that he/she is \_\_\_\_\_ of the

(Title)

\_\_\_\_\_  
hereby (Name of Beneficiary) (The "Beneficiary") and

Certifies on behalf of the Beneficiary to \_\_\_\_\_ (the "Bank), with

(Name of Issuing Bank)

Reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_ Issued by the

Bank (the "Letter of Credit"), that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
2. The Beneficiary is making a drawing under the Letter of Credit.
3. An Event of Default has occurred under Contract No. \_\_\_\_\_.
4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

**IN WITNESS WHEREOF**, this certificate is executed this \_\_ day of \_\_, 20\_\_.

(NAME OF BENEFICIARY)

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Bank Draft**

**FOR VALUE RECEIVED**

Pay on presentment to \_\_\_\_\_ the sum of \_\_\_\_\_  
\_\_\_\_\_ (Name of Beneficiary) Dollars (\$)

Charge the Account of \_\_\_\_\_ Irrevocably Standby Letter of  
(Name of Issuing Bank)

Credit No. \_\_\_\_\_ Dated: 20\_\_\_\_\_.

To \_\_\_\_\_  
(Name of Issuing Bank)

**NAME OF BENEFICIARY**

By \_\_\_\_\_

Its \_\_\_\_\_

**A.3 BUS TESTING**

**NOT APPLICABLE**

#### **A.4 BUY AMERICA REQUIREMENTS**

49 U.S.C. 5323(j)

49 C.F.R. part 661

##### **Applicability to Contracts**

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA's Buy America regulation at: [The Federal Transit Administration's Buy America website](#).

##### **Flow Down**

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

##### **Model Clause/Language**

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for FTA funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement.

##### **Buy America**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

***In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.***

*Certificate of Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Certificate of Non-Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

***In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment) use the following certifications:***

*Certificate of Compliance with Buy America Rolling Stock Requirements*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. § 661.11.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Certificate of Non-Compliance with Buy America Rolling Stock Requirements*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. § 661.7.

Date:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Company:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **A.5 CARGO PREFERENCE REQUIREMENTS**

46 U.S.C. § 55305

46 C.F.R. part 381

### **Applicability to Contracts**

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

### **Flow Down**

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

### **Model Clause/Language**

The Maritime Administration (MARAD) regulations at 46 C.F.R. § 381.7 contain suggested contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Cargo Preference - Use of United States-Flag Vessels**

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the

preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**A.6 CHARTER SERVICE**

**NOT APPLICABLE**

## **A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

42 U.S.C. §§ 7401 – 7671q

33 U.S.C. §§ 1251-1387

2 C.F.R. part 200, Appendix II (G)

### **Applicability to Contracts**

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251– 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

### **Flow Down**

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

Recipients can draw on the following language for inclusion in their federally funded procurements.

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

## A.8 CIVIL RIGHTS LAWS AND REGULATIONS

### Civil Rights and Equal Opportunity

The COUNTY is an Equal Opportunity Employer. As such, the COUNTY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the COUNTY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**Nondiscrimination:** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**Race, Color, Religion, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

**Age:** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 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.

**Disabilities:** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## **A.9 DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

49 C.F.R. part 26

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. §26.13(b) in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the COUNTY deems appropriate, which may include, but is not limited to:

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

### **Prompt Payment**

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 7 days after the contractor's receipt of payment for that work from the COUNTY (49 C.F.R. § 26.29(a)). In addition, no retainage will be withheld by the COUNTY from progress payments due the prime contractor. Retainage by the prime contractor or subcontractors is prohibited and no retainage will be held by the prime contractor from progress payments due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor or deficient subcontract performance, or noncompliance by a subcontractor.

Contractor shall submit proof of payment monthly for each DBE subcontractor that performed work the previous month. Proof of payment shall consist of a copy of the issued check or equivalent and a signed monthly report. Failure to submit proof of payment may result in administrative withholding of up to \$10,000 for each DBE subcontractor for each month that proof of payment is not submitted.

### **DBE Subcontractors**

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the COUNTY's written consent. The prime contractor shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without prior written authorization from the COUNTY. Unless the COUNTY's prior written consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs on the DBE Utilization and Participation form submitted with the bid (49 C.F.R. § 26.53(f)(1)).

### **DBE Overview**

It is the policy of the COUNTY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBEs"), as defined herein and in the Federal regulations published at

49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the COUNTY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The COUNTY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the COUNTY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the COUNTY.

#### **Contract Assurance**

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the COUNTY deems appropriate.

#### **DBE Participation**

For the purpose of this Contract, the COUNTY will accept only DBEs who are:

1. Certified, at the time of bid opening or proposal evaluation, by the *Unified Certification Program (UCP)*; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval.

#### **DBE Participation Goal**

The DBE participation goal for this Contract is set at **3%**. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 3%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

#### **Proposed Submission**

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization and Participation Schedule Form** (see attached form) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.

2. A list of those qualified DBEs with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Utilization and Participation Schedule Form** (see attached form). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may NOT deviate from the DBE Utilization and Participation Schedule Form submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the COUNTY.

3. An original **DBE Letter of Intent** (see attached form) from each DBE listed in the **DBE Utilization and Participation Schedule Form**. This form affirms both the DBE participation in the contract and certifies that the DBE has had no change in its DBE status since the date of its last certification.

### **Good Faith Efforts**

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the COUNTY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the COUNTY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the COUNTY's DBE Liaison (questions of RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the COUNTY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media, and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBEs encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBEs.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBEs for elements of the Contract:

1. The names, addresses, and telephone numbers of DBEs that were contacted;
2. A description of the information provided to targeted DBEs regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBEs contacted in obtaining bonding or insurance required by the Bidder or the COUNTY.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the COUNTY may take into account the performance of other Bidders in meeting the Contract goals.

For example, if the apparent successful Bidder failed to meet the goal but meets or exceeds the average DBE participation obtained by other Bidders, the COUNTY may view this as evidence of the Bidder having made good faith efforts.

### **Administrative Reconsideration**

Within five (5) business days of being informed by the COUNTY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the COUNTY's DBE Liaison Officer (DBELO). The DBELO will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The COUNTY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Utilization and Participation Schedule Form** without the COUNTY's prior written consent. The COUNTY 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 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 to find another DBE subcontractor to substitute for the original DBE and immediately notify the COUNTY 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. Failure to comply with these requirements will be in accordance with the Section below (*Sanctions for Violations*).

### **Continued Compliance**

The COUNTY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit monthly written reports to the COUNTY that summarize the total DBE value for this Contract. These reports will be provided to the contractor monthly and they shall provide the back the following information to the COUNTY:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the prior month;
- The value of expenditures with each DBE firm for the month by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
  
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Liaison. Reports shall continue to be submitted monthly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The COUNTY to have access to necessary records to examine information as the COUNTY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the COUNTY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE(s) shall be maintained by the Contractor and shall make such workpapers and materials available at their respective offices at all reasonable times during the Contract period and for three (3) years from the date of final payment under the Contract. The COUNTY, Federal Transit Administration, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Contractor, Subcontractors, and the Contractor's Independent CPA, that are pertinent to the Contract for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

#### **Sanctions for Violations**

If at any time the COUNTY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the COUNTY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

## **A.10 EMPLOYEE PROTECTIONS**

49 U.S.C. § 5333(a)

40 U.S.C. §§ 3141 – 3148

29 C.F.R. part 5

18 U.S.C. § 874

29 C.F.R. part 3

40 U.S.C. §§3701-3708

29 C.F.R. part 1926

### **Applicability to Contracts**

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

#### **1. Prevailing Wage Requirements**

- a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);
- b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
- c. U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

#### **2. “Anti-Kickback” Prohibitions**

- a. Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
- b. Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
- c. U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.

#### **3. Contract Work Hours and Safety Standards**

- a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and

- b. U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

**Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland "Anti- Kickback" Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

**Model Clause/Language**

The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

**Prevailing Wage and Anti-Kickback**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

### Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with

the clauses set forth in this agreement.

**Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

## **A.11 ENERGY CONSERVATION**

42 U.S.C. 6321 *et seq.*

49 C.F.R. part 622, subpart C

### **Applicability to Contracts**

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

### **Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Energy Conservation**

The contractor agrees 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.

## **A.12 FLY AMERICA**

49 U.S.C. § 40118

41 C.F.R. part 301-10

48 C.F.R. part 47.4

### **Applicability to Contracts**

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

### **Flow Down Requirements**

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

### **Model Clause/Language**

The relevant statutes and regulations do not require any specific clause or language that recipients use in their third-party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements.

FTA proposes the following language, modified from the Federal clause.

### **Fly America Requirements**

- a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

**Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following

reasons. See FAR § 47.403. *[State reasons]*:

(End of statement)

- e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of Clause)

**A.13 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

2 C.F.R. part 180

2 C.F.R part 1200

2 C.F.R. § 200.213

2 C.F.R. part 200 Appendix II (I)

Executive Order 12549

Executive Order 12689

**Background and Applicability**

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

**Flow Down**

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

**Model Clause/Language**

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

**Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**A.14 LOBBYING RESTRICTIONS**

31 U.S.C. § 1352

2 C.F.R. § 200.450

2 C.F.R. part 200 appendix II (J)

49 C.F.R. part 20

**Applicability to Contracts**

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**Flow Down**

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

**Model Clause/Language**

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third-party contracts as follows:

**Lobbying Restrictions**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 contract, the making of any Federal grant, the making of any Federal loan, the entering

into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

## **A.15 NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

### **Applicability to Contracts**

The No Obligation clause applies to all third-party contracts that are federally funded.

### **Flow Down**

The No Obligation clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **No Federal Government Obligation to Third Parties.**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **A.16 PATENT RIGHTS AND RIGHTS IN DATA**

2 C.F.R. part 200, Appendix II (F)

37 C.F.R. part 401

### **Applicability to Contracts**

If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award, the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

1. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award;  
and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

### **Flow Down**

The Patent Rights and Rights in Data requirements flow down to all third-party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2.

### **Model Clause/Language**

Recipients can draw on language provided in 37 C.F.R. § 401.3 for appropriate Patent Rights and Data Rights Clauses for use in their federally funded research, development, demonstration, or special studies projects. Recipients should consult legal counsel for guidance in developing an appropriate Intellectual Property Agreement. At a minimum, recipients can include the following language in their standard boilerplates.

## Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
  - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

- b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

**A.17 PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES**

**NOT APPLICABLE**

## **A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

49 U.S.C. § 5323(l) (1)

31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001

49 C.F.R. part 31

### **Applicability to Contracts**

The Program Fraud clause applies to all third-party contracts that are federally funded.

### **Flow Down**

The Program Fraud clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

### **Model Clause/Language**

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract 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.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**A.19 PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

**NOT APPLICABLE**

## **A.20 RECYCLED PRODUCTS**

42 U.S.C. § 6962

40 C.F.R. part 247

2 C.F.R. part § 200.322

### **Applicability to Contracts**

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

### **Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

### **Model Clause/Language**

There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Recovered Materials**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## **A.21 SAFE OPERATION OF MOTOR VEHICLES**

23 U.S.C. part 402

Executive Order No. 13043

Executive Order No. 13513

U.S. DOT Order No. 3902.10

### **Applicability to Contracts**

The Safe Operation of Motor Vehicles requirements apply to all federally funded third-party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third-party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third-party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third-party agreements supported with Federal assistance.

### **Flow Down Requirements**

The Safe Operation of Motor Vehicles requirements flow down to all third-party contractors at every tier.

### **Model Clause/Language**

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

## **Safe Operation of Motor Vehicles**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs

for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**A.22 SCHOOL BUS OPERATIONS**

**NOT APPLICABLE**

## **A.23 SEISMIC SAFETY**

42 U.S.C. 7701 *et seq.*

49 C.F.R. part 41

Executive Order (E.O.) 12699

### **Applicability to Contracts**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

### **Flow Down**

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

### **Model Clauses/Language**

The regulations do not provide suggested language for third-party contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **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 (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

**A.24 SUBSTANCE ABUSE REQUIREMENTS**

**NOT APPLIABLE**

## **A.25 TERMINATION**

2 C.F.R. § 200.339

2 C.F.R. part 200, Appendix II (B)

### **Applicability to Contracts**

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.

### **Flow Down**

For all contracts in excess of \$10,000, the Termination clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Termination for Convenience (General Provision)**

The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the AGENCY's best interest. 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 AGENCY to be paid the Contractor. If the Contractor has any property in its possession belonging to AGENCY, the Contractor will account for the same, and dispose of it in the manner AGENCY directs.

### **Termination for Default [Breach or Cause] (General Provision)**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be affected by serving a Notice of Termination on the Contractor

setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the AGENCY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the AGENCY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### **Opportunity to Cure (General Provision)**

The AGENCY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to AGENCY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from AGENCY setting forth the nature of said breach or default, AGENCY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### **Waiver of Remedies for any Breach**

In the event that AGENCY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by AGENCY shall not limit AGENCY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

#### **Termination for Convenience (Professional or Transit Service Contracts)**

The AGENCY, by written notice, may terminate this contract, in whole or in part, when it is in the AGENCY's interest. If this contract is terminated, the AGENCY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### **Termination for Default (Supplies and Service)**

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the AGENCY.

#### **Termination for Default (Transportation Services)**

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of AGENCY goods, the Contractor shall, upon direction of the AGENCY, protect and preserve the goods until surrendered to the AGENCY or its agent. The Contractor and AGENCY shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the AGENCY.

### **Termination for Default (Construction)**

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, AGENCY may terminate this contract for default. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the AGENCY may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the AGENCY resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the AGENCY in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of AGENCY, acts of another contractor in the performance of a contract with AGENCY, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies AGENCY in writing of the causes of delay. If, in the judgment of AGENCY, the delay is excusable, the time for completing the work shall be extended. The judgment of AGENCY shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of AGENCY.

#### **Termination for Convenience or Default (Architect and Engineering)**

The AGENCY may terminate this contract in whole or in part, for the AGENCY's convenience or because of the failure of the Contractor to fulfill the contract obligations. The AGENCY shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the AGENCY's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. AGENCY has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the AGENCY, the AGENCY's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the AGENCY may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the AGENCY.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of AGENCY.

#### **Termination for Convenience or Default (Cost-Type Contracts)**

The AGENCY may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of AGENCY or for the default of the Contractor. If the termination is for default, the notice shall state the manner in

which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the AGENCY, or property supplied to the Contractor by the AGENCY. If the termination is for default, the AGENCY may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the AGENCY and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of AGENCY, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the AGENCY determines that the Contractor has an excusable reason for not performing, the AGENCY, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **A.26 VIOLATION AND BREACH OF CONTRACT**

2 C.F.R. § 200.326

2 C.F.R. part 200, Appendix II (A)

### **Applicability to Contracts**

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

### **Flow Down**

The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier.

### **Model Clauses/Language**

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third-party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

### **Rights and Remedies of the AGENCY**

The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and

4. The right to money damages.

For purposes of this Contract, breach shall include [AGENCY to define].

### **Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

### **Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### **Disputes**

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of AGENCY's [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

- **Example 2:** The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

#### **Performance during Dispute**

Unless otherwise directed by AGENCY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### **Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **Remedies**

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the AGENCY and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the AGENCY is located.

### **Rights and Remedies**

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AGENCY or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**ARTICLE 23: QUALITY ASSURANCE**

Placer County uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract. Placer County may examine the records and reports of tests the Agency performs if they are available at the job site. Schedule work to allow time for QAP.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this AGREEMENT as of the day first above stated:

**COUNTY OF PLACER (“COUNTY”)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Chair of the Board,  President, or  
 Vice President

Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin Bell, Acting Director  
Department of Public Works

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Secretary,  Asst. Secretary,  
 Chief Financial Officer, or  Asst.  
Treasurer

Date: \_\_\_\_\_

Approved as to Form  
Office of Placer County Counsel

\_\_\_\_\_

Date: \_\_\_\_\_

"If Contractor is a corporation, contract must be signed by the following two corporate officers, one from each category: (1) Chairman of the Board, President or any Vice President, and (2), Corporate Secretary, any Assistant Corporate Secretary, Chief Financial Officer or any Treasurer or Assistant Treasurer, unless an authenticated copy of a resolution of the corporation which delegates to a single officer the authority to bind the corporation is attached to this contract.

If Contractor is another type of business entity, such as a partnership or limited liability company, contract must be signed by officer(s) possessing legal authority to bind the entity. An authenticated copy of a resolution, partnership agreement, operating agreement or other legal evidence of signature authority must be attached to this contract."

**DRAFT CERTIFICATION LABOR CODE SECTION 1861**

STATE OF CALIFORNIA)  
COUNTY OF PLACER)

I, the undersigned, do hereby certify:

That I am aware of the provisions of Section 3700 of the Labor Code of the State of California, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Executed at: \_\_\_\_\_

On: \_\_\_\_\_

I certify under the penalty of perjury that the foregoing is true and correct.

**CONTRACTOR - EMPLOYER**

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**DISADVANTAGED BUSINESS ENTERPRISE  
 (DBE) UTILIZATION AND PARTICIPATION SCHEDULE**

AGENCY: \_\_\_\_\_ LOCATION: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

CONTRACT NUMBER: \_\_\_\_\_

FTA PROJECT NUMBER: \_\_\_\_\_

TOTAL CONTRACT AMOUNT: \$ \_\_\_\_\_

PROPOSAL/BID DATE: \_\_\_\_\_

BIDDER/OFFEROR'S NAME: \_\_\_\_\_ STATE REGISTRATION NO. \_\_\_\_\_

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract (DETAILS LISTED BELOW).

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of 3%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts (as defined in Title 49, CFR Part 26 – appendix A).

**DBE Participation Schedule**

NAME OF DBEs (Must be certified on the date bids are opened - include DBE address and phone number)	CONTRACT ITEM NUMBER OR WORK DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED	DBE Certification Number	RACE AND GENDER OF FIRM	DOLLAR AMOUNT DBE
IMPORTANT: Identify all DBE firms participating in the project, regardless of tier. Names of the first tier DBE Subcontractors and their respective item(s) of work listed above should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid. Provide copies of the DBEs' quotes, and if applicable, a copy of joint venture agreements pursuant to the Subcontractors Listing Law and the Special Provisions.  Enter DBE prime and subcontractor's certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces.			Total Claimed	\$ _____
			Participation	_____ %
			Signature of Bidder	_____
			Date	(Area Code) Phone No.
			Person to Contact (Please Type or Print)	

INFORMATION ONLY – NOT TO BE COMPLETED WITH BID  
(to be completed by the local agency upon award of contract)

## INSTRUCTIONS – DBE Utilization & Participation

The form requires specific information regarding the construction contract: Agency, Location, Project Description, Contract Number (assigned by local agency), Federal Aid Project Number (assigned by Federal Transit Administration), Total Dollar Contract Amount, Bid Date, and Bidder/Offeror's Name. Check the appropriate box for the DBE utilization.

Include the DBE(s) name, address, and phone number along with their DBE certification number.

List the contract item number(s) and/or the work and description or services to be subcontracted or materials to be provided by DBEs.

Enter the total DBE dollar amount for each DBE subcontract. If 100 percent of an item is not to be performed or furnished by the DBE, describe exact portion of time or percentage to be performed or furnished by the DBE.

Be sure to list ALL DBEs being used on the project.

This form must be signed and dated by bidder/offeror. Also list a phone number in the space provided and print the name of the person to contact.

**LETTER OF INTENT – DBE COMMITMENT**  
**(Submit a separate page for each DBE subcontractor)**

CONTRACT NUMBER: \_\_\_\_\_  
FTA PROJECT NUMBER: \_\_\_\_\_  
PROJECT DESCRIPTION: \_\_\_\_\_  
NAME OF BIDDER/OFFEROR'S FIRM: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_  
NAME OF DBE FIRM: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_

DESCRIPTION OF WORK TO BE PERFORMED BY DBE FIRM:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE BIDDER/OFFEROR IS COMMITTED TO UTILIZING THE ABOVE-NAMED DBE FIRM FOR THE WORK DESCRIBED ABOVE. THE ESTIMATED DOLLAR VALUE OF THIS WORK IS \$ \_\_\_\_\_.

**DBE AFFIRMATION:**

- THE DBE AFFIRMS THAT IT WILL PERFORM THE PORTION OF THE CONTRACT FOR THE ESTIMATED DOLLAR VALUE AS STATED ABOVE.
- THE DBE CERTIFIES THAT THERE HAS NOT BEEN ANY CHANGE IN ITS DBE STATUS SINCE THE DATE OF ITS LAST CERTIFICATION.

BY \_\_\_\_\_  
(Signature of DBE) (Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

**BOND FOR LABOR AND MATERIALS**

**KNOW ALL PERSONS BY THESE PRESENTS**, THAT WHEREAS, COUNTY OF PLACER, STATE OF CALIFORNIA, (“Owner”) has awarded to [CONTRACTOR NAME] as Principal (“Contractor”), a contract for the work described as follows: [CONTRACT DESCRIPTION]

**AND, WHEREAS**, pursuant to Public Contract Code section 10223, the Contractor is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, and other persons as provided by law.

**NOW, THEREFORE**, we, the undersigned Contractor and [enter name of surety], licensed by the State of California to execute bonds and undertakings as sole surety, “Surety,” are held and firmly bound unto the Owner in the sum of [WRITE AMOUNT] Dollars (\$000.000.00) for the payment of which sum Contractor and Surety bind themselves, their successors, and assigns, jointly and severally, by this instrument.

**THE CONDITION OF THIS OBLIGATION IS SUCH,**

1. That if said Principal or its subcontractors shall fail to pay any of the persons named in Civil Code section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, that the surety herein will pay for the same, otherwise this obligation is to be void. In case suit is brought upon this bond, the Surety will pay a reasonable attorney’s fee to be fixed by the court.
2. This bond shall inure to the benefit of any persons named in Civil Code section 9100 as to give a right of action to such persons or their assigned in any suit brought upon this bond.
3. The aggregate liability of the Surety hereunder, including costs and attorney fees, on all claims whatsoever, shall not exceed the penal sum of the bond in accordance with the provisions of Section 996.470(a) of the Code of Civil Procedure.
4. This bond is executed by the Surety, to comply with the provisions of Public Contract Code sections 7103, 10221, and 10222, of Chapter 5, Title 3, Part 6, Division 4 of the Civil Code and of Chapter 2, Title 14, Part 2 of the Code of Civil Procedure and said bond shall be subject to all of the terms and provisions thereof.
5. This bond may be cancelled by the Surety in accordance with the provisions of Section 996.310 et seq. of the Code of Civil Procedure.
6. This bond to become effective \_\_\_\_\_.

<b>CONTRACTOR</b> <i>*Signature must be notarized</i>
Signature: _____
Name: _____
Date: _____

<b>SURETY, ATTORNEY-IN-FACT*</b> <b>[ADDRESS]</b> <i>*Signature must be notarized</i>
Signature: _____
Name: _____
Date: _____

*\*Attorney-in-fact must have power of attorney on file with the Placer County Clerk or attached to this bond*

INFORMATION ONLY – NOT TO BE COMPLETED WITH BID  
(to be completed by the local agency upon award of contract)

**APPROVED AS TO FORM BY PLACER COUNTY COUNSEL**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**BOND OF FAITHFUL PERFORMANCE**

**KNOW ALL PERSONS BY THESE PRESENTS, THAT WHEREAS**, COUNTY OF PLACER, STATE OF CALIFORNIA, (“Owner”) has awarded to [CONTRACTOR NAME] as Principal (“Contractor”), a contract for the work described as follows:

[CONTRACT DESCRIPTION]

**AND, WHEREAS**, pursuant to Public Contract Code 10224, the Contractor is required to furnish a bond in connection with said contract, guaranteeing the faithful performance thereof.

**NOW, THEREFORE**, the undersigned Contractor and [enter name of surety], licensed by the State of California to execute bonds and undertakings as sole surety, “Surety,” are held and firmly bound unto the Owner in the sum of [WRITE AMOUNT] Dollars (\$000.000.00) for the payment of which sum Contractor and Surety bind themselves, their successors, and assigns, jointly and severally, by this instrument.

THE CONDITION OF THIS OBLIGATION IS SUCH,

1. Contractor will faithfully perform the work described in [CONTRACT NO.] and shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material, other than any material agreed to be furnished by the County, necessary to complete the work in a good workmanlike manner.
2. Contractor’s work will be done in accordance with all applicable law and completed on or before [completion date], or as otherwise provided by lawful extensions of time granted by the County. Should Contractor fail to complete all required work within the time allowed, County may, at its sole discretion, cause all required work to be completed and the Contractor and Surety will be firmly bound for the payment of all necessary costs therefore.
3. Contractor guarantees its work against any defective work, labor, or materials for a period of one (1) year following completion and acceptance by the County.
4. Surety, for value received, agrees no changes, time extensions, alteration, or modification of the contract documents or of the obligation to be performed will in any way affect its obligation on this bond, and it waives notice of any such change, extension of time, alteration, or modification of the contract documents or of the obligation to be performed.
5. This bond consists of this instrument, the Contract Documents, and the following two (2) exhibits, all of which are incorporated by this reference:
  - a. A certified copy of the appointment, power of attorney, bylaws, or other instrument entitling or authorizing the persons executing this person to do so; and
  - b. Current proof that the Surety is licensed to do business in the State of California for the type of insurance required by this bond.
6. This obligation will remain in effect for one (1) year following the County’s acceptance of work as complete. If at that time, Contractor has performed its obligation, the obligation will be null and void.
7. If suit is brought upon this bond, Surety agrees it will pay, in addition to the basic obligation herein, all court costs, expenses, and all reasonable attorneys’ fees awarded and fixed by the Court, and to be taxed as costs, and to be included in the judgment therein rendered.

<b>CONTRACTOR</b> <i>*Signature must be notarized</i>
Signature: _____
Name: _____
Date: _____

<b>SURETY, ATTORNEY-IN-FACT*</b> <b>[ADDRESS]</b> <i>*Signature must be notarized</i>
Signature: _____
Name: _____
Date: _____

*\*Attorney-in-fact must have power of attorney on file with the Placer County Clerk or attached to this bond*

**APPROVED AS TO FORM BY PLACER COUNTY COUNSEL**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**NOTICE TO BIDDERS AND SPECIAL PROVISIONS**

See <https://placer.bidsandtenders.net/Module/Tenders/en>

**REVISIONS TO THE STANDARD SPECIFICATIONS**

See <https://placer.bidsandtenders.net/Module/Tenders/en>