

**ATTACHMENT E**  
**AGREEMENT 22-05**  
**ENTERPRISE LLC**

## Agreement # 22-05

### NON- EXCLUSIVE VANPOOL AGREEMENT

This Non-Exclusive Vanpool Agreement (Agreement) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 ["Effective Date"] by and between Kings County Area Public Transit Agency, hereinafter referred to as the "AGENCY", and Enterprise Rent-A-Car Company of Sacramento, LLC, hereinafter referred to as the "FIRM", "CONTRACTOR", "BIDDER" OR "VENDOR".

#### W I T N E S S E T H

**WHEREAS**, the AGENCY is authorized and empowered to employ consultants and specialists in the performance of its duties and functions; and

**WHEREAS**, the AGENCY desires to provide the citizens of Kings County with transportation choices and improved air quality to enhance their quality of life; and

**WHEREAS**, there currently exist in the Kings County area private mass transportation companies which provide, operate, and administer vanpool services for commuters; and

**WHEREAS**, the AGENCY intends to provide for the participation of private mass transportation companies in a Kings County Vanpool Program ("Program") to the maximum extent feasible.

**WHEREAS**, CONTRACTOR has represented that it has the necessary expertise and personnel and is qualified to perform such services; and

**NOW, THEREFORE**, AGENCY and CONTRACTOR agree as follows:

#### **I. SERVICES, TERM, RENEWALS, AND NON-EXCLUSIVITY**

##### **A. Services**

- a) Vehicle Rental – CONTRACTOR will rent vanpool vehicles that it owns and to which it retains ownership and control consistent with ownership during performance, each seating seven (7) to fifteen (15) passengers (such vehicles are referred to as "vans"), to vanpool groups enrolled in the Vanpool Program. Vehicles that accommodate individuals with disabilities may require modifications. The AGENCY and CONTRACTOR will mutually agree on price. In order to comply with the Americans with Disabilities Act (ADA), in the event that a van that is accessible to individuals with disabilities is requested, CONTRACTOR shall supply an accessible van within the same time frame as CONTRACTOR would for a non-accessible van.
- b) Vanpool Marketing – CONTRACTOR will market and promote the Vanpool Program and provide ride matching assistance to facilitate formation of vanpool groups. It is acknowledged that while CONTRACTOR will encourage all eligible vanpools to



participate in the Agency's vanpool program, CONTRACTOR may operate non-Agency vanpools in the same service area.

- c) Vanpool Agreements and Eligibility Requirements - Each vanpool driver must (a) sign a Volunteer Driver Agreement or a Vanpool Coordinator and Optional Driver Agreement, (b) authorize CONTRACTOR, or its designee, to obtain records related to his/her driving history, and (c) meet certain minimum automobile insurance and continuing eligibility requirements. CONTRACTOR reserves the right to decline or terminate any vanpool driver who fails to comply with the requirements of the Vanpool Program or who fails to meet the requirements as to driving history.
- d) Vehicle Servicing & Maintenance – CONTRACTOR will arrange for preventative maintenance and inspections of vanpool vehicles. According to Original Equipment Manufacturer ("OEM") standards, each van will be eligible for a regular, routine service and safety inspection including lubrication, and oil and filter change. During this service visit, a comprehensive safety inspection will be performed and include monitoring all major and mechanical systems including wear/air pressure of tires, brakes, belts, hoses, water pump, fluids, suspension, wheel bearings and exhaust.
- e) Reporting – CONTRACTOR will provide the AGENCY with certain data and reports to enable the AGENCY to comply with NTD Reporting requirements. Such data shall be provided in the format prescribed by the Federal Transit Administration. Data for monthly reports shall be available no later than the twentieth (20th) calendar day following the month covered by such monthly reports. Data for annual reports shall be available no later than the sixtieth (60th) calendar day following the year covered by such annual reports.

Upon request, CONTRACTOR will prepare and submit monthly report to the Agency that includes the following items:

- Number of Vanpool groups added or discontinued during the month, and the number of active vanpools; and
  - Route and group information such as origin and destination, van driver (name) and van passenger capacity.
- f) Other Services as Needed – Other services like marketing and advertising campaigns, onsite events or otherwise cannot be provided. Any additional services will be mutually agreed upon including cost sharing activities by both parties prior to implementation.

#### **B. Term, Renewal, and Non-Exclusivity**

- a) This Agreement shall begin in July 1, 2022 and shall continue in full force and effect until June 30, 2024 ("Initial Term"). This Agreement shall be non-exclusive, and AGENCY shall be free to enter into the same or materially similar agreements with other entities. At its sole discretion, AGENCY may renew the Agreement for up to four (4) renewal periods of one (1) year each (a "Renewal Term"). Any renewal or extension of the Agreement must be in writing and signed by both Parties to the Agreement in the form of a Contract Amendment as set forth herein.

## **II. AGREEMENT**

This Agreement includes the entire Agreement, including a Contract signature sheet that is incorporated into the Agreement, and Appendices hereto, all of which shall be construed together with the documents listed below to form the Agreement between the Parties. In case of any conflict among these documents where the parties' intended resolution is not clear, the order of precedence shall be as follows in order of precedence, with the first listed document having the highest precedence.

- a) This Agreement, including its Signature Pages
- b) Appendices to this Agreement
- c) Any Schedule attached to this Agreement
- d) Request for Proposal 2122-05
- e) CONTRACTOR's proposal, as accepted by the Agency.

### **III. VANPOOL SUBSIDY ELIGIBILITY**

The Kings County Vanpool Program ("Program") shall be available to vanpools for persons whose commute begins in Kings County. At least 90 percent of the vehicle's mileage is reasonable expected to be for the purposes of transporting commuters in connection with travel between their residence and their place of employment. For purposes of this Agreement, "Active Van" is defined as a van that is compliant with all provisions of this Agreement, in active service during the month for a period of at least 14 days, with a minimum average monthly ridership of fifty percent (50%) of the maximum seating capacity of the vehicle (including the driver), eligible to receive funding per the terms of this Agreement, and is operating in the described service area with a signed agreement between CONTRACTOR and the driver displaying its effective dates. Each van will be assigned to a qualified vanpool group. Under no circumstances shall Program vans be used for transporting passengers for hire or compensation.

### **IV. INDEPENDENT CONTRACTOR STATUS**

CONTRACTOR will be at all times an independent contractor and not an agent for AGENCY or its Board of Directors. The CONTRACTOR shall be fully responsible for all acts and omissions of its employees, subcontractors, and their suppliers, and specifically will be responsible for sufficient administration and supervision to ensure compliance in every respect with the Agreement requirements. There will be no contractual relationship between any subcontractor or supplier and AGENCY by virtue of the Agreement with the CONTRACTOR. No provision of the Agreement will be for the benefit of any party other than AGENCY and the CONTRACTOR. The CONTRACTOR will be entirely responsible and liable for the operation and maintenance of all equipment. The CONTRACTOR, and not AGENCY, is the employer of all the vanpool service provider employees, and the CONTRACTOR is responsible for their wages, hours, benefits, worker's compensation, social security, and all other incidents of employment.

### **V. SUBLITTING**

- A. Any contract between CONTRACTOR and any subcontractor shall comply with all provisions of this Agreement. AGENCY's approval of any assignment, sublet, or transfer shall not release CONTRACTOR of any obligation under this Agreement. As between AGENCY and CONTRACTOR, CONTRACTOR shall be fully responsible for the acts and omissions of the subcontractors and persons either directly or indirectly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and AGENCY.
- B. All subcontracts in the amount of \$10,000.00 or more shall include the provisions set forth in this Agreement.



## VI. COMPENSATION

AGENCY shall pay CONTRACTOR on a firm-fixed subsidy base in accordance with the following provisions.

- A. The firm-fixed monthly subsidy to CONTRACTOR by AGENCY to provide services as set for in Exhibit A, RFP 2122-05, **shall be up to** Three Hundred Fifty Dollars (\$350) for each existing vanpools and Four Hundred Dollars (\$400) for new vanpools that are approved by AGENCY, enrolled in the program and complies with the provisions of the Program.
- B. The AGENCY agrees and covenants that to the extent permitted by law and regulation, it will use its best efforts to obtain the authorization and appropriation of funds necessary to meet its obligations and fund performance under this Agreement, including, without limitation, the inclusion of such funds in its budgeting. The AGENCY further agrees to apply funds that are appropriated for this Vanpool Program to the payment of its obligations under the Agreement.
- C. In the event sufficient funds are not appropriated for payments owed to ENTERPRISE under this Agreement, the Agency shall notify ENTERPRISE of such non-appropriation no later than seven (7) days after the Agency has knowledge that an appropriation will not be available. extent permitted by applicable law.
- D. CONTRACTOR shall invoice AGENCY on a monthly basis for payments corresponding to actual number of approved vanpools by CONTRACTOR. Approved vanpools shall be documented in a monthly report prepared by CONTRACTOR, which shall accompany each invoice submitted by CONTRACTOR. CONTRACTOR shall also furnish such other information as may be requested by AGENCY to substantiate the validity of an invoice. At its sole discretion, AGENCY may decline to make full subsidy payment listed in paragraph A until such time as CONTRACTOR has documented to AGENCY satisfaction, that CONTRACTOR has fully completed all work required under the task. AGENCY's payment in full shall constitute AGENCY's final acceptance of CONTRACTOR's work.
- E. Invoices shall be submitted by CONTRACTOR on a monthly basis. Each invoice shall be accompanied by the monthly report specified in paragraph B. AGENCY shall remit payment within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:
  - Agreement No.
  - Van unit number(s)
  - Driver's Name
  - Monthly Vanpool Fee billed to vanpool driver
  - Amount of approved subsidy applied
  - The amount of payment(s) collected from each vanpool
  - The time period covered by the invoice
  - Any other information as agreed or requested by AGENCY to substantiate the validity of an invoice.
- F. If CONTRACTOR becomes aware of a duplicate contract financing or invoice payment or that the AGENCY has otherwise overpaid on a contract financing or invoice payment, CONTRACTOR shall:
  - a) Remit the overpayment amount to AGENCY along with a description of the overpayment, including the circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment); or

- b) Credit AGENCY's account and send the AGENCY a description of the overpayment, including the circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment) CONTRACTOR will provide a copy of the remittance and supporting documentation to the AGENCY/

## **VII. PROMPT PAYMENT CLAUSE**

- A. AGENCY has adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely payment to all subcontractors in accordance with regulator mandates. Pursuant to 49 CFR Part 26.29, KCAPTA will include the following clause in each U. S. DOT-assisted contract:
- B. CONTRACTOR agrees to pay each subconsultant under this Contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment CONTRACTOR receives from AGENCY. CONTRACTOR agrees further to return retainage payments to each subcontractor within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Agreement work by AGENCY. Any delay or postponement of payment from the above referenced time frame may take place only for good cause and with AGENCY's prior written approval. CONTRACTOR shall incorporate this clause verbatim, set forth above, in all subcontract, broker, dealer, vendor, supplier, purchase order or other source agreements issued to both DBE and non-DBE firms.
- C. Any violation of the provisions listed above shall subject the violating CONTRACTOR 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 CONTRACTOR or subcontractor in the event of a dispute involving late payment or nonpayment by CONTRACTOR deficient subcontractor performance and/or noncompliance by a subcontractor.
- D. Failure to comply with this provision without prior approval from AGENCY will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.
- E. AGENCY shall provide CONTRACTOR thirty (30) days advance written notice of any reduction in the monthly subsidy during the term of this Agreement and of any reduction in the maximum compensation amount. AGENCY shall provide CONTRACTOR written notice of any monthly incentive increase without the necessity of advance written notice.

## **VIII. MAXIMUM OBLIGATION**

In no event shall the compensation paid by AGENCY to CONTRACTOR under this Agreement exceed one million two hundred sixty thousand dollars (\$1,260,000 ).

## **IX. CHANGES**

By written notice or order, AGENCY may, from time to time, order work suspension and/or make changes in the general scope of this Agreement, including, but not limited to, the services furnished to AGENCY by CONTRACTOR as describe in the Scope of Work. If any such work suspension or change causes an increase or decrease in the price of the Agreement or in the time required for its performance, CONTRACTOR shall promptly notify AGENCY thereof and assert its claim for adjustment within ten (10) calendar days after the change of work suspension is ordered, and an equitable adjustment shall be negotiated, However, nothing in this clause shall excuse CONTRACTOR from proceeding immediately with the Agreement as changed.



## **X. SPECIAL CONTRACT REQUIREMENTS**

- A. Compliance with Law – CONTRACTOR shall comply with all applicable federal and state laws, including maintaining any license, permit, operating authority, insurance, or regulatory authorization required to perform the Services.
- B. Substitution of Vehicles – CONTRACTOR may replace vans used in the Vanpool Program at the sole discretion of CONTRACTOR.
- C. Vanpool Drivers Not Employees – The vanpool drivers and CONTRACTOR are independent parties participating with one another in a Vanpool arrangement and neither party shall be an agent, servant, or employee of the other. Nothing in this Agreement shall establish any joint venture or other such relationship between CONTRACTOR and its vanpool drivers.
- D. This Vanpool Service Agreement is Not a Lease and Does Not Create any Ownership Interest by the Agency in any Vehicle – The parties expressly agree and acknowledge that this Agreement is not, and is not intended to be, a contract for the lease of a commuter vanpool vehicle, and by entering into this Agreement, the AGENCY is not, and is not intending to, own or lease any commuter vanpool vehicles.

## **XI. DISPUTES**

- A. Except as otherwise provided in the Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by AGENCY's Executive Director, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the Executive Director shall be final and conclusive.
- B. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of AGENCY's Executive Director. This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any AGENCY official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

## **XII. LIMITATION ON LIABILITY**

The Agency shall not be liable to CONTRACTOR for any amount owed to CONTRACTOR by participants in the Vanpool Program, including any excess mileage charges, towing, charges, roadside assistance charges, mechanical repair cost, maintenance cost, physical damage repair costs, or for the loss or theft of any CONTRACTOR owned vehicle.

## **XIII. INTEREST OF OFFICIALS AND THE CONTRACTOR**

- A. No officer, member, or employee of the AGENCY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
  - 1. Participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, any interest; or
  - 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.

- B. The CONTRACTOR hereby covenants that it has, at the time of the execution of this Agreement, no interest, and that CONTRACTOR shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONTRACTOR further covenants that in the performance of this work, no person having any such interest shall be employed.

#### **XIV. NO PERSONNEL, AGENCY, OR COMMISSION**

The CONTRACTOR warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, the AGENCY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **XV. SPECIFICATIONS**

All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are binding as to the performance of the work specified in this Agreement unless they are changed by written amendment to this Agreement to incorporate such changes.

#### **XVI. DOCUMENTS/DATA**

- A. Ownership of Documents: All original papers and documents, produced as a result of this Agreement, shall become the property of the AGENCY. In addition, AGENCY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the AGENCY.
- B. Publication: No report, information, or other data given or prepared or assembled by the CONTRACTOR pursuant to this Agreement, shall be made available to any individual or organization by the CONTRACTOR without the prior written approval of the AGENCY. Notwithstanding the foregoing, however, the CONTRACTOR shall not be required to protect or hold in confidence and confidential information which (1) is or becomes available to the public with the prior written consent of the AGENCY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.

#### **XVII. INDEMNIFICATION AND INSURANCE**

- A.
1. CONTRACTOR at its own cost and expense, shall indemnify, defend and hold harmless AGENCY from, and against, any and all claims demands, actions, suits, damages, liabilities, losses and expenses, including reasonable attorney's fees and reimbursements, for personal injury or property damage asserted by third parties ("Third Party Claims") to the extent caused by the negligence or willful misconduct of CONTRACTOR in connection with CONTRACTOR's performance or failure to perform in compliance with this Agreement.



2. AGENCY shall promptly give written notice to CONTRACTOR after obtaining knowledge of any Third Party Claim against AGENCY as to which recovery may be sought against CONTRACTOR because of the indemnity set forth in clause 1. above.
  3. CONTRACTOR will have the right to defend AGENCY against any such Third Party Claim with counsel mutually agreed upon by CONTRACTOR and AGENCY. In addition:
    - a. AGENCY may retain separate co-counsel at its sole cost and expense to monitor the defense of such Third Party Claim provided, however, that CONTRACTOR shall have the right to control the defense of such Third Party Claim in CONTRACTOR's sole discretion;
    - b. AGENCY will not consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim without the prior written consent of CONTRACTOR; and
    - c. AGENCY shall cooperate with all reasonable requests of CONTRACTOR in connection with the defense of such Third Party Claim.
  4. To the extent reasonable possible, AGENCY shall use its good faith efforts to mitigate any losses that CONTRACTOR is obligated to indemnify against, pursuant to this indemnifications provision.
- B. Without limiting AGENCY's right to indemnification, it is agreed that CONTRACTOR shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:
1. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
  2. Commercial General Liability, to include Products/Completed Operations, Contractual Liability, and Personal Injury Liability, and Property Damage with a minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.
  3. Automobile Liability Insurance to include owned, hired and non-owned autos with a combined single limit of \$1,000,000.00 each accident;
- C. AGENCY'S Executive Director is hereby authorized to reduce the requirements set forth above in the event he/she determines that such reduction is in the AGENCY'S best interest.
- D. Insurance Policies are to contain, or be endorsed to contain, the following provisions:
1. AGENCY, its officers, agents, employees, representatives and volunteers are to be covered as additional insured's on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

2. Primary Coverage: For any claims related with respect to performance to the extent of the CONTRACTOR's contractual obligations under Section XII A "Indemnification", the CONTRACTOR's insurance coverage shall be primary insurance as respects the AGENCY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the AGENCY, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except by (30) days prior written notice of cancellation or material change in coverage provided to the AGENCY.
4. Waiver of Subrogation: CONTRACTOR hereby grants to AGENCY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the AGENCY by virtue of the payment of any loss under such insurance to the extent of CONTRACTOR's indemnification obligation under this agreement. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation, but this provision applies regardless of whether or not the AGENCY has received a waiver of subrogation endorsement from the insurer.
5. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the AGENCY
6. Verification of Coverage: CONTRACTOR shall furnish the AGENCY's Facility and Fleet Specialist 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 AGENCY 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 AGENCY reserves the right to require complete, certified copies of all required certificates of insurance, except for the workers compensation policy, including endorsements required by these specifications, at any time provided however that the CONTRACTOR may redact policies of all copies requested by the AGENCY to prevent disclosure of confidential information not germane to the insurance coverage provided by the CONTRACTOR.

#### **XVIII. MISCELLANEOUS PROVISIONS**

- A. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties. Neither the AGENCY nor CONTRACTOR shall assign or otherwise transfer this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise, without the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed. CONTRACTOR shall have the right to delegate the performance of certain obligations and duties under this Agreement to one or more affiliates of CONTRACTOR hereunder. No delegation or other transfer will relieve the affected Party of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void.



- B. Dispute/Governing Law: Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.
- C. Notices: Notice shall be sufficient hereunder if personally served upon the Clerk of the Board, or an officer or principal of the CONTRACTOR, or if sent via the United States Postal Service, postage prepaid, addressed as follows:

Kings County Area Public Transit Agency  
610 W 7<sup>th</sup> Street  
Hanford, CA 93230  
Attention: Clerk of the Board

Enterprise Rent-A-Car Company of Sacramento, LLC  
150 North Sunrise Avenue  
Roseville, CA 95661  
Attention: Maryam Amiri

- D. Jurisdiction/Venue/Waiver Of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Kings County, California. The CONTRACTOR hereby expressly waives any right to remove any action to a county other than Kings County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- E. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the AGENCY and the CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the AGENCY and the CONTRACTOR.
- F. Severability: If any term or other provision of the Agreement is deemed invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- G. Counterparts: This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by E-mail or other comparable means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- H. Relationship of Parties: Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint consultant, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- I. No Third-Party Beneficiaries: This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other party any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of the Agreement.

- J. Construction: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.
- K. Authority: Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.
- L. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.
- M. CONTRACTOR covenants that he presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder.
- N. CONTRACTOR will not discriminate against any employee, or applicant for employment, because of race, color, religion, sex, marital status, or national origin. CONTRACTOR will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, marital status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

#### **XIX. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS**

This contract is financed in part with Federal funding. All services performed by CONTRACTOR pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable federal laws and requirements including, but not limited to:

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

No Obligation by the Federal Government.

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

##### **B. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS** **(31 U.S.C. §3801 et seq., 49 CFR Part 31, 18 U.S.C. §1001, 49 U.S.C. §5307)**

- 1. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and United States Department of Transportation ("U.S. DOT") regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this AGREEMENT. Upon execution of this AGREEMENT, 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 this AGREEMENT or the FTA assisted project for which this work is being performed. In



addition to other penalties that may be applicable, 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 CONTRACTOR to the extent the Federal Government deems appropriate.

2. 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 this AGREEMENT that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C §1001 on CONTRACTOR, to the extent the Federal Government deems appropriate.
3. 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.

**C. PRIVACY ACT (5 U.S.C. §552)**

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

1. CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR, or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this AGREEMENT.
2. CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**D. CIVIL RIGHTS REQUIREMENTS (29 U.S.C. §623, 42 U.S.C. §2000, 42 U.S.C. §6102, 42 U.S.C. §§12112 and 12132, 49 U.S.C. §5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.)**

AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY 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.

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53,

prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

- b) **Prohibition against Employment Discrimination.** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- 2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- 3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
- 4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

**E. DISADVANTAGED BUSINESS ENTERPRISES (DBE) (49 CFR Part 26)**

- 1. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Contractors are encouraged to cooperate with AGENCY in its effort to ensure equal and open access to AGENCY's contracting opportunities for DBEs. A separate contract goal has not been established for this procurement.
- 2. The CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. 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 AGENCY deems appropriate. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))
- 3. The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.



4. The prime contractor agrees to pay each sub-contractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime contractor receives from AGENCY. The prime contractor agrees to not withhold retainage from sub-contractors' payments. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of AGENCY. This clause applies to both DBE and non-DBE sub-contractors.
5. The CONTRACTOR must promptly notify AGENCY, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliated without prior written consent of AGENCY.
6. AGENCY will require contractors to submit regular reports of the actual payments made to DBE firms for work committed to the at the time of contract award. AGENCY will review the reports submitted by the prime contractor and seek confirmation, as needed, that payment was actually made to the DBE firm.
7. If a prime contractor is found not to be in compliance with its DBE commitment, it shall be so notified by AGENCY and directed to cure the problem within an appropriate time period. Failure by the prime contractor to comply may result in monetary penalties and partial to total termination for default with re-solicitation costs to be borne by the prime contractor or its bond. In addition, AGENCY may consider a contractor's non-compliance when evaluating contractor responsibility in future bids or proposals.

**F. ENERGY CONSERVATION REQUIREMENTS (42 U.S.C. §6321 et seq., 49 CFR Part 18)**

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.

**G. FEDERAL CHANGES (49 CFR Part 18)**

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement dated October, 2011) between AGENCY and FTA, as they may be amended or promulgated from time to time during the term of this PO/Contract. CONTRACTOR's failure to so comply shall constitute a material breach of this PO/Contract.

**H. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS (FTA Circular 4220.1F)**

**Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding PO/Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated April 14, 2009, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any AGENCY requests, which would cause AGENCY to be in violation of the FTA terms and conditions.

**I. ACCESS TO RECORDS (49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17)**



The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the CONTRACTOR agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. CONTRACTOR also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO CONTRACTOR access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, CONTRACTOR agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
3. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the CONTRACTOR shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
4. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
5. The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 CONTRACTOR agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
6. FTA does not require the inclusion of these requirements in subcontracts.

**J. LOBBYING (31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20)**

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.



Language in Lobbying Certification is mandated by 49CFR Part 19, Appendix A, Section 7, which provides that CONTRACTORS file the certification required by 49 CFR 20.110(d).

**K. RECYCLED PRODUCTS (42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873)**

**Recovered Materials** - The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**L. GOVERNMENT-WIDE DEBARMENT & SUSPENSION (49 CFR Part 29, Executive Order 12549)**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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 Kings County Area Public Transit Agency. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Kings County Area Public Transit 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 49 CFR 29, Subpart C 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.

**M. CLEAN WATER (33 U.S.C. 1251)**

1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. The CONTRACTOR agrees to report each violation to the AGENCY, understands, and agrees that the AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**N. CLEAN AIR (42 U.S.C. 7401 et seq, 40 CFR 15.61, 49 CFR Part 18)**

1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401. The CONTRACTOR agrees to report each violation to the AGENCY, understands, and agrees that the AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

**O. TERMINATION (49 U.S.C. Part 18 FTA Circular 42201.F)**

(1) **Termination for Convenience:** Either Party may terminate this Agreement without cause, upon no less than 180 days prior written notice to the other Party. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. CONTRACTOR shall be paid fairly such that it is made whole, including (1) a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, (2) reasonable charges that have resulted from the termination, including contract close-out costs and the costs associated with settling terminated subcontracts, and (3) fee/profit on work performed up to the time of termination. CONTRACTOR shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the AGENCY any right to audit CONTRACTOR's records. CONTRACTOR shall include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, contractors, and subcontractors at every tier, that exceed \$10,000, including this requirement to flow down the clause.

(2) **Termination for Default [Breach or Cause] (General Provision):** Either Party may terminate this Agreement, effective on written notice to the other Party, of the other Party breaches this Agreement, and such breach is incapable of cure, or being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach. If it is determined that the AGENCY improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(3) **Renewal:** Either Party may decline a Renewal Term by providing written notice of non-renewal to the other Party at least ninety (90) days prior to the last day of the Term.

(4) **Obligations Upon Termination:** The termination of this Agreement shall not relieve either Party of its obligations that accrued prior to the effective date of termination. For example, in the event that the AGENCY terminates CONTRACTOR for default, CONTRACTOR will still be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Agreement. Further, the rights and obligations of the Parties set forth in this Agreement that, by their nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

**P. Bonus or Commission:**

CONTRACTOR affirms that it has not paid, and agrees that it will not pay, any bonus or commission to obtain federal assistance for any Project or related activities supported under the Agreement or Underlying Agreement.

**Q. Trafficking in Persons:**

1. CONTRACTOR agrees that it and its employees that participate on the CONTRACTOR Vanpool Program at issue in the Agreement may not:
  - a. Engage in severe forms of trafficking in persons (as defined by 22 U.S.C. § 7102), during the period of time that the Agreement is in effect;
  - b. Procure a commercial sex act (as defined at 22 U.S.C. § 7102) during the period of time that the Agreement is in effect, or



- c. Use forced labor in the performance of the Agreement or subagreements thereunder.
- 2. CONTRACTOR agrees to comply and assures the compliance of each subrecipient, with federal requirements and guidance, including:
  - a. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended 22 U.S.C. § 7104 (g), and
  - b. The terms of this section 4.g, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 C.F.R. Part 175 per U.S. OMB's direction.
- 3. CONTRACTOR agrees to, and assures that each subrecipient or subcontractor will:
  - a. Provide Information: Inform FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this clause; and
  - b. Flow-down: Include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, contractors, and subcontractors at every tier, including this requirement to flow down the clause.

**R. Awards Involving Commerce – Fair Labor Standards Act:**

CONTRACTOR agrees to comply with the Fair Labor Standards Action ("FLSA"), 29 U.S.C. § 201, et seq., to the extent that the FLSA applies.

**S. Safe Operation of Motor Vehicles:**

- 1. Seat Belt Use: Pursuant to Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), 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 CONTRACTOR or AGENCY.
- 2. Distracted Driving: Pursuant to (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, CONTRACTOR is encouraged 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 and employer, and driving a vehicle the driver owns or rents, a vehicles CONTRACTOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**T. Charter Services:**

- 1. CONTRACTOR agrees that it will not provide charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:
  - a. Federal transit laws, specifically 49 U.S. C. § 5323 (d);
  - b. FTA regulations, "Charter Services," 49 C.F.R. Part 604;

- c. Any other federal Charter Service regulations; or
  - d. Federal guidance, except as FTA determines otherwise in writing.
2. CONTRACTOR agrees that it will include the substance of this clause in each subcontract that may involve operating public transit services.

**U. School Bus Operations:** CONTRACTOR agrees that neither it nor any third-party Participant will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323 (f) or (g), FTA regulations, "School Bus Operations" laws, regulations, requirements, or applicable federal guidance.

**V. Substance Abuse:** To the extent CONTRACTOR is engaged in operations requiring compliance with 49 C.F.R. Part 655, CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administration, the State Oversight Agency of California, or AGENCY, to inspect the facilities and records associated with implementation of the required drug and alcohol testing program and to review the testing process. To the extent applicable, CONTRACTOR agrees to certify annually its compliance with Part 665 before March 1<sup>st</sup> and to submit the Management Information System reports before March 10 to Angie Dow, Executive Director. To the extent applicable, CONTRACTOR shall use "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," published annually in the Federal Register, to certify compliance.

**W. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES:**

AGENCY and contractors are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§12101 et seq. and 49 U.S.C. §322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app §1612; and the following regulations and any amendments thereto:

- 1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
- 2. U.S. DOT regulations, " Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
- 3. U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 49 C.F.R. Part 38;
- 4. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;
- 5. DOJ regulation, "Nondiscrimination of the Bases of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
- 6. General Services Administration regulations, "Construction and Alteration of Public Buildings", "Accommodations for the Physically Handicapped", 41 C.F.R. Part 101-19;
- 7. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630;



8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled", 49 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons", 49 C.F.R. Part 609.

**X. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

To the extent the Contract Work Hours and Safety Standards Act apply CONTRACTOR agrees:

1. Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States 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 the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for Unpaid Wages and Liquidated Damages. AGENCY 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 Hourly 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 the clause set forth in paragraph (2) of this section.
4. Subcontracts. 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 clause set forth in this section.
5. Payrolls and Basic Records (Non-Construction). Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site for work. Such records shall contain the name, address, and social security number of each such worker, his or her classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification

of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**Y. VIOLATION AND BREACH OF CONTRACT:**

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 Agreement 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 Agreement, breach shall include disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of KCAPTA's Transit Manager. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the CONTRACTOR mails or otherwise furnishes a written appeal to the Executive Director. 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 Executive Director shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.

Performance During Dispute - Unless otherwise directed by AGENCY, CONTRACTOR shall continue performance under this Agreement while matters in dispute are being resolved.

Claims for Damages - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he 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.

**Rights and Remedies of CONTRACTOR**

Inasmuch as the CONTRACTOR can be adequately compensated by money damages for any breach of this Agreement, 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 Agreement, entitling CONTRACTOR to cancel or rescind the Agreement (unless the AGENCY directs CONTRACTOR to do so) or to suspend or abandon performance.

**Remedie**

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.

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 Agreement, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Agreement 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 Agreement, 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 Agreement while matters in dispute are being resolved.

#### **Claims for Damages**

Should either party to the Agreement 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 Agreement 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 Agreement 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 Agreement, 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.

## **Z. FTA PROTEST PROCUDURES**

CONTRACTOR is hereby notified that, if this contract is funded in whole or in part by the Federal Department of Transportation, The Federal Transit Administration (FTA) may entertain a protest that alleges that AGENCY failed to have or follow written protest procedures. Bidders must file a protest with the FTA not later than five (5) days after AGENCY renders a final decision or five (5) days after the Bidder knows or has reason to know that AGENCY has failed to render a final decision. Protest to the FTA must be filed in accordance with FTA Circular 4220.1F (as periodically updated)

## **AA. NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the AGENCY and CONTRACTOR must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the AGENCY is located.

1. The types of legal matters that require notification include, but are not limited to, major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
2. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
3. The AGENCY must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the AGENCY is located, if the AGENCY has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et. Seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participate of AGENCY. It also applies to subcontractor at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the AGENCY.

The CONTRACTOR must include this provision in all sub agreements at every tier.

**AB. DHS SEAL, LOGO, & FLAGS**

The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval

**AC. PROMPT PAYMENT**

The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the CONTRACTOR's receipt of payment for that work. In addition, the CONTRACTOR is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

The CONTRACTOR must promptly notify the Agency, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The CONTRACTOR may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

CONTRACTOR agrees to include the Prompt Payment Clause in each subcontract.

**AD. SIMPLIFIED ACQUISITION THRESHOLD:**



Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317-200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000 49 U.S.C. § 5323(j)(13)).

CONTRACTOR agrees to include the Simplified Acquisition Clause in each subcontract greater than the \$250,000.

**AE. TAX LIABILITY AND FELONY CONVICTIONS:**

The CONTRACTOR certifies:

1. It has not unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
2. It has not been convicted of a felony criminal violation under any Federal law within the preceeding 24 months.

The CONTRACTOR agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

KINGS COUNTY AREA PUBLIC TRANSIT AGENCY

CONTRACTOR

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
NAME  
Title

Approved as to Form

\_\_\_\_\_  
General Counsel