

**ATTACHMENT C**  
**AGREEMENT 2302 ECOLANE**

## AGREEMENT 2302

### SOFTWARE LICENSE & SERVICE AGREEMENT

This Agreement, entered into this 28th day of September, 2022, by and between Kings County Area Public Transit Agency, hereinafter referred to as the "KCAPTA" or "Agency" and Ecolane USA, Inc., hereinafter referred to as the "Provider" or "Contractor".

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

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

**WHEREAS**, the Provider represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, KCAPTA and Provider agree as follows:

#### **1. SERVICES TO BE PERFORMED BY THE PROVIDER**

a. Scope of Work:

- i) This Agreement is for services to be rendered by Provider to KCAPTA with respect to: Dispatching and Scheduling Software.
- ii) By executing this Agreement, the Provider represents and agrees that Provider is qualified to perform and fully capable of performing and providing the services required or necessary under this Agreement in a fully competent, professional, and timely manner.
- iii) Time is of the essence with respect to this Agreement
- iv) The services to be performed under this Agreement consist of Scope of Work, as described, and designated in Section 3 hereof. Compensation to the Provider for Scope of Work designated in Section 5.

#### **2. RESPONSIBILITIES OF THE PROVIDER**

- a. Services to be provided. The Provider shall provide KCAPTA with all services required in Section 3 to satisfactorily complete the Project within the time limitations set forth herein and in accordance with the highest professional standards.

b. Standard of Care

- a. The Provider shall exercise reasonable care and diligence in performing services under this Agreement in accordance with the highest generally accepted standards of this type of Provider practice throughout the United States and in accordance with applicable federal, state, and local laws and regulations applicable to the performance of these services. Provider is solely responsible for the professional quality, accuracy, and timely completion and/or submission of all work related to the Scope of Work.



- b. Provider shall be responsible for all errors or omissions of its agents, contractors, employees, or assigns in the performance of the Agreement. Provider shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes, or conflicts at no additional cost to KCAPTA.
- c. The Provider shall not, except as otherwise provided for in this Agreement, subcontract the performance of any work under this Agreement without prior written permission of KCAPTA. No permission for subcontracting shall create, between KCAPTA and the subcontractor, any contract, or any other relationship.
- d. Provider is an independent contractor of KCPATA. Any and all employees of the Provider engaged by the Provider in the performance of any work or services required of the Provider under this Agreement, shall be considered employees or agents of the Provider only and not of KCAPTA, and any and all claims that may or might arise under any workers compensation or other law or contract on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Provider.
- e. If activities related to the performance of this Agreement require specific licenses, certifications, or related credentials Provider represents that it and/or its employees, agents and subcontractors engaged in such activities possess such licenses, certifications, or credentials and that such licenses certifications, or credentials are current, active, and not in a state of suspension or revocation.

### 3. SCOPE OF WORK

- a. Scope of Work: The Provider agrees to perform the services as described in the response to Request for Proposal 2122-06 "Transportation Scheduling Software," attached as Exhibit A, Provider Proposal, attached as Exhibit B.
- b. Precedence of Documents: The Provider and KCAPTA agree that in the event that there are any conflicts in the language, terms or provisions of the documents constituting this Agreement, the order of precedence shall be as follows: (1) the Agreement, (2) the Proposer Proposal, including the Price Proposal, (3) Addendums No. 1 and 2, and (4) Request for Proposals 2122-06.

### 4. DURATION OF SERVICES

- a. Term. The term of this Agreement shall be from October 1, 2022, to December 1, 2027.
- b. Scheduling of Services.
  - i) The Provider shall schedule and perform its activities in a timely manner.
  - ii) Should KCPATA determine that the Provide is behind schedule, it may require the Provider to expedite and accelerate its efforts, including providing additional resources and working overtime, as necessary, to perform its services in accordance with the approved project schedule at no additional cost to KCAPTA.
  - iii) The "Go Live" date for the software shall be December 1, 2022.

## 5. COMPENSATION

- a. Compensation for Scope of Work. Compensation for Scope of Work shall include all compensation due the Provider from KCAPTA for all services under this Agreement as describe in Exhibit C "Price Proposal". The maximum amount payable for Scope of Work shall not exceed One Hundred Eighty Five Thousand Dollars (\$185,000). Payment for Scope of work shall become due and payable within thirty (30) days of Provider properly invoicing KCPATA. Payment shall be subject to provisions of Section 5(b).
- b. Disputes. In the event the amount stated on an invoice is disputed by KCPATA, KCPATA may withhold payment of all or a portion of the amount stated on an invoice until the parties resolve the dispute. Provider and KCPATA shall work diligently to resolve the disputed amount within sixty (60) days of the Provider's date of invoice. Should Provider fail to perform its duties under the terms of this Agreement, KCAPTA may, without fault or penalty, withhold any payments associated with the work to be performed until such time as said work is completed.
- c. Additional Services. KCAPTA shall not be responsible for costs related to any services in addition to the Scope of Work performed by Provider unless KCPATA request such additional services in writing and such additional services are evidenced by a written amendment to this Agreement.

## 6. RESPONSIBILITIES OF KCAPTA

- a. Cooperation and Coordination. KCAPTA has designated the Executive Director to act as KCAPTA's representative with respect to the Project and shall have the authority to render decisions and shall be available during working hours as often as may be reasonable required to render decisions and to furnish information.

## 7. INSURANCE

- a. General Requirements. Provider shall obtain, at its sole expense, Commercial General Liability Insurance, Automobile Insurance, Workers' Compensation Insurance, and any additional insurance as may be required.

## 8. INDEMNITY

- a. Indemnity. The Provider agrees, without limitation, to defend, indemnify and hold harmless KCPATA from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the Project and arising from property damage or bodily injury including death to any person or persons caused in whole or in part by the negligence or misconduct of the Provider except to the extent same are caused by the negligence or willful misconduct of KCAPTA. It is the intent of this provision to require the Provider to indemnify KCAPTA to the fullest extent permitted under California law.

## 9. AMENDMENTS TO THE AGREEMENT

- a. Changes in Scope of Work. Changes in the Scope of Work and entitlement to additional compensation or change in duration of this Agreement shall be made by a written Amendment to this Agreement Executed by KCPATA and the Provider. The Provider shall proceed to perform the Services required by the Amendment only after receiving a fully executed Amendment from KCPATA.

## 10. TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or equity or as otherwise provided



for under this Agreement.

- a. Termination By Either Party Without Cause: The KCAPTA or PROVIDER may terminate this Agreement at any time by giving written notice to the other party of said termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination.
- b. Termination of Agreement for Cause: The KCAPTA may, by written notice to the PROVIDER specifying the effective date thereof, at least sixty(60) days before the effective date of such termination, terminate the whole or any part of this Agreement in any of the following circumstances:
  - i) If the PROVIDER fails to perform the services called for by this Agreement within the time(s) specified herein or any extension thereof; or
  - ii) If the PROVIDER fails to make progress under this Agreement so as to endanger PROVIDER's performance of this Agreement in accordance with its terms or to interfere with the KCAPTA's ability to perform its duties and functions, and does not correct such failure within a period of ten (10) days (or longer period as the KCAPTA may authorize in writing) after receipt of written notice from the KCAPTA specifying such failure.
- c. Post-Termination:
  - i) In the event the KCAPTA terminates this Agreement with or without cause, the KCAPTA may procure, upon such terms and such manner as it may determine appropriate, services similar to those terminated.
  - ii) Should the Agreement be terminated with or without cause, the PROVIDER shall provide the KCAPTA with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the PROVIDER pursuant to this Agreement.
  - iii) Upon termination, with or without cause, PROVIDER will be compensated for the services satisfactorily completed to the date of termination according to the compensation provisions contained herein. In no event, shall the total compensation paid PROVIDER exceed the total compensation agreed to herein.
  - iv) If, after notice of termination of this Agreement, it is determined for any reason that the PROVIDER was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was terminated without cause.
  - v) Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

## 11. ADDITIONAL 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.
- b. Prohibition of Assignment: Neither the KCAPTA nor PROVIDER shall assign, delegate, or transfer their rights and duties in this Agreement without the written consent of the other party.

- c. 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.
- d. Notices: Notice shall be sufficient hereunder if personally served upon the Clerk of the Board, or an officer or principal of the PROVIDER, 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

Provider  
 Ecolane USA, INC.  
 940 West Valley Road, Suite 1400  
 Wayne, PA 19087

- e. 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 California. 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 PROVIDER 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.
- f. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the KCAPTA and the PROVIDER 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 KCAPTA and the PROVIDER.
- g. Severability: If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.
- h. 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.
- i. 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.
- j. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.
- k. Ownership of Work Product: Should Provider's performance of this Agreement generate documents, items or things that are specific to this Project such as documents, data, or things shall become the property of KCAPTA and may be used on any other project without additional compensation to the Provider. The use of the documents, data, or other things by KCAPTA or by any person or entity for any purpose other than the Project as set forth in this Agreement shall be at the full risk of KCAPTA.
- l. Non-Appropriation: Provider acknowledges that KCAPTA is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under the authority of its statutory mandate.



In the event that public funds are unavailable and not appropriated for the performance of KCAPTA's obligations under this Agreement, then this Agreement shall automatically expire without penalty to KCAPTA immediately upon written notice to Provider of the unavailability and non-appropriation of public funds. It is expressly agreed that KCAPTA shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis.

In the event of a change in KCAPTA's statutory authority, mandate and /or mandated functions, by state and/or Federal legislative or regulatory action, which adversely affects KCAPTA's authority to continue its obligation under this Agreement, then this Agreement shall automatically terminate without penalty to KCAPTA upon written notice to Provider of such limitation or change in KCAPTA's legal authority.

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

This contract is financed in part with Federal funding, and is thus subject to the statutes, rules, regulations, and guidelines as issued by the Federal Government and the Federal Transit Administration. Accordingly, all services performed by PROVIDER 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. Access to Records and Reports.**

***Applicable to: All Contracts.***

#### **Flow Down:**

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

#### **Contract Requirements:**

- i. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and make readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontractor, arrangements, other third party agreements of any type, and supporting materials related to those records.
- ii. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.33. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of 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.
- iii. **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 reasonable may be required.
- iv. **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 reasonable may be required.

### **b. Americans with Disabilities Act (ADA)**

***Applicable to: All Contracts.***

Flow Down

These requirements flow down to all tiers

Contract Requirements

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

c. Buy America Requirements

**Applicable to:** *Construction contracts and acquisition of goods or rolling stock (valued at more than \$150,000).*

Flow Down:

These 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.

Contract Requirements:

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.

d. Cargo Preference Requirements

**Applicable to:** *All contracts involving equipment, materials, or commodities which may be transported by ocean vessels.*

Flow Down:

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

Contract Requirements"

**Use of United States-Flag Vessels.** The Contractor agrees:

- i. 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.
- ii. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 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 D.C. 20590 and the FTA recipient (through the Contractor in the case of a subcontractor's bill-of lading.)

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

e. Civil Rights Laws and Regulations

***Applicable to:*** All contracts and subcontracts

Flow Down:

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

Contract Requirements:

**Civil Rights and Equal Opportunity**

The Kings County Area Public Transit Agency (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.

- i. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

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.

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.

- ii. **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.
- iii. **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," 29part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

- iv. **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.

f. Clean Air Act and Federal Water Pollution Control Act

**Applicable to:** All contracts and subcontracts which exceed \$150,000.

Flow Down:

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

Contract Requirements:

The Contractor agrees 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 FTA and the Regional Office of the Environmental Protection Agency.

Clean Air Act

- i. 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 et seq.
- ii. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

- i. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

g. Contract Work Hours and Safety Standards Act



**Applicable to:** This requirement applies to all FTA grant and cooperative agreement programs.

Flow Down

These requirements flow down to all tiers.

Contract Requirements

Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.

Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer 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 must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

**Contract Work Hours and Safety Standards**

- i. **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 workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at 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 workweek.
- ii. **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 workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- iii. **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) 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 the clause set forth in paragraph (2) of this section.



- iv. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of 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 paragraphs (1) through (4) of this section.

**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 subcontract of all tiers.

h. **Davis Bacon Act and Copeland Anti-Kickback Act**

**Applicable to:** The Davis-Bacon and Copeland Acts are codified at 40 USC 3441, *et. Seq.* and 18 USC 874. The acts apply to all grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145 (a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5 (a). Construction, for the purposes of the Acts, includes actual construction, alteration and/or repair, including painting and decorating. 29 CFR 5.5 (a). The requirements of both Acts are incorporated into a single clause.

**Flow Down**

These requirements flow down to all tiers.

**Contract Requirements**

In accordance with the statute, contractors must be required to 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, contractors must be required to pay wages not less than once a week.

The Non-Federal entity 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. The non- Federal entity must report all suspected or reported violations to the Federal awarding agency.

**"Compliance with the Copeland "Anti-Kickback" Act.**



- i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

i. Debarment and Suspension

**Applicable to:** All contracts and subcontracts which exceed \$25,000

Flow Down:

These requirements flow down to all contract awards in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit.

Contract Requirements:

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:

- i. Debarred from participation in any federally assisted Award;
- ii. Suspended from participation in any federally assisted Award;
- iii. Proposed for debarment from participation in any federally assisted Award;
- iv. Declared ineligible to participate in any federally assisted Award;
- v. Voluntarily excluded from participation in any federally assisted Award;
- vi. Disqualified from participation in any federally assisted Award.

By signing Attachment C 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.

j. Disadvantage Business Enterprise (DBE)

***Applicable to:*** All contracts.

Flow Down:

These requirements flow down to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier

Contract Requirements:

It is the policy of the Kings County Area Public Transit Agency (AGENCY) and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), 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 AGENCY to:

- i. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- ii. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
- iii. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- iv. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
- v. Help remove barriers to the participation of DBEs in DOT assisted contracts;
- vi. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
- vii. 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 AGENCY 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 AGENCY 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 AGENCY.

**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 AGENCY deems appropriate.

**DBE Participation**

- i. For the purpose of this Contract, the AGENCY will accept only DBE's who are:  
Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP)]; or



- ii. 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; or
- iii. Certified by another agency approved by the AGENCY.

#### **DBE Participation Goal**

The DBE participation goal for this Contract is set at 0 % This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 0 %** of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Officer non-responsive.

#### **Proposed Submission**

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

- i. A completed **DBE Utilization Form** (see Attachment E) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
- ii. A list of those qualified DBE's with whom the Bidder/Officer 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 Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Officer has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Officer may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.
- iii. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
- iv. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

#### **Good Faith Efforts**

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

- i. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
- ii. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Officer's of DBE subcontracting opportunities;
- iii. The Bidder/Officer'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;
- iv. Written notification to DBE's encouraging participation in the proposed Contract; and
- v. Efforts made to identify specific portions of the work that might be performed by DBE's.



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

- i. The names, addresses, and telephone numbers of DBE's that were contacted;
- ii. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
- iii. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

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 Authority 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 Authority 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 AGENCY 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 AGENCY's [Contact Name]. The [Contact Name] 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 AGENCY 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 Participation Schedule** (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five 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 AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

#### **Continued Compliance**

The AGENCY 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 quarterly written reports to the AGENCY that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- i. DBE utilization established for the Contract;
- ii. Total value of expenditures with DBE firms for the quarter;
- iii. The value of expenditures with each DBE firm for the quarter by race and gender;
- iv. Total value of expenditures with DBE firms from inception of the Contract; and
- v. 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 Coordinator with copies provided to the [Agency Name1] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- i. The AGENCY to have access to necessary records to examine information as the AGENCY 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.
- ii. The authorized representative(s) of the AGENCY, 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.
- iii. All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

#### **Sanctions for Violations**

If at any time the AGENCY 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 AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- i. Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- ii. 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.

#### **k. DHS Seal, Logo, and Flags**

***Applicable to: All contracts***

#### **Flow Down:**

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

#### **Contract Requirements:**

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.

I. Energy Conservation

***Applicable to:*** All contracts

Flow Down:

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

Contract Requirements:

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.

m. Equal Employment Opportunity

***Applicable to:*** All contracts

Flow Down:

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

Contract Requirements:

During the performance of this contract, the contractor agrees as follows:

- i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- iv. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided



- by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - vi. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - vii. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - viii. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- n. Federal Changes

***Applicable to:*** All contracts.

Flow Down

These requirements flow down appropriately to each applicable changed requirement.

Contract Requirements

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 between Kings County Area Public Transit Agency and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

o. Fly America

***Applicable to:*** Contracts that have 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.

Flow Down:

These 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.

Contract Requirements:

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 41.

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.

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.

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]:*

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

p. FTA Protest Procedures

**Applicable to:** *All Contracts*

Flow Down:

The requirements extend to all third party contractors

Contract Requirements:

Contractors are 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)

q. Incorporation of Federal Transit Administration (FTA) Terms

**Applicable to:** *All contracts.*

Flow Down

These requirements flow down to all tiers.



### Contract Requirements

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 2008, 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 Kings County Area Public Transit Agency requests which would cause Kings County Area Public Transit Agency to be in violation of the FTA terms and conditions.

### r. Lobbying Restrictions

**Applicable to:** All Contract and subcontracts of \$100,000 or more at any tier under a Federal Grant.

### Flow Down:

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

### Contract Requirements:

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:

- i. 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.
- ii. 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.
- iii. 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

s. Metric Requirement

**Applicable to:** All Contracts

Flow Down:

The Metric Requirement clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Contract Requirements:

As required by U.S. DOT or FTA KCAPTA agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. §§ 205a note; and other U.S.DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, KCAPTA agrees to accept products and services with dimensions expressed in the metric system of measurement.

t. Notification to FTA/Legal Matters Concerning a Covered Transaction

**Applicable to:** All Contracts Equal or Exceeding \$25,000

Flow Down:

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

Contract Requirements:

If a current or prospective legal matter that may affect the Federal Government emerges, the AGENCY must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the AGENCY is located. The AGENCY must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to C.F.R. §§ 180.220 & 1200.220.

- i. The types of legal matters that require notification include, but are not limited to, a 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.
- ii. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- iii. 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 Recipient 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 Participant of the Recipient. It also applies to subcontractors 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.



u. No Government Obligations to Third Parties

**Applicable to:** All Contracts

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.

Contract Requirements:

Kings County Area Public Transit 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 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.

v. Patent Rights and Rights in Data

**Applicable to:** Only to apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information.

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.

Contract Requirements:

**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.

- i. 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.

- Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- ii. 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.
- iii. 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.
- iv. 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.
- v. 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.
- vi. 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.
- w. Privacy Act

**Applicability to:** All Contracts when contractor maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier.

Flow Down:

The Federal Privacy Act requirements flow down to each third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Contract 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:

The Contractor agrees to comply with, and assures that compliance of its employees with, the



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

x. Program Fraud and False or Fraudulent Statements and Related Acts

**Applicable to:** All contracts

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.

Contract Requirements:

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.

y. Prompt Payment

**Applicable to:** All contracts.

Flow Down:

These requirements flow down to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier

Contract Requirements:

The contractor is required to pay its subcontractors performing work related to this contract 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 contract is satisfactorily completed.

The contractor must promptly notify the 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 affiliate without prior written consent of the Agency.

z. **Recycled Products**

**Applicable to:** The Recycle Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year using Federal funds.

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.

Contract Requirements:

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
  - Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.
- ii. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

aa. Safe Operations of Motor Vehicles

**Applicable to:** All third party contracts

Flow Down:

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

Contract Requirements:

**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.



bb. Simplified Acquisition Threshold

**Applicable to:** All contracts in excess of simplified acquisition threshold.

Flow Down:

The requirements extend to all third party contractors

Contract Requirements:

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)).

cc. Special DOL EEO Clause

**Applicable to:** Construction contracts greater than \$10,000

Flow Down:

These requirements flow down to all third party contractors at every tier.

Contract Requirements

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

dd. Tax Liability and Felony Convictions

**Applicable to:** All contracts

Flow Down

To all third party contracts and their contracts at every tier and subrecipients and their subcontracts at every tier.

Contract Requirements:

The Contractor certifies:

- i. 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
- ii. It has not been convicted of a felony criminal violation under any Federal law within the preceding 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.

ee. Termination

**Applicable to:** All contracts in excess of \$10,000

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.

Contract Requirements:

**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 effected 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:

- i. 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
- ii. 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.

ff. **Trafficking Victims Protections Act**  
**Applicable to:** *All Contracts*

**Flow Down:**

The requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontractors at every tier.



Contract Requirements:

The Contractor certifies:

The Contractor does not engage in, or uses labor recruiters, brokers, or other agents who engage in

- i. Severe forms of trafficking in persons
- ii. The procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect
- iii. The use of forced labor in the performance of the grant, contract, or cooperative agreement
- iv. Acts that directly support or advance trafficking in persons, including the following acts:
  - (A) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.
  - (B) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless
    - Exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, contract, or cooperative agreement; or
    - The employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or witness in a human trafficking enforcement action
  - (C) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment
  - (D) Charging recruited employee placement or recruitment fees
  - (E) Providing or arranging housing that fails to meet the host country housing and safety standards.

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

gg. Veterans Hiring Preference

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

hh. Violation and Breach of Contract

**Applicable to:** All contracts in excess of the Simplified Acquisition threshold (\$150,000)

Flow Down:

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

**Contract Requirements:**

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.

- i. 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;
- ii. The right to cancel this Contract as to any or all of the work yet to be performed;
- iii. The right to specific performance, an injunction or any other appropriate equitable remedy; and
- iv. The right to money damages.

For purposes of this Contract, breach shall include disputes arising in the performance of this Contract 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 KCAPTA, 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 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 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.

**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.

**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 Transit Manager. 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 Transit Manager. 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 Transit Manager 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.

#### **ii. Conformance with ITS National Architecture**

***Applicable to:*** Contracts and Solicitations for ITS projects only.

#### **Flow Down:**

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

Contract Requirements:

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

jj. Prohibition of Certain Telecom and Video Surveillance Services or Equipment

**Applicable to:** *All Contracts*

Flow Down

These requirements flow down to all tiers

Contract Requirements

KCAPTA is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporations (or any subsidiary or affiliate of such entities).
  - 1. For the purpose of public safety, security of government facilities, physical security surveillance or critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology (or any subsidiary or affiliate of such entities).
  - 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of Federal Bureau of Investigation, reasonable believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- D. In implementing the prohibition under Public Law 115-232, section 889, subsection (f) paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonable 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.
- E. CONTRACTOR represents and warrants that it has performed a due diligence review of its supply chain and that no such "covered telecommunications equipment or services" shall be provided to KCAPTA that would cause KCAPTA to be in violation of the prohibition contained in the Act.



### 13. MISCELLANEOUS PROVISIONS

- a. PROVIDER covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with its performance of services required hereunder.
- b. PROVIDER will not discriminate against any employee, or applicant for employment, because of race, color, religion, sex, marital status, or national origin. PROVIDER 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.

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

KINGS COUNTY AREA PUBLIC TRANSIT AGENCY

ECOLANE USA INC.

\_\_\_\_\_  
Joe Neves  
Chairman

Approved as to Form

\_\_\_\_\_  
Legal Counsel

Attachments:

Exhibit "A" RFP 2122-06

Exhibit "B" Proposal

Exhibit "C" Price Proposal