

# **ATTACHMENT C**

**AGREEMENT 2401 WITH SEALS CONSTRUCTION INC**

**CONSTRUCTION AGREEMENT NO. 2401  
FOR  
KART TRANSIT CENTER  
(Kings County Area Public Transit Agency Project #479083)**

This AGREEMENT, entered into and effective this 19<sup>th</sup> day of July, 2023 ["Effective Date"] by and between Kings County Area Public Transit Agency, hereinafter referred to as the "OWNER", and Seals Construction, Inc. hereinafter referred to as the "CONTRACTOR" or "Bidder".

**RECITALS**

**WHEREAS**, CONTRACTOR is a Corporation with a primary business address of 910 W Placer Avenue, Visalia Ca 93291, License No(s) 949738 **Class B**;

**WHEREAS**, the OWNER desires completion of the KART Transit Center Construction, which was let to bid on May 25, 2023 and

**WHEREAS**, the OWNER reviewed and evaluated responses to the Bid and determined to award a contract to CONTRACTOR for the KART Transit Center Construction (the "Project"); and

**WHEREAS**, the CONTRACTOR represents it is licensed, qualified and willing to complete the Project pursuant to terms and conditions of this Agreement.

**NOW, THEREFORE**, the parties hereto do mutually agree as follows:

**ARTICLE 1  
THE CONTRACT DOCUMENTS**

**1.1** The complete Contract between the OWNER and the CONTRACTOR shall consist of the following contract documents: The Notice to Contractors, the Bonds, the Instruction to Bidders, the Accepted Bid Proposal, all Addenda, this Construction Agreement, the General conditions, Supplemental Conditions, the Drawings and Specifications, Notice of Award, Notice to Proceed, Change Orders, Notice of Substantial Completion, Notice of Completion, and modifications incorporated in those documents. The contract, Drawings and Specifications are intended to supplement on another.

**ARTICLE 2  
THE WORK**

**2.1** The CONTRACTOR agrees to furnish at his own cost and expense, all labor, equipment, and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinist, teamsters, freight carriers, and laborer required for the construction of the KART Transit Center. All in strict compliance with the plans, drawings and specification therefore prepared by RRM Design Group, 3765 S Higuera St. STE. 102, San Luis Obispo, CA 93401.

**2.2** The work to be performed under this Agreement is on a construction project assisted under a program providing direct Federal Transit Administration. CONTRACTOR is subject to federal requirements contained in the attachments hereto which are incorporated herein by reference.

### **ARTICLE 3**

#### **TIME TO COMPLETE AND LIQUIDATED DAMAGES**

**3.1** For the purpose of determining the contract completion date, the date of commencement shall be ten (10) calendar days after receipt of written Notice to Proceed, or if no such written Notice to Proceed is issued, it shall be 10 calendar days from the date of this Agreement.

**3.2** Time is of the essence in this contract, and the time of completion for this Project shall be 111 calendar days from the date established in the OWNER's Notice to Proceed, or if no such written Notice to Proceed is issued, 10 calendar days from the date of this Agreement. Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject the CONTRACTOR to liquidated damages. For purpose of liquidated damages, the concept of substantial completion shall not constitute completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the OWNER would suffer if the Project were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the OWNER would suffer in the event of delay include, but are not limited to, loss of the use of the Project, disruption of activities, costs of administration, supervision and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that the amount herein set forth shall be the amount of damage which the OWNER shall directly incur upon failure of the Contractor to complete the Project within the time specified: **\$2,000**, for each calendar day by which completion of the Project is delayed beyond the completion date as adjusted by change orders.

If the Contractor becomes liable under this section, the OWNER, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the CONTRACTOR until the liability of the CONTRACTOR under this section has been finally determined. IF the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the CONTRACTOR incurred under this Article, the CONTRACTOR and its sureties shall continue to remain liable to the OWNER for such liabilities until all such liabilities are satisfied in full.

### **ARTICLE 4**

#### **THE CONTRACT PAYMENT**

**4.1** In consideration of the covenants, agreements, and promises on the part of the CONTRACTOR contained in the Contract Documents, and the strict and literal fulfillment of each and every such covenant, agreement, and promise, and as compensation agreed upon for the erections, construction and completion of the said work, in strict accordance with the Plans and Specifications therefore, the OWNER agrees to pay and cause to be paid to the CONTRACTOR the Contract Sum of Twenty-nine million, nine hundred fifty-five thousand dollars (\$29,955,000), lawful money of the United States, subject to additions and deductions as provided in the Contract Documents.

**4.2** The Contract Sum is based upon the following alternates, if any which are described in the Contract Documents and are hereby accepted by OWNER.

Add Alt # 1 – Photovoltaic Panels, equipment, conductor, and misc.                      \$650,000

Add Alt # 2A – Northern most two bay bus canopies                                      \$490,000

Add Alt # 2B – Photovoltaic Panels, equipment, conductors, and misc.      \$240,000

Add Alt # 3 – Bulbouts and all associated work at the 3 corners of 7<sup>th</sup> and Haris, and 7<sup>th</sup> and Brown intersections      \$325,000

## **ARTICLE 5 PROGRESS PAYMENT**

Applications for Payment shall be submitted monthly in a timely manner by the CONTRACTOR on or before the date mutually agreed upon by the OWNER and CONTRACTOR. The form shall be approved by the OWNER.

Progress Payments shall be made once each month, on or about a date to be determined by the OWNER. The amount shall be based on the percent completion of each portion of work completed at the end of the month covered by the Application of Payment. Payment of undisputed contract amounts (progress payments) is contingent upon the CONTRACTOR furnishing the OWNER with a release of all claims against the OWNER arising by virtue of the work relating to the amount so paid. The release may be on the form used for computing monthly progress payment.

The progress payment amount shall be adjusted as set forth in the Project Manual, General Conditions.

## **ARTICLE 6 FINAL PAYMENT**

**6.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the OWNER to the CONTRACTOR when (1) the Contract has been fully performed by the CONTRACTOR, and (2) a final Certificate for Payment has been issued by the Inspector; such final payment shall be made by the OWNER not more than 60 days after the recording of the Notice of Completion.

**6.2** Pursuant to Public Contract Code section 7107, in the event of a dispute between the OWNER and CONTRACTOR, the OWNER may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. Except as so withheld, the OWNER shall release the retention withheld within 60 days after the date of completion of the work of improvement, as "completion" is defined in Public Contract Code section 7107. In the event that retention payments are not made within the time periods required by Public Contract Code section 7107, the OWNER shall be subject to the interest payment provisions of Public Contract Code section 7107.

## **ARTICLE 7 CHANGES**

Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in the General Conditions.

## **ARTICLE 8 TERMINATION**

Because this project is funded by a Federal Transit Authority Grant, the following termination provisions apply Pursuant to 40 U.S.C. Part 18, and FTA Circular 4220.1F.

**(a) Termination for Convenience (General Provision):** Kings County Area Public Transit Agency may terminate this contract, in whole or in part, at any time by written notice to the CONTRACTOR when it is in the Kings County Area Public Transit Agency's best interest. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work

performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to Kings County Area Public Transit Agency to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to Kings County Area Public Transit Agency, the CONTRACTOR will account for the same, and dispose of it in the manner Kings County Area Public Transit Agency directs.

**(b) 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; Kings County Area Public Transit Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Kings County Area Public Transit 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, Kings County Area Public Transit Agency, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

**(c) Termination for Default (Construction):** If the CONTRACTOR refuses or fails to prosecute the work or any separable part, with the diligence that will insure 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 provisions of this contract; Kings County Area Public Transit Agency may terminate this contract for default. Kings County Area Public Transit Agency shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of the default. In this event, Kings County Area Public Transit 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 Kings County Area Public Transit 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 Kings County Area Public Transit Agency in completing the work.

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include: acts of God, acts of Kings County Area Public Transit Agency, acts of another CONTRACTOR in the performance of a contract with Kings County Area Public Transit Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The CONTRACTOR, within [10] days from the beginning of any delay, notifies Kings County Area Public Transit Agency in writing of the causes of delay. If in the judgment of Kings County Area Public Transit Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Kings County Area Public Transit Agency shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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 Kings County Area Public Transit Agency.

**(d) Opportunity to Cure (General Provision):** Kings County Area Public Transit 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 Kings County Area Public Transit Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by CONTRACTOR of written notice from Kings County Area Public Transit Agency setting forth the nature of said breach or default, Kings County Area Public Transit 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 Kings County Area Public Transit Agency from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

**(e) Waiver of Remedies for any Breach:** In the event that Kings County Area Public Transit Agency elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by Kings County Area Public Transit Agency shall not limit Kings County Area Public Transit Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

#### **ARTICLE 9**

#### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS (49 CFR Part 26)**

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The agency's overall goal for DBE participation is **1.8%**. A separate contract goal has not been established for DBE participation has been established for this procurement.

The CONTRACTOR or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the CONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Kings County Area Public Transit Agency deems appropriate. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

For the purpose of this Contract, the OWNER will accept only DBE's who are:

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

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

- a. The names and addresses of DBE firms that will participate in this contract;
- b. A description of the work each DBE will perform;

- c. The dollar amount of the participation of each DBE firm participating;
- d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- e. Written confirmation from the DBE that it is participating in the contract as provided in the prime CONTRACTOR's commitment; and
- f. If the contract goal is not met, evidence of good faith efforts to do so.

The CONTRACTOR must promptly notify Kings County Area Public Transit 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 King County Area Public Transit Agency.

The OWNER 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 OWNER** that summarize the total DBE value for this Contract. These reports shall provide the following details:

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

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to CM Construction Services. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The CONTRACTOR shall permit:

- The OWNER to have access to necessary records to examine information as the OWNER 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 CONTRACTOR and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the OWNER, 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.

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

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

- Termination or cancellation of the Contract, in whole or in part, unless CONTRACTOR is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

## **ARTICLE 10**

### **PROMPT PAYMENT TO SUBCONTRACTORS**

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 from the Kings County Area Public Transit Agency. In addition, 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.

## **ARTICLE 11**

### **PREVAILING WAGES**

**10.1** This project is funded with both Federal and State funds, as such Labor wages performed under this contract shall conform to Federal Davis-Bacon requirements or State of California Labor Code requirements, whichever is greater.

**10.2** The project is a public work, the Work shall be performed as a public work and pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holidays and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacations, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the OWNER's principal office. The rate of prevailing wage for any craft, classification, or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandator upon the CONTRACTOR and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

**10.3** The CONTRACTOR and any subcontractor under the CONTRACTOR as a penalty to the OWNER shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the CONTRACTOR.

**10.4** The CONTRACTOR and each Subcontractor shall keep or cause to be kept an accurate recode for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers , and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, The also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspections by the OWNER, its officers and agents and to the representative of the Division of Labor Law Enforcement of the State Department of Industrial Relations. The CONTRACTOR and each subcontractor shall furnish a certified copy of all payroll records directly to both OWNER and to the Labor Commissioner.

**10.5** This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. A CONTRACTOR or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless



currently registered and qualified under the Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§ 1720 et seq.) of the Labor Code.

A CONTRACTOR or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7 Chapter 1 (§§ 1720 et seq.) of the Labor Code). Unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

## **ARTICLE 12** **WORKING HOURS**

In accordance with the provisions of Section 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the CONTRACTOR or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that the work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1 ½) times the basic rate of pay. The CONTRACTOR and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the OWNER and the Division of Labor Enforcement. The CONTRACTOR shall as a penalty to the OWNER forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

## **ARTICLE 13** **INDEMNIFICATION AND INSURANCE**

**12.1** The CONTRACTOR will defend, indemnify, and hold harmless the OWNER, its governing board, officers, agents, trustees, employees, and others as provided in the General Conditions.

**12.2** By this statement the CONTRACTOR represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The CONTRACTOR shall supply the OWNER with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the OWNER will receive thirty (30) days' notice of cancellation.

**12.3** CONTRACTOR shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$1,000,000 per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$ 1,000,000 per accident for bodily injury and property damage combined single limit.

## **ARTICLE 14** **ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties relating to the Project, and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the OWNER's award of the Project to CONTRACTOR, unless such agreement is expressly incorporated herein. The OWNER makes no representation or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856.

**ARTICLE 15**  
**EXECUTION OF OTHER DOCUMENTS**

The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

**ARTICLE 16**  
**EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts such that the signature may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

**ARTICLE 17**  
**BINDING EFFECT**

CONTRACTOR, by execution of this Agreement, acknowledges that CONTRACTOR has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The CONTRACTOR shall inure to the benefit of and shall be binding upon the CONTRACTOR and the OWNER and their respective successors and assigns.

**ARTICLE 18**  
**SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM**

If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Kings, subject to transfer of venue under applicable State law.

**ARTICLE 19**  
**AMENDMENTS**

The terms of the Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

**ARTICLE 20**  
**ASSIGNMENT OF CONTRACT**

The CONTRACTOR shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the OWNER.

**ARTICLE 21**  
**WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered, certified, or overnight mail to the last business address known to the person who give the notice.

**ARTICLE 22**

## **INDEPENDENT CONTRACTOR**

It is understood and agreed by the parties herein that CONTRACTOR, in the performance of this Agreement, shall act as an independent CONTRACTOR, and therefore shall obtain no rights to any fringe benefits that accrue to regular full-time OWNER employees.

### **ARTICLE 23** **INDEMNIFICATION**

The CONTRACTOR waives any and all claims and recourse against the OWNER, including the right of contribution of loss of damage to person or property arising from, growing out of, or in any way connected with or incidental to the CONTRACTOR's performance of this Agreement, except claims arising from the concurrent or sole negligence of the OWNER or its officers, agents or employees. The CONTRACTOR will indemnify, hold harmless, and defend (at OWNER's option) the OWNER against any and all claims, demands, damages, costs, expenses, or liability arising out of the CONTRACTOR's performance of this Agreement except for liability arising out of the concurrent or sole negligence of the OWNER or its officers, agents, or employees.

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

KINGS COUNTY AREA PUBLIC TRANSIT AGENCY

CONTRACTOR

---

Joe Neves  
Board Chairman

---

Seals Construction

**ATTACHMENT A  
FEDERAL REQUIREMENTS**

**FEDERAL TRANSIT ADMINISTRATION (FTA) CONTRACT CLAUSES**

**1. ACCESS TO RECORDS AND REPORTS**

49 U.S.C. § 5325 (g)  
2 C.F.R. §200.333  
49 C.F.R. part 633

(a) 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.

(b) 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.

(c) Access to Records. The CONTRACTOR agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonable may be required.

(d) Access to the Sites of Performance. The CONTRACTOR agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonable may be required.

**2. AMERICANS WITH DISABILITIES ACT (ADA)**

49 U.S.C § 5301  
29 U.S.C §794  
42 U.S.C §§12101  
42 U.S.C. §§ 4151

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

**3. BUILD AMERIC, BUY AMERICA ACT REQUIREMENTS**

49 U.S.C. 5323 (j)  
49 C.F.R. part 661  
Public Law Act 117-58, div 70901-52

## 2 CFR, part 184

The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j), 49 C.F.R. part 661, Public Law Act 117-58 div 70901-52 and 2 CFR, part 184 which provide that Federal funds may not be obligated unless all steel, iron, construction material, 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.

### 4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. §55305

46 C.F.R. part 381

(1) 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.

(2) 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.)

(3) 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.

### 5. CIVIL RIGHTS LAWS AND REGULATIONS

#### Civil Rights and Equal Opportunity

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

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

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

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment

on the basis of race, color, religion, sex, or national origin.

2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

#### 6. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

42 U.S.C. §§ 7401-7671q  
33 U.S.C. §§ 1251-1387  
2 C.F.R. part 200, Appendix II (G)

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 OWNER.

##### Clean Air Act

- (1) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The CONTRACTOR agrees to report each violation to the OWNER and understands and agrees that the OWNER will, in turn, report each violation as required to assure notification to the OWNER, Federal Emergency Management OWNER, and the appropriate Environmental Protection OWNER Regional Office.
- (3) 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

- (1) The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The CONTRACTOR agrees to report each violation to the OWNER and understands and

agrees that the OWNER will, in turn, report each violation as required to assure notification to the OWNER, Federal Emergency Management OWNER, and the appropriate Environmental Protection OWNER Regional Office.

(3) 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."

**7. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**  
49 CFR Part 613 and 621

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).

**8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**  
40 USC §§ 3701, 3702 and 3704  
29 C.F.R. Part 5  
2 C.F.R § Part 200, Appendix II

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**

1. **Overtime requirements** - No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any 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.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause

set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages** - 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.
4. **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.

#### **9. DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT**

18 U.S.C. § 874  
40 U.S.C §§ 3145 - 3147  
29 C.F.R. PART 3 and 5  
49 U.S.C § 533

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 OWNER.

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

- (1) 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.
- (2) 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.
- (3) 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.

**10. DEBARMENT AND SUSPENSION**

2 C.F.R. part 180, 2 C.F.R. part 1200, 2 C.F.R. § 200.213  
2 C.F.R. part 200 Appendix II (I), Executive Order 12549,  
Executive Order 12689

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 OWNER to be:

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

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

The certification in this clause is a material representation of fact relied upon by the OWNER. If it is later determined by the OWNER that the bidder or proposer knowingly rendered an erroneous

certification, in addition to remedies available to the OWNER, 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.

#### **11. DHS SEAL, LOGO, AND FLAGS**

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

#### **12. ENERGY CONSERVATION**

42 U.S.C. 6321 *et seq.*  
49 C.F.R. part 622, subpart C

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.

#### **13. EQUAL EMPLOYMENT OPPORTUNITY**

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

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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 OWNER 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.

- (5) 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.
- (6) 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 OWNER and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) 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.
- (8) 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.

#### **14. FEDERAL CHANGES**

49 C.F.R. PART 18

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Kings County Area Public Transit OWNER 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.

#### **15. FLY AMERICA**

49 U.S.C. § 40118, 1 C.F.R. part 301-10

48 C.F.R. part 47.4

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.

#### **16. FTA PROTEST PROCUDRES**

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

#### **17. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

FTA Circular 4220.1F

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 OWNER requests which would cause Kings County Area Public Transit OWNER to be in violation of the FTA terms and conditions.

#### **18. LOBBYING RESTRICTIONS**

31 U.S.C. § 1352, 2 C.F.R. § 200.450

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

49 C.F.R. part 20

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

#### **Lobbying Restrictions**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an OWNER, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any OWNER, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

\_\_\_\_\_  
Date

**19. METRIC REQUIREMENT**  
15 U.S.C §§205  
2007 – Pub. L 110-69

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.

**20. NOTIFICATION TO FTA**  
2 C.F.R §§ 180.220 & 1200.220  
31 U.S.C § 3729 et seq.,

If a current or prospective legal matter that may affect the Federal Government emerges, the OWNER must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the OWNER is located. The OWNER 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 sub-agreements at every tier, for any agreement that is a "covered transaction" according to C.F.R. §§ 180.220 & 1200.220.

(1) 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.

(2) 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.

(3) The OWNER 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 OWNER 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 OWNER 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 OWNER, 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 OWNER.

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

Kings County Area Public Transit OWNER 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.

## **22. PROHIBITION OF CERTAIN TELECOM AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

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 of 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.

### **23. PRIVACY ACT**

5 U.S.C. § 552

The following requirements apply to CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) 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.

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

49 U.S.C. § 5323(l) (1), 31 U.S.C. §§ 3801-3812  
18 U.S.C. § 1001, 49 C.F.R. part 31

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.

## **25. RECYCLED PRODUCTS**

42 U.S.C. § 6962, 40 C.F.R. part 247  
2 C.F.R. part § 200.322

(1) 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.

(2) 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>."

## **26. SAFE OPERATION OF MOTOR VEHICLES**

23 U.S.C. part 402, Executive Order No. 13043  
Executive Order No. 13513, U.S. DOT Order No. 3902.10

### **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 OWNER.

### **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.

## **27. SEISMIC SAFETY**

42 U.S.C. 7701 *et seq.*, 49 C.F.R. part 41  
Executive Order (E.O.) 12699

The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure



that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

**28. SIMPLIFIED ACQUISITION THRESHOLD**

41 U.S.C. § 1908  
2 C.F.R. §§ 200.317-200.327  
49 U.S.C. § 5323(j)(13)

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian OWNER 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)).

**29. SPECIAL DOL EEO CLAUSE**

41 C.F.R. 60-1.4 (a)  
41 C.F.R. 60-741.5 (a)

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

**30. TAX LIABILITY AND FELONY CONVICTIONS**

US DOT Order 4200.6

The CONTRACTOR certifies:

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

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

**31. TRAFFICKING VICTIMS PROTECTION ACT**

(22 U.S.C. § 7104)

The CONTRACTOR certifies:

The CONTRACTOR does not engages in, or uses labor recruiters, borkers, or other agents who engage in

1. Severe forms of trafficking in persons
2. The procurement of a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect
3. The use of forced labor in the performance of the grant, contract, or cooperative agreement
4. 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 OWNER 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.

### **32. VETERANS HIRING PREFERENCE**

49 U.S.C. 5325(k)

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.

### **33. VIOLATION AND BREACH OF CONTRACT**

2 C.F.R. § 200.326

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

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

1. The right to take over and complete the work or any part thereof as OWNER for and at the expense of the CONTRACTOR, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;

3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include 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 OWNER, the CONTRACTOR expressly agrees that no default, act or omission of the OWNER shall constitute a material breach of this Contract, entitling CONTRACTOR to cancel or rescind the Contract (unless the OWNER 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 OWNER 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 OWNER takes action contemplated herein, the OWNER will provide the CONTRACTOR with sixty (60) days written notice that the OWNER 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 OWNER'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 OWNER 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 OWNER 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 OWNER's direction or decisions made thereof.

#### **Performance during Dispute**

Unless otherwise directed by OWNER, 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 OWNER 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 OWNER 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 OWNER 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.