

KINGS COUNTY AREA PUBLIC TRANSIT AGENCY REQUEST FOR PROPOSAL

(THIS IS NOT AN ORDER)

RFP Number: RFP-2324-01	RFP Title: Professional Auditing Services
RFP Due Date and Time: May 3, 2024 1:30 P.M.	Number of Pages: 72

ISSUING AGENCY INFORMATION

Procurement Officer: Heather Corder Heather.Corder@co.kings.ca.us	Issue Date: 3/29/2024
Kings County Area Public Transit Agency 610 W 7 th Street Hanford, CA 93230	Phone: (559) 852-2717 Fax: (559) 582-5003

INSTRUCTIONS TO FIRMS

Return Sealed Proposal to:

Kings County Area Public Transit Agency
610 W 7th Street
Hanford, CA 93230

IMPORTANT: SEE STANDARD TERMS AND CONDITIONS

FIRMS MUST COMPLETE THE FOLLOWING

Firm's Name/Address:	Authorized Firm's Signatory:
	(Please print name and sign in ink)
Firm Phone Number:	Firm FAX Number:
Firm Federal I.D. Number:	Firm E-mail Address:
Firm Disadvantage Enterprise Number: (If Applicable)	
Firm Small Business Number: (If Applicable)	
OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE	

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INSTRUCTIONS TO PROPOSER

It is the responsibility of each “Proposer” to:

Follow the format required in the RFP when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.

Provide complete answers/descriptions. Read and answer **all** questions and requirements. Don't assume the AGENCY or evaluation committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the AGENCY. The proposals are evaluated based solely on the information and materials provided in your response.

Use the forms provided, i.e., cover page, certification forms, etc.

Submit your response on time. Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late proposal responses are **never** accepted.

The following items **MUST** be included in the response to be considered responsive.
Failure to include any of these items may result in a non-responsive determination.

Signed Cover Sheet

Signed Addenda (if appropriate)

Point-by-Point response to all sections and subsections

Response to Attachments A, B, C, and D

Complete answers to all requirements of Sections 3, 4, and 5

SCHEDULE OF EVENTS

Event

Date of Event

RFP Issue Date.....	March 29, 2024.
Deadline for Receipt of Written Questions.....	April 12, 2024.
Deadline for Response of Written Answers	April 19, 2024.
RFP due at 1:30 p.m. at 610 W 7 th Street, Hanford, CA 93230.....	May 3, 2024.
<i>Review of Proposals</i>	<i>May 6, 2024.</i>
<i>Award of Contract @ KCAPTA Board Meeting</i>	<i>May 22, 2024.</i>
<i>Contract Begins.....</i>	<i>July 1, 2024</i>

SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

1.0. BACKGROUND

Kings County Area Public Transit Agency (KCAPTA), a joint powers Agency, is comprised of the County of Kings and the cities of Hanford, Lemoore, and Avenal. KCAPTA oversees the operation of the Kings Area Rural Transit system (KART).

The Kings County Area Public Transit Agency's Board is the policymaking body for KCAPTA systems. KCAPTA staff administers, plans, markets, and monitors the systems.

KART began operations in June of 1980. KART presently uses a fleet of vehicles ranging in size from 9-passenger to 33-passenger buses to provide transit services. An independent contractor provides maintenance and operating services. KCAPTA provides buses, radios, fareboxes, video surveillance system, street furnishings, published information, and passes

There are three levels of services offered by KART: fixed-route, on-demand and paratransit services. The paratransit services are available daily in Hanford, Lemoore, and Armona. There are regular Hanford Area, Hanford-Lemoore, Hanford-Avenal, Hanford-Corcoran, Hanford-Laton, Hanford-Visalia, and Hanford-Fresno fixed-route services along with commuter service to Corcoran State Prison.

In addition to regular fares, there are monthly passes, quarterly passes, senior citizen passes, and student passes. It is anticipated that the system will grow as the population grows over the next 5-10 years. Total population of the service area is about 153,443.

The Fixed Route Service consists of 14 routes. Operating hours are approximately 6:30 a.m. to 8:00 p.m. Monday through Friday, excluding holidays and 9:30 a.m. to 5:00 p.m. on Saturdays. Fifteen buses are operated during peak level service. This schedule results in an annual total of about 44,000 vehicle revenue hours and 706,000 vehicle revenue miles.

The Paratransit service operates up to six vehicles. Operating hours are approximately from 6:30 a.m. to 8 p.m., Monday through Friday, excluding holidays and 9:30 a.m. to 5:00 p.m. on Saturdays. The Paratransit service may operate approximately 3,700 revenue vehicle hours and 50,000 vehicle revenue miles.

KCAPTA currently employs seven (7) full time employees. KCAPTA contributes to a defined benefit pension plan (CALPERS) and has made available to its eligible employees a deferred compensation plan under the Section 457.

1.1. DISADVANTAGED BUSINESS PARTICIPATION & EQUAL OPPORTUNITY PROVISIONS

Kings County Area Public Transit Agency has adopted a Disadvantaged Business Enterprise (DBE) Program. The DBE program was adopted to insure that small disadvantaged firms have an equal opportunity to participate in the AGENCY FTA projects. The term "Disadvantage Business" means approved by the State of California as a certified DBE whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The Agency's overall goal for DBE Participation is .34%. A separate contract goal has not been established for this procurement.

Disadvantaged firms are encouraged to submit proposals as prime contractor for this project. Price alone will not be an acceptable basis for rejecting DBE proposals as prime contractors or subcontractors on this project unless it is determined that a reasonable price cannot be obtained from a DBE

1.2. DEFINITION OF TERMS

- “RFP” means the Request for Proposal process
- AGENCY means Kings County Area Public Transit Agency
- “Board” means the Board of Kings County Area Public Transit Agency
- Firm, “Auditor” “Offeror”, "Vendor", "Supplier", “Consultant”, “Contractor” and “Subrecipient” are used interchangeably throughout this invitation to mean the person, firm, or corporation or other entity submitting a Bid in response to the Request for Proposals.
- “Bid” and “Proposal” are used interchangeably to mean an individual’s or entity’s offer in response to this Request for Proposal.

1.3. PROJECT OVERVIEW

The AGENCY is seeking a qualified, experienced, responsible, capable, and professional Auditing Firm to perform financial and compliance audits for Fiscal years ending June 2024, 2025, 2026, 2027 and 2028. These audits are to be performed in accordance with generally accepted auditing standards as set forth by the American Institutes of Certified Public Accountants, the provisions of 2 CFR part 200, subpart F, and the Supplement, Audits of State and Local Governments and Non-Profits Organizations, the Transportation Development Act Statutes and California Code of Regulations, and the Basic Audit Program and Reporting guidelines for California Special Districts prescribed by the State Controller. A more complete description of the supplies and/or services sought for this project is provided in Section 3.0, Scope of Work.

The AGENCY will evaluate each complete proposal submitted. Negotiations may or may not be conducted with respondents; therefore, the proposal submitted should contain the respondent’s most favorable terms and conditions, since the selection and award may be made without discussion to any respondent.

1.4. CONTRACT TERM

The contract term is for Fiscal Years Ending 2024, 2025, 2026, 2027 and 2028. This contract, including any renewals, may not exceed a total of five (5) years.

1.5. SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until a Firm is selected and the selection is announced by the procurement officer, the procurement officer is in charge of this solicitation. Any unauthorized contact may disqualify the Firm from further consideration. Contract information for the single point of contact is as follows:

Procurement Officer:	Heather Corder
Address:	KCAPTA 610 W 7 th Street Hanford, CA 93230
Telephone Number	(559) 852-2611
Fax Number	(559) 582-5003
E-mail Address:	heather.corder@co.kings.ca.us

1.6. REQUIRED REVIEW

1.6.1. REVIEW RFP. Firms should carefully review the instructions, mandatory requirements, specifications, standard terms and conditions, and contract attached to this RFP and promptly notify the procurement officer identified above in writing or via e-mail of any ambiguity, inconsistency, unduly restrictive specification, or error which they discover upon examination of this RFP. This should include any terms or requirements within the RFP that either preclude the Firm from responding to the RFP or add unnecessary cost.

This notification must be accompanied by an explanation and suggested modification and be received by the deadline for receipt of written or e-mail inquiries set forth below. The AGENCY will make any final determination of changes to the RFP.

1.6.2. FORM OF QUESTIONS. Firms with questions or requiring clarification or interpretation of any section within this RFP must address these questions in writing or via e-mail to the procurement officer referenced above on or before April 12, 2024. Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline will not be considered.

1.6.3. AGENCY'S ANSWERS The AGENCY will provide an official written answer by April 19, 2024 to all questions received by April 12, 2024. The AGENCY's response will be by formal written addendum. Any other form of interpretation, correction, or change to this RFP will not be binding for AGENCY. Any formal written addendum will be faxed or emailed to Firms. Firms must sign and return with their RFP response with an Acknowledgement of Addendum for any addendum issued.

1.7. GENERAL REQUIREMENTS

1.7.1. ACCEPTANCE OF STANDARD TERMS AND CONDITIONS/CONTRACT. By submitting a response to the RFP, Firm agrees to acceptance of the standard terms and conditions and contract as set fourth in Attachment A of this RFP. Much of the language included in the standard terms and conditions and contract reflects requirements of both the State of California and the Federal Transit Administration. Requests for additions or exceptions to the standard terms and conditions, contract terms, including any necessary licenses, or any added provisions must be submitted to the procurement officer referenced above by the date for receipt of written/e-mail questions and must be accompanied by an explanation of why the exception is being sought and what specific effect it will have on the Firm's ability to respond to the RFP or perform the contract. The AGENCY reserves the right to address non-material requests for exception with the highest scoring Firm during contract negotiation. Any material exceptions requested and granted to the standard terms and conditions and contract language will be addressed in any formal written addendum issued for this RFP and will apply to all Firms submitting a response to this RFP. The AGENCY will make any final determination of changes to the standard terms and conditions and/or contract.

1.7.2. RESULTING CONTRACT. This RFP and any addenda, the "Firm's RFP response, including any amendments, a best and final offer, and any clarification, questions, and responses shall be included in resulting contract. The AGENCY's contract, attached as Attachment G, contains the contract terms and conditions which will form the basis of any contract between the AGENCY and the highest scoring Firm. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract along with any attachments prepared by the AGENCY, will govern in the same order of precedence as listed in the contract.

1.7.3. UNDERSTANDING OF SPECIFICATIONS AND REQUIREMENTS. By submitting a response to this RFP, Firm agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

1.7.4. PRIME CONTRACTOR/SUBCONTRACTORS. This highest scoring Firm will be the prime contractor if a contract is awarded and shall be responsible, in total, for all work of any

subcontractors. All subcontractors, if any, must be listed in the proposal. The AGENCY reserves the right to approve all subcontractors. The Firm shall be responsible to the AGENCY for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Firm. Further, nothing contained within this document or any contract documents created as a result of any contract award derived from this RFP shall create any contractual relationships between any subcontractor and the AGENCY.

1.7.5. Firm's SIGNATURE. The proposals must be signed in ink by an individual authorized to legally bind the business submitting the proposal. The Firm's signature on a proposal in response to this RFP guarantees that the offer has been established without collusion and without effort to preclude the AGENCY from obtaining the best possible supply or service. Proof of authority of the person signing the RFP response must be furnished upon request.

1.7.6 OFFER IN EFFECT FOR 120 DAYS. A proposal may not be modified, withdrawn or canceled by the Firm for a 120-day period following the deadline for proposal submission as defined in the Scheduled of Events, or receipt of best and final offer, if required, and Firm so agrees in submitting the proposal.

1.8. SUBMITTING A PROPOSAL

1.8.1. ORGANIZATION OF PROPOSAL. Firms must organize their proposal into sections that follow the format of this RFP, with tabs separating each section. A point-by-point response to all numbered sections, subsections, and appendices (section 1.1. through sections 6.0., Attachments A, B and C and Attachment D) is required. If no explanation or clarification is required in the Firm's response to a specific subsection, the Firm shall indicate so in the point-by-point response or utilize a blanket response for the entire section with the following statement:

"(Firm's Name)" understands and will comply.

A Firm making the statement "Refer to our literature..." or "Please see www....com" may be deemed non-responsive or receive point deductions. If making reference to materials located in another section of the RFP response, specific page numbers and sections must be noted. The Evaluation Committee is not required to search through literature or another sections of the proposal to find a response.

1.8.2. FAILURE TO COMPLY WITH INSTRUCTIONS. Firms failing to comply with these instructions may be subject to point deductions. The AGENCY may also choose to not evaluate, may deem non-responsive, and/or may disqualify from further consideration any proposals that do not follow this RFP format, are difficult to understand, are difficult to read or are missing any requested information.

1.8.3. PRICE SHEET Firms must respond to this RFP by providing a fee schedule with a fixed fee for the work contemplated on the project (Attachment F).

1.8.4. COPIES REQUIRED AND DEADLINE FOR RECEIPT OF PROPOSALS. Firms must submit three (3) original proposals and one (1) electronic copy of the proposal and bids. Proposals must be sealed and labeled on the outside of the package "RFP No. 2324-01", "Professional Auditing Services." **Proposals must be received at 610 W 7th Street, Hanford, CA 93230 prior to 1:30 PM, May 3, 2024. Facsimile responses WILL NOT be accepted.**

1.8.5. LATE PROPOSALS. **Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration.** It shall be the Firm's sole responsibility to assure delivery to the receptionist's desk at the designated office by the designated time. Late proposals will not be opened and may be returned to the Firm at the expense of the Firm or destroyed if requested.

1.8.6. ADDRESSING OF PROPOSALS. Proposals MUST be returned in a sealed package and marked as shown below:

RFP # 2324-01
Professional Auditing Services
Kings County Area Public Transit AGENCY
610 W 7th Street
Hanford, CA 93230

Proposals that are not returned in a sealed package, with the Request for Proposal Number clearly labeled on the outside WILL BE DISQUALIFIED.

1.9. COST OF PREPARING A PROPOSAL

1.9.1 AGENCY NOT RESPONSIBLE FOR PREPARATION COST. The cost for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the AGENCY are entirely the responsibility of the Firm. The AGENCY is not liable for any expense incurred by the Firm prior to execution of a contract.

1.9.2 ALL TIMELY SUBMITTED MATERIALS BECOME AGENCY PROPERTY. All materials submitted in response to this RFP become the property of the AGENCY and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the AGENCY and Firm resulting from this RFP process.

1.10 PROTEST PROCEDURES

The AGENCY's Procurement and Appeals Process is pursuant to ATTACHMENT E.

SECTION 2: RFP STANDARD INFORMATION

2.0. COMPETITION

The AGENCY encourages free and open competition among Firms. Whenever possible, the AGENCY will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the AGENCY's need to procure technically sound, cost-effective services and supplies.

2.1. RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

2.1.1 PUBLIC INFORMATION. The proposals received shall become the property of Kings County Area Public Transit Agency and are subject to public disclosure. Proposal prices and information submitted by proposers will be made available to proposers after Board has approved award of contract. Proposers are to indicate any restrictions on the use of data contained in their responses. Those parts of a proposal which are defined by the proposer as business or trade secrets, as that term is defined in California Government Code, Section 6254.7, and are reasonably marked as "Trade Secrets", "Confidential" or "Proprietary" shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most, or all, of their proposal as exempt from disclosure may be deemed non-responsive.

2.1.2 PROCUREMENT OFFICER REVIEW OF PROPOSALS. Upon opening the proposals received in response to this RFP, the procurement officer in charge of the solicitation will review the proposals and separate out any information that meets the referenced exceptions in Section 2.1.1 above, providing the following conditions have been met;

- Confidential information is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.

Information separated out under this process will be available for review only by the procurement officer, the evaluation committee members, and limited other designees. Firm must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

The claim of a trade secret must be reasonable. If materials or information are included in a request for trade secret coverage that is not reasonable considered a "trade secret," the proposal will be rejected as non-responsive and will not be considered. In such cases, a Firm will not be given an opportunity to revise the proposal.

2.2. CLASSIFICATION AND EVALUATION OF PROPOSALS

2.2.1 INITIAL CLASSIFICATION OF PROPOSALS AS RESPONSIVE OR NON-RESPONSIVE. All proposals will initially be classified as either "responsive" or "non-responsive". Proposals may be found non-responsive at anytime during the procurement process if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the proposal is not within the plans and specifications described and required in the RFP. If a proposal is found to be non-responsive, it will not be considered further.

2.2.2 DETERMINATION OF RESPONSIBILITY. The procurement officer will determine whether a Firm is responsible and that the prices are reasonable. Firms may be asked to provide any information required to determine the responsibility of the Firm.

2.2.3 EVALUATION OF PROPOSALS. The evaluation committee will evaluate the remaining proposals and recommend whether to award the contract to the highest scoring Firm or, if necessary, to seek discussion/negotiation or a best and final offer in order to determine the highest

scoring Firm. All responsive proposals will be evaluated based on stated evaluation criteria. In scoring against stated criteria, the AGENCY may consider such factors as accepted industry standards and a comparative evaluation of all other qualified RFP responses in terms of differing price, quality, and contractual factors. These scores will be used to determine the most advantageous offering to the AGENCY.

2.2.4 COMPLETENESS OF PROPOSALS. Selection and award will be based on the Firm's proposal and other items outlined in this RFP. Submitted response may not include references to information located elsewhere, such as Internet websites or libraries, unless specifically requested. Information or materials presented by Firms outside the formal response or subsequent discussion/negotiation or "best and final offer," if requested, will not be considered, will have no bearing on any award, and may result in the Firm being disqualified from further consideration.

2.2.5 BEST AND FINAL OFFER. The "Best and Final Offer" is an option available to the AGENCY under the RFP process, which permits the AGENCY to request a "best and final offer" from one or more Firms if additional information is required to make a final decision. Firms may be contacted asking that they submit their "best and final offer," which must include any and all discussed and/or negotiated changes. The AGENCY reserves the right to request a best and final offer for this RFP, if any based on price/cost alone.

2.2.6. RECOMMENDATION FOR CONTRACT AWARD. The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores justification and rationale for its decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring in the evaluator's/evaluations committee's recommendation of the responsive and responsible Firm that achieves the highest score and is, therefore, the most advantageous to the AGENCY.

2.2.7. REQUEST FOR DOCUMENTS NOTICE. Upon concurrence with the evaluation committee's recommendations the procurement officer will issue a "Request for Documents Notice" to the highest scoring Firm to obtain the required documents/information, such as insurance documents and/or best and final offer, and any other necessary documents. Receipt of the "Request of Documents Notice" does not constitute a contract and **no work may begin until a contract signed by all parties is in place**. The procurement officer will notify all other Firms of the AGENCY's selection.

2.2.8. CONTRACT EXECUTION. Upon receipt of all required materials requested in the "Request for Documents Notice," a formal contract utilizing the contract attached as Attachment G and incorporating the Standard Terms and Conditions Attached as Attachment A, as well as the highest scoring Firm's response to the RFP will be provided to the highest scoring Firm for signature. The highest scoring Firm will be expected to accept and agree to all material requirements contained in the contract as set out in Appendices A, B, C and D of this RFP. If the highest scoring Firm does not accept all material requirements, the AGENCY may move to the next highest scoring Firm, or cancel the RFP. Work under the contract may begin when the contract is fully executed i.e., when the contract is signed by all parties.

2.3. AGENCY'S RIGHTS RESERVED

While the AGENCY has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes as a commitment by the AGENCY to award and execute a contract. Upon a determination such actions would be in its best interest, the AGENCY, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP
- Reject any or all proposals received in response to this RFP

- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any proposal
- Not award if it is in the best interest of the AGENCY not to proceed with contract execution
- If awarded, terminate any contract if the AGENCY determines adequate funds are not available.

2.4. FUNDING

Any contract resulting from this request for proposals is subject to a financial assistance contract between Kings County Area Public Transit Agency and the Federal Transit Administration. All Firms will be required to certify that they are not on the U.S. Department of Transportation's list of ineligible contractors. Further, the Firm will be required to comply with all applicable equal employment opportunity laws and regulations.

SECTIONS 3: SCOPE OF WORK

3.0. OVERVIEW

The AGENCY is seeking a qualified, experienced, responsible, capable, and professional Auditing Firm to perform financial and compliance audits for fiscal years ending June 2024, 2025, 2026, 2027 and 2028. These audits are to be performed in accordance with generally accepted auditing standards as set forth by the American Institutes of Certified Public Accountants, 2 CFR, part 200, subpart F, and the Supplement; Audits of State and Local Governments and Non-Profit Organizations; the Transportation Development Act Statutes; California Code of Regulations; and the Basic Audit Program and Reporting guidelines for California Special Districts prescribed by the State Controller.

The AGENCY will evaluate each complete proposal submitted. Negotiations may or may not be conducted with respondents; therefore, the proposal submitted should contain the respondent's most favorable terms and conditions, since the selection and award may be made without discussion to any respondent.

It is the intent of the Agency to award a contract to the best-qualified firm that demonstrates experience in performing transit financial and compliance audits. During the evaluation process, the Agency reserves the right, where it may serve the Agency's best interest, to request additional information or clarifications from proposing firms, or to allow corrections of errors or omissions.

3.1. WORK TASK

The selected Firm shall perform financial and compliance audits for fiscal years ending June 30, 2024, 2025, 2026, 2027 and 2028 and express an opinion on the fair presentation of the Financial Statements of the Agency.

3.1.1. AUDIT OF FINANCIAL RECORDS AND STATEMENTS The audit must be conducted in accordance with Codifications of Statements on Auditing Standards, issued by the American Institute of Certified Public Accountants (generally accepted auditing standards), government Auditing Standards and Guideline for Financial and Compliance Audits for Federally Assisted Programs, issued by the United States General Accounting Office, Codification of Governmental Accounting and Financial Reporting Standards, published by the Governmental Accounting Standards Board; 2 CFR part 200, subpart F, and the Supplement; and Audits of State, Local Governments and Non-Profit Organizations. The audit will include a review of the systems of internal control and tests of transactions to the extent necessary.

The Firm will; prepare most year-end adjusting journal entries; be ultimately responsible for the preparation, typing, proofing, printing, and copying of the Basic Financial Statements, supplementary information and compliance reports. The Agency's Executive Director and Accountant will be actively involved in the MD&A, and other scheduled section preparation. The draft Financial Statement will be submitted for review in detail, by the Executive Director. This draft should be submitted to the Agency in time to allow ample review and corrections. **The timing of this should insure final completion of the Financial Statements no later than the annual December 15 deadline.**

3.1.2. SINGLE AUDITS & TRANSPORTATION DEVELOPMENT ACT COMPLIANCE AUDITS The Single Audits and Compliance audits will be performed in accordance with generally accepted auditing standards and will include such procedures as to enable the selected Firm to express and opinions regarding compliance with provisions of all significant federal, state and county statutes, ordinances, charter, administrative codes, rules and regulations, The audit will comply with the provisions of 2 CFR part 200, subpart F, and the Supplement; the Transportation Development Act Statutes; and California Code of Regulations, and the Basic Audit Program and Reporting Guideline for California Special Districts prescribed by the State Controller.

3.2 MAJOR CHANGES

KCAPTA is currently in process of the construction of a new Transit Center. The construction has begun and is expected to be complete in 2025. KCAPTA has received multiple grants to assist in the funding of this project.

3.3. REPORTS

The audit must be completed and reports rendered no later than December 15.

A preliminary draft of the audit and required journal entries must be submitted to the Accountant by December 1 for proofing and reconciliation to the Agency's records.

Three (3) copies and one (1) electronic copy of the; Audited Financial Statements; Independent Auditors Report; Compliance Reports; Current Year Findings and Questioned Costs; Status of Prior Year Findings and Questioned Cost; A management letter, with appropriate recommendations, commenting on material weaknesses in internal accounting control; reportable conditions; and identifying possible noncompliance with finance related legal provisions; Irregularities and illegal acts.

Auditors are required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties;

- Board Chair
- Executive Director

Other applicable reports must be supplied to the Executive Director within the time frame cited above.

In the required report(s) on internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operations of the internal control structure, which could adversely affect the Agency's ability to record, process, summarize, and report financial statements. In addition, the following conditions shall be considered reportable:

- Reportable conditions that are also material weaknesses shall be identified as such in the report
- Non-reportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the reports(s) on internal controls
- The report on compliance shall include all material instances of noncompliance. All nonmaterial instances of noncompliance shall be reported in a separate management letter, which shall be referred to in the report on compliance.

3.4. TIMING, LOCATION AND CONDUCT OF AUDIT WORK

The Agency expects to receive a list of schedules to be prepared and other items required for the audit prior to September 1st of each year.

Pre-closing, interim, test and procedures shall be conducted at a mutually agreeable time.

The final audit will be scheduled for the middle of October. The audit can be conducted on Agency premises or remote as agreed upon by both parties. If the final audit is onsite, the Agency will provide space deemed adequate by the auditor to efficiently conduct the audit.

Prior to completion of the audit, the auditor will meet with the Accountant to review adjusting journal entries and concerns.

Prior to submission of the completed report, the auditor will be required to review a draft of the proposed report and management letter with the Accountant.

The final financial audit reports must be submitted to the Agency no later than December 15th of each year.

The Firm will present the financial statements and management letter at a meeting of the Agency Board as requested.

3.5. WORKING PAPER RETENTION AND ACCESS TO WORKING PAPERS

All working papers and reports must be retained, at the "Firm's expense, for a minimum of five (5) years, unless the firm is notified in writing by the Agency of the need to extend the retention period. The Firm will be required to make working papers available, upon request, to the following parties or their designees;

- Agency Board
- U.S. General Accounting Office (GAO)
- Parties designated by the federal or state governments or by the Agency as part of an audit quality review process audit.

In addition, the firm shall respond to the reasonable inquiries of successor Auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

SECTION 4: "AUDITORS" QUALIFICATIONS

4.0 AGENCY'S RIGHT TO INVESTIGATE AND REJECT

The AGENCY may make such investigations as deemed necessary to determine the ability of the Firm to provide the supplies and/or perform the services specified. The AGENCY reserves the right to reject any proposal if the evidence submitted by, or investigation of, the Firm fails to satisfy the AGENCY that the Firm is properly qualified to carry out the obligations of the contract. *This includes the AGENCY's ability to reject the proposal based on negative references.*

4.1. "AUDITORS" QUALIFICATION/INFORMATIONAL REQUIREMENTS

Firm proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposal requirements.

In determining the capabilities of a Firm to perform the services specified herein, the following information requirements must be met by the Firm. The response, "(Firms Name) understands and will comply" is not appropriate for this section. **(Note: Each item must be thoroughly addressed. Firms taking exception to any requirements listed in this section may be found non-responsive or be subject to point deductions.)**

4.1.1. INDEPENDENCE Firm should provide an affirmative statement that it is independent of the Agency as defined by generally accepted auditing standards/ the U.S. General Accounting Office's government Auditing Standards.

4.1.2. LICENSE TO PRACTICE IN CALIFORNIA An affirmative statement should be included indicating that the firm and all assigned key professional staff are properly licensed to practice in California.

4.1.3. FIRM QUALIFICATIONS AND EXPERIENCE The proposal should state the size of the firm, the size of the firm's government audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number of staff to be employed on a part-time basis.

The firm shall provide information on the results of the most recent peer review and the results of any Federal or State review of its audits during the past five (5) years. In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past five (5) years with state regulatory bodies or professional organizations.

4.1.4. PARTNER, SUPERVISORY AND STAFF QUALIFICATIONS AND EXPERIENCE The firm should identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement and indicate whether each such person is licensed to practice as a certified public accountant in California. The firm also should provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past five (5) years and membership in professional organizations relevant to the performance of the audit.

The firm should provide as much information as possible regarding the number, qualifications, experience and training including relevant continuing professional education, of the specific staff to be assigned to this engagement. The firm also should indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be

changed for other reasons with the express prior written permission of the Agency. However, in either case the Agency retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

4.1.5. SIMILAR ENGAGEMENT WITH OTHER GOVERNMENT ENTITIES For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum of ten) performed in the last five years that are similar to the engagement described in this request for proposal. Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

4.1.6. SPECIFIC AUDIT APPROACH The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section 3 of this request for proposals.

Firms are required to provide the following information on their audit approach:

- a) Proposed segmentation of the engagement.
- b) Level of staff and number of hours to be assigned to each proposed segment of the engagement.
- c) Sample sizes and the extent to which statistical sampling is to be used in the engagement.
- d) Type and extent of analytical procedures to be used in the engagement.
- e) Approach to be taken to gain and document an understanding of the Agency's internal control structure.
- f) Approach to be taken in determining laws and regulations that will be subject to audit test work.

SECTION 5: PRICE PROPOSAL

5.0. PRICE PROPOSAL

The Proposed Price Proposal shall be provided under separate, sealed cover as a part of the RFP submittal (Attachment F)

Firm should review the requirements of this RFP and address all services in their fee schedule that might reasonably be expected to support the audit. The total all-inclusive maximum price to be bid is to contain all direct and indirect cost including all out-of-pocket expenses.

The sealed Price Proposal shall include the following information;

- a) Name of Firm
- b) Certification that the person signing the proposal is entitled to represent the firm empowered to submit the bid and authorized to sign a contract with the Agency.
- c) A fixed price consistent with auditing standards at the time for the 2024, 2025, 2026, 2027 and 2028 engagement
- d) Manner of Payment- Progress payments will be made on the basis of work completed during the course of the agreement. Interim billings shall cover a period of not less than a calendar month.

5.1. CONFLICT OF INTEREST

Firm shall disclose any financial, business or other relationship with the AGENCY or any member of the AGENCY staff that may have an impact on the outcome of the project. Firm shall also list current clients who may have a financial interest in the outcome of the project

SECTION 6: EVALUATION AND AWARD

6.0. EVALUATION CRITERIA

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on a **total number of 100 points**.

The **Auditors Qualifications, Ability to Meet Schedule, and Price Proposal** portions of the offer will be evaluated based on the following Scoring Guide.

6.1. SCORING GUIDE

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

6.1.1 SUPERIOR RESPONSE (90-100%). A superior response is a highly comprehensive, excellent reply that meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the AGENCY.

6.1.2 GOOD RESPONSE (75-89%). A good response meets all the requirements of the RFP and demonstrates in a clear and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

6.1.3 FAIR RESPONSE (60-74%). A fair response minimally meets most requirements set forth in the RFP. The Firm demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

6.1.4 FAILED RESPONSE (59 or Less). A failed response does not meet the requirements set forth in the RFP. The Firm has not demonstrated sufficient knowledge of the subject matter.

6.2. WEIGHT OF CRITERIA

Auditors Qualifications possible		25 points
Category	Section of RFP	Point Value
A. Auditors Qualification/Informational Requirements	4.1	25

Ability to Meet Schedule possible		25 points
Category	Section of RFP	Point Value
A. Timing, Location, and Conduct of Audit Work	3.4.	25

Price Proposal possible		50 points
Category	Section of RFP	Point Value
A. Price Proposal	5.0	50

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS OR PROPOSALS: The AGENCY reserves the right to accept or reject any or all bids or proposals, wholly or in part, and to make awards in any manner deemed in the best interest of the AGENCY. Bids, proposals will be firm for 30 days unless stated otherwise in the text of the invitation for bid, request for proposal.

ACCESS AND RETENTION OF RECORDS: The Contractor agrees to provide the AGENCY, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of five (5) years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract.

ALTERATION OF SOLICITATION DOCUMENTS: In the event of inconsistencies or contradictions between language contained in the AGENCY's solicitation document and a vendor's response, the language contained in the AGENCY's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the AGENCY.

BILLING: The AGENCY cannot pay for materials or services in advance. All billing against his purchase order/contract must be made only after completion of receipt of merchandise or services rendered.

ETHICS IN PUBLIC CONTRACTING: Each proposer, by submitting a proposal, certifies that it is not a party to any collusive action or any action that may be in violation of the Sherman Antitrust Act by submitting a proposal, the proposer certifies that its proposal was made without fraud; that it has not offered or received any kickbacks or inducements from any other proposer in connection with the request for proposal; and that it has not conferred on any public employee, public member or public official having responsibility for this procurement transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value. The proposer further certifies that no relationship exists between itself and the AGENCY or another person or organization that interferes with fair competition or constitutes a conflict of interest with respect to a contract with Kings County Area Public Transit AGENCY.

Prior to the award of any PO/contract, the potential Vendor may be required to certify in writing to KCAPTA that no relationship exists between the "Bidder" and any AGENCY employee, officer, official or agent that interferes with fair competition or is a conflict of interest with respect to a PO/contract with Kings County Area Public Transit AGENCY.

More than one proposal from an individual, firm, partnership, corporation or association under the same or different names may be rejected. Reasonable grounds for believing that a proposer has interest in more than one proposal for the work solicited may result in rejection of all proposals in which the proposer is believed to have an interest.

EQUAL EMPLOYMENT OPPORTUNITY: During the performance of the contract, CONTRACTOR agrees to the following:

1. Contractor shall comply with all the requirements, when applicable, of the California Fair Employment Practice Commission and provisions of, when applicable, all Federal, State of California, County of Kings and City of Hanford laws and ordinances related to employment practices.
2. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, religion, national origin, disability, age, sexual origin, gender identity, or status as a parent. The Contractor agrees to post in conspicuous places, visible to the employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
3. Contractor, in all solicitations or advertisements for employees, placed by, or on behalf of the proposer, shall state that proposer is an Equal Opportunity Employer.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the AGENCY. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

DISABILITY ACCOMMODATIONS: The AGENCY does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to the AGENCY. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile bids will not be accepted.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/contractor to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the AGENCY may, in its discretion, suspend the bidder/Contractor for a period of time from entering into any contracts with the AGENCY.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERMS: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation documents, the AGENCY is allowed 30 days to pay such invoices.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing list, packages and correspondence pertaining to the contract.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the AGENCY of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation documents.

TERMINATION OF CONTRACT: Unless otherwise stated, the AGENCY may, by written notice to the Contractor, terminate the contract in whole or in part at any time the Contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The AGENCY, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason.

U.S. FUNDS: All prices and payments must be in U.S. dollars.

PROPRIETARY INFORMATION: The proposals received shall become the property of Kings County Area Public Transit Agency and are subject to public disclosure. Proposal prices and information submitted by proposers will be made available after Board has approved award of contract. Proposers are to indicate any restrictions on the use of data contained in their responses. Those parts of a proposal which are defined by the proposer as business or trade secrets, as that term is defined in California Government Code, Section 6254.7, and are reasonably marked as "Trade Secrets", "Confidential" or "Proprietary" shall only be disclosed to the public if such disclosure is required or permitted under the California Public Records Act or otherwise by law. Proposers who indiscriminately and without justification identify most, or all, of their proposal as exempt from disclosure may be deemed non-responsive.

INCURRING COSTS: Kings County Area Public Transit AGENCY is not liable for any cost incurred by proposers in responding to this Request for Proposals.

VENUE: Any contract resulting from this solicitation shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any litigation arising out of the contract will be vested in Kings County, California.

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purposed manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the AGENCY. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.

COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS: This contract may be financed in whole or in part with funding received under Section 5307 and 5311 of the Federal Transit Act. All services performed by CONTRACTOR pursuant to this AGREEMENT shall be performed in accordance and full compliance with all applicable federal laws and requirements including, but not limited to:

A. ACCESS TO RECORDS AND REPORTS

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

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:

- (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.

B. 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)

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:

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

C. 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))

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:

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

D. 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 (KCAPTA) is an Equal Opportunity Employer. As such, the KCAPTA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the KCAPTA 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. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(49 C.F.R. part 26)

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 (KCAPTA) 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 KCAPTA to:

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

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The KCAPTA 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 KCAPTA 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 KCAPTA.

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 KCAPTA deems appropriate.

DBE Participation

For the purpose of this Contract, the KCAPTA 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 KCAPTA.

DBE Participation Goal

The DBE participation goal for this Contract is set at 0.1 %. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than 0.1 % of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

Proposed Submission

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

1. A completed DBE Utilization Form (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required

by the DBE Participation Schedule (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE 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 KCAPTA.

3. An original DBE Letter of Intent (see below) from each DBE listed in the DBE Participation Schedule.
4. 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/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the KCAPTA will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the KCAPTA will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

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

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. 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 KCAPTA 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 KCAPTA'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 KCAPTA 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 KCAPTA's prior written consent. The KCAPTA 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 KCAPTA 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 KCAPTA 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 KCAPTA 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 the [Agency Name 1] and [Agency Name 2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The KCAPTA to have access to necessary records to examine information as the KCAPTA deems appropriate for the purpose of investigating and determining compliance with this

provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.

- The authorized representative(s) of the KCAPTA, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations

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

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

DBE UTILIZATION FORM

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

_____The Bidder/Offer is committed to a minimum of _____% DBE utilization on this contract.

_____The Bidder/Offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

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F. ENERGY CONSERVATION

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

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.

G. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

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

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:

- 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 KCAPTA. If it is later determined by the KCAPTA that the bidder or proposer knowingly rendered an erroneous

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

H. NO GOVERNMENT OBLIGATION 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.

I. 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)

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.

J. RECYCLED PRODUCTS

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

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:

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

K. 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)

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 KCAPTA.

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.

L. TERMINATION

(2 C.F.R. § 200.339, 2 C.F.R. part 200, Appendix II (B))

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 KCAPTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the KCAPTA'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 KCAPTA to be paid the Contractor. If the Contractor has any property in its possession belonging to KCAPTA, the Contractor will account for the same, and dispose of it in the manner KCAPTA 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 KCAPTA 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 KCAPTA 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 KCAPTA, 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 KCAPTA, 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 KCAPTA'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 KCAPTA setting forth the nature of said breach or default, KCAPTA 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 KCAPTA 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 KCAPTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by KCAPTA shall not limit KCAPTA'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 KCAPTA, by written notice, may terminate this contract, in whole or in part, when it is in the KCAPTA's interest. If this contract is terminated, the KCAPTA 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 KCAPTA may terminate this contract for default. The KCAPTA 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 KCAPTA.

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 KCAPTA may terminate this contract for default. The KCAPTA 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 KCAPTA goods, the Contractor shall, upon direction of the KCAPTA, protect and preserve the goods until surrendered to the KCAPTA or its agent. The Contractor and KCAPTA 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 KCAPTA.

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, KCAPTA may terminate this contract for default. The KCAPTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the KCAPTA may take over the work and compete 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 KCAPTA 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 KCAPTA in completing the work.

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of KCAPTA, acts of another contractor in the performance of a contract with KCAPTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies KCAPTA in writing of the causes of delay. If, in the judgment of KCAPTA, the delay is excusable, the time for completing the work shall be extended. The judgment of KCAPTA 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 KCAPTA.

Termination for Convenience or Default (Architect and Engineering)

The KCAPTA may terminate this contract in whole or in part, for the KCAPTA's convenience or because of the failure of the Contractor to fulfill the contract obligations. The KCAPTA 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 KCAPTA'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. KCAPTA 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 KCAPTA, the KCAPTA'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 KCAPTA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the KCAPTA.

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 KCAPTA.

Termination for Convenience or Default (Cost-Type Contracts)

The KCAPTA 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 KCAPTA 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 KCAPTA, or property supplied to the Contractor by the KCAPTA. If the termination is for default, the KCAPTA 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 KCAPTA and the parties shall negotiate the termination settlement to be paid the Contractor.

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

M. VIOLATION AND BREACH OF CONTRACT

(2 C.F.R. § 200.326, 2 C.F.R. part 200, Appendix II (A))

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 KCAPTA shall have the following rights in the event that the KCAPTA 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 KCAPTA 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 KCAPTA, the Contractor expressly agrees that no default, act or omission of the KCAPTA shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the KCAPTA directs Contractor to do so) or to suspend or abandon performance.

Remedy

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 KCAPTA 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 KCAPTA takes action contemplated herein, the KCAPTA will provide the Contractor with sixty (60) days written notice that the KCAPTA 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

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 KCAPTA'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.

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

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 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 KCAPTA 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 KCAPTA 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 KCAPTA 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.

N. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

(FTA Circular 4220.1F)

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.

O. AMERICANS WITH DISABILITIES ACT (ADA)

Applicable to: All contracts.

Flow Down

These requirements flow down to all tiers.

Contract Requirements

Americans with Disabilities Act (ADA). The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

P. 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

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.

Q. 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.

R. 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:

- (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 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.
- (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 agency 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.

S. 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.

T. 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)

U. 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.

V. PROMPT PAYMENT

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:

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.

W. 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:

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 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.

X. TRAFFICKING VICTIMS PROTECTION 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

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 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.

ATTACHMENT B: AFFIRMATIVE ACTION CHECK LIST

Federal regulations require that any firm with 50 or more employees soliciting a federally funded contract must have an affirmative action program. If applicable, please provide a brief response to the following items that would typically be covered in any such program. You may provide a copy of your program and reference appropriate pages.

1. Date plan was adopted
2. Name of affirmative action officer
3. Statement of commitment to affirmative action by the chief executive officer
4. Designation of an affirmative action officer, of assignment of specific responsibilities and of to whom the officer reports
5. Outreach recruitment
6. Job analysis and restructuring to meet affirmative action goals
7. Validation and revision of examinations, educational requirements, and any other screening requirements.
8. Upgrading and training programs
9. Internal complain procedure
10. Initiating and insuring supervisory compliance with the affirmative action program
11. Survey and analysis of entire staff by department and job classification and progress report system
12. Recruitment and promotion plans (including goals and time tables)

ATTACHEMENT C: DEBARMENT, SUSPENSION, & RESPONSIBILITY MATTERS CERTIFICATE

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, KCAPTA may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to KCAPTA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact KCAPTA for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by KCAPTA .
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, KCAPTA may pursue available remedies including suspension and/or debarment.

**"Certification Regarding Debarment, Suspension, Ineligibility and
Voluntary Exclusion - Lower Tier Covered Transaction"**

1. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date _____

Signature _____

Company Name _____

Title _____

ATTACHMENT D: CERTIFICATION REGARDING LOBBYING

CERTIFICATION REGARDING LOBBYING

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUBCONTRACTORS 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The CONTRACTOR, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of CONTRACTOR'S Authorized Official

Name and Title of CONTRACTOR'S Authorized Official

Date

CERTIFICATE REGARDING DEBARMENT & SUSPENSION (Lower-Tier Covered Transaction)

The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 CFR § 29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

If the prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an "X" in the following space: _____

**THE PROPOSER, _____,
CERTIFIES OR AFFIRMS THAT TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS
CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS
AND AGREES THAT THE PROVISIONS OF 31 USC §§ 38.01 ET SEQ. APPLY TO THIS
CERTIFICATION AND EXPLANATION IF ANY.**

Name and title of Proposer's authorized official:

Authorized signature

Date

ATTACHMENT E: PROTEST PROCEDURES

KINGS COUNTY AREA PUBLIC TRANSIT (KCAPTA) PROTEST PROCEDURES

A. Purpose

The purpose of these procedures is to set forth the procedures to be utilized by Kings County Area Public Transit Agency (KCAPTA) in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.

B. General

In order for a bid protest to be considered by KCAPTA, it must be submitted by an interested party (as defined below) in accordance with the procedures set forth herein. A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by KCAPTA. In all instances where KCAPTA receives a protest involving a potential contract that will be funded with Federal Transit Administration funds, KCAPTA will notify the Federal Transit Administration and the California Department of Transportation of the protest, provide information concerning the nature of the protest, and keep the Federal Transit Administration and the California Department of Transportation informed about the status of the protest.

C. Definitions

For purposes of these Bid Protest Procedures:

1. The term "Bid" includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
2. The term "contract" means that document to be entered into between KCAPTA and the successful bidder and offeror.
3. The term "days" refers to normal business days of KCAPTA staff offices.
4. The term "interested party" means any person: who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and whose direct economic interest would be affected by the award of the contract or by failure to award a contract. A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.
5. The term "solicitation" means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.

D. Grounds for Protest

Any interested party may file a bid protest with KCAPTA on the grounds that:

1. KCAPTA has failed to comply with applicable Federal or State Law.
2. KCAPTA has failed to comply with its procurement procedures.

3. KCAPTA has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable.
4. KCAPTA has issued restrictive or discriminatory specifications.
5. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

E. Contents of Protest

1. A bid protest must be filed in writing and must include:
 - a. The name and address of the protestor.
 - b. The name and number of the procurement solicitation.
 - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of KCAPTA procurement procedures, or specific term of the solicitation alleged to have been violated.
 - d. Any relevant supporting documentation the protesting party desires KCAPTA to consider in making its decision.
 - e. The desired relief, action, or ruling sought by the protestor.
2. Protest must be filed with:

KCAPTA
Clerk of the Board
610 W 7th Street
Hanford, CA 93230
3. All protest must be received at KCAPTA address listed above during normal office hours of 9:00 a.m. to 5:00 p.m., Pacific Standard Time.
4. If any of the information required by this section is omitted or incomplete, KCAPTA will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

F. Timing Requirements and Categories of Protests

KCAPTA will consider the following categories of bid protests within the time period set forth in each category:

1. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed not later than five (5) calendar days prior to the scheduled bid opening or deadline for submittal of proposals, as appropriate, in order to be considered by KCAPTA. Any protest based on such grounds not filed within this

period will not be considered by KCAPTA. This category of protests includes, but not limited to, allegation of restrictive or exclusionary specifications or conditions.

2. Any bid protest regarding the evaluation of bids or proposals by KCAPTA, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with KCAPTA no later than five (5) calendar days after the protestor's receipt of KCAPTA written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the evaluation of bids or proposals, or the contract approval or award will not be considered by KCAPTA. KCAPTA will notify all unsuccessful bidders or proposers of its intent to award a contract to the successful bidder or proposer by email at the same time it notifies the successful bidder or proposer if Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required.

G. Review of Protest by KCAPTA

1. KCAPTA will notify the protestor within three (3) days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, KCAPTA will inform the protestor of any additional information required for evaluation of the protest by KCAPTA, set a time deadline for submittal of such information. If KCAPTA requests additional information and it is not submitted by the stated deadline, KCAPTA may either review the protest on the information before it, or decline to take further action on the protest.
3. In its sole discretion, KCAPTA may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to KCAPTA relative to the merits of the bid protest. KCAPTA will set a time deadline for submittal of such comments, which will be no less than five (5) days after KCAPTA provides notification of the protest.
4. In its sole discretion, KCAPTA may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by KCAPTA in deciding the bid protest if it is submitted to KCAPTA in writing within in three (3) days after the conference.

H. Effects of Protest on Procurement Action

1. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, KCAPTA will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless KCAPTA determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment of all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, KCAPTA will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.

3. Notwithstanding the pendency of a bid protest, KCAPTA reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - a. Where the item to be procured is urgently required.
 - b. Where KCAPTA determines, in writing, that the protest is vexation or frivolous.
 - c. Where delivery or performance will be unduly delay or other undue harm to KCAPTA will occur, by failure to make the award promptly.
 - d. Where KCAPTA determines that proceeding with the procurement is otherwise in the public interest.

I. Summary Dismissal of Protests

KCAPTA reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by KCAPTA in a previous bid protest by any interested party in the same solicitation or procurement action.

J. Protest Decisions

1. After review of a bid protest by appropriate KCAPTA staff and/or legal counsel, a recommendation shall be made to the KCAPTA Executive Director concerning the appropriate disposition of such protest.
2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences and KCAPTA own investigation and analysis.
3. The decision of the KCAPTA Executive Director shall be in writing and shall be the final binding agency action. Except in exceptional circumstances, the decision of the KCAPTA Executive Director will be issued within thirty (30) days after the date all relevant information submitted according to the dealing set forth in these procedures.
4. If the protest is upheld, KCAPTA will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-solicitation, revised evaluation of bides or proposals or KCAPTA determination, or termination of the contract.
5. If the protest is denied, KCAPTA will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

K. California Department of Transportation (Caltrans) Appeal, (Only if Federal 5311 funds are used in the procurement)

Under certain limited circumstances, and after the protester has exhausted all administrative protest remedies made available to them at KCAPTA, an interested party may appeal KCAPTA's unfavorable decision to Caltrans. The deadline for submitting protest to Caltrans after opening/announcement of award is 1:30 P.M. PST June 22, 2024.

Caltrans review of any protest will be limited to:

(1) Violation of Federal Law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(2) Violation of KCAPTA protest procedures or KCAPTA failure to review a compliant or protest.

The protest filed with Caltrans shall:

- (1) Include the name and address of the protester.
- (2) Identify KCAPTA as the party responsible for the RFP process.
- (3) Contain a statement of the grounds for protest and any supporting documentation. (The grounds for protest filed with Caltrans must be fully supported to the extent feasible. Additional materials in support of an initial protest will only be considered if authorized the FTA regulations).
- (4) Include a copy of the protest filed with KCAPTA, and a copy of KCAPTA decision, if any.
- (5) Indicate the ruling or relief desired from Caltrans.

Such protest should be sent to:

California Department of Transportation
Division of Rail & Mass Transportation
P.O. Box 942874- M.S. 39
Sacramento, CA 94274-0001

A copy of such protest should be sent to KCAPTA, Executive Director.

L. Judicial Appeals

A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court in the State of California.

M. Federal Transit Administration Appeal (Only if Federal funds are used in the procurement)

1. A protestor adversely affected by a bid protest decision of the KCAPTA Executive Director may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1F, as currently in effect as of the date of KCAPTA's decision on the bid protest. A protestor must exhaust its administrative remedies by pursuing KCAPTA's protest procedures to completion before appealing KCAPTA's decision to FTA.
2. Under the provision of the FTA Circular, FTA will only review protest regarding the alleged failure of KCAPTA to have written protest procedures, the alleged failure of KCAPTA to have complied with its protest procedures; or KCAPTA alleged failure to review a protest when presented the opportunity to do so. FTA will not consider every appeal filed by a protestor merely because a Federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violation of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.
3. In accordance with the FTA Circular, such protest must be filed with FTA's Regional Office no later than five (5) working days after the date when the protestor has received actual or constructive notice of KCAPTA's final decision or within five (5) working days of the date when the protester has identified other grounds for

appeal to FTA (i.e., KCAPTA failure to have or failure to comply with its protest procedures or failure to review the protest).

ATTACHMENT F: COST PROPOSAL FORM

COST PROPOSAL FORM

The Form will be used with respect to the cost aspect evaluation of Proposals. In addition to the contents of this Form, the Proposer may suggest other potential cost factors, which must be specifically identified. As a result thereof, the Proposer may be asked to provide additional detailed cost information.

Name of Organization: _____

Name of Authorized Representative: _____

Authorized Signature _____ Date _____

SERVICES	2024	2025	2026	2027	2028
Financial Statements including preparation of transmittal letter	\$	\$	\$	\$	\$
Compliance Reports <ul style="list-style-type: none"> • California Transportation Development Act, Public Transportation Modernization Improvements, Low Carbon Transit Operations Program, State Transit Assistance State of Good Repair • Internal Control in accordance with Government Auditing Standards 	\$	\$	\$	\$	\$
Single Audit Report <ul style="list-style-type: none"> • Audit and Federal Financial Assistance (2 CFR part 200, subpart F and Supplement) • Schedule of Expenditures of Federal Award Compliance Reports • Notes to the Schedule of Expenditure of Federal Award 	\$	\$	\$	\$	\$
Finding and Recommendations	\$	\$	\$	\$	\$
Direct Costs:					
Supplies and Copying	\$	\$	\$	\$	\$
Telephone/Postage	\$	\$	\$	\$	\$
Travel	\$	\$	\$	\$	\$
Other:	\$	\$	\$	\$	\$
TOTAL COSTS:	\$	\$	\$	\$	\$

#

Professional Services Agreement

This Agreement, entered into this __ day of _____, 2018 by and between Kings County Area Public Transit Agency, hereinafter referred to as the "AGENCY", and _____ hereinafter referred to as the "FIRM".

W I T N E S S E T H

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

WHEREAS, the AGENCY has the desire to secure certain technical and professional services to assist in the preparation and completion of the items of work described as "Scope of Work" in RFP 2324-01 with Exhibit "A", and hereinafter referred to as the "PROJECT" ;and

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

NOW, THEREFORE, AGENCY and FIRM agree as follows:

I. SERVICES TO BE PERFORMED BY THE FIRM

- A. Authorized Scope of Work: The FIRM agrees to perform all work necessary to complete in a manner satisfactory to the AGENCY those tasks described in Exhibit "A" - Scope of Work, for the price identified in Exhibit "B" - Project Fees.

II. TIME OF PERFORMANCE

The FIRM shall commence performance of this Agreement within five (5) days following Board approval of this Agreement and shall complete the work within the timeframes outlined in Exhibit "A", unless otherwise extended in writing by AGENCY, in its sole discretion.

If the FIRM fails to complete the PROJECT within the time specified, plus any extensions of time which may be granted, the AGENCY shall determine the percent of each work item completed and shall pay the FIRM on that basis.

FIRM shall not be responsible for delays which are due to causes beyond the FIRM's reasonable control. In the case of any such delay, the time of completion shall be extended accordingly in writing signed by both parties.

III. COMPENSATION

- A. Total Compensation: For services performed pursuant to this Agreement, the AGENCY agrees to pay and the FIRM agrees to accept, as payment in full, a sum

not to exceed \$_____ for the fiscal year 2023/2024 audit, \$_____ for the 2024/2025 audit, \$_____ for the 2025/2026 audit, \$_____ for the 2026/2027 audit, and \$_____ for the 2027/2028 audit. This amount shall constitute complete compensation, including document production and out-of-pocket expenses for all services for the work and PROJECT identified in Exhibit "A".

- B. Payment of Compensation: The FIRM shall be compensated according to the progress payment schedule set forth in Exhibit "E" upon completion of percentage of each noted phase. The FIRM shall be paid no later than thirty (30) days following submission of a written, verified billing to the AGENCY. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any.

IV. AUTHORIZED REPRESENTATIVE

- A. AGENCY: The Executive Director of the Agency shall represent the AGENCY in all matters pertaining to the services to be rendered under this Agreement, except where approval of the AGENCY's Board is specifically required.
- B. FIRM: _____ shall represent and act as principle for FIRM in all matters pertaining to the services to be rendered by it under this Agreement.

V. TERMINATION

Termination for Convenience (General Provision)

The AGENCY may terminate this contract, in whole or in part, at any time by written notice to the FIRM when it is in the AGENCY's best interest. The FIRM shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The FIRM shall promptly submit its termination claim to AGENCY to be paid the FIRM. If the FIRM has any property in its possession belonging to AGENCY, the FIRM will account for the same, and dispose of it in the manner AGENCY directs.

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

If the FIRM does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the FIRM fails to perform in the manner called for in the contract, or if the FIRM 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 FIRM setting forth the manner in which the FIRM is in default. The FIRM 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 FIRM 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 FIRM, the AGENCY, after setting up a new delivery of performance schedule, may allow the FIRM 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 FIRM [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 FIRM 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 FIRM 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 FIRM. Any such termination for default shall not in any way operate to preclude AGENCY from also pursuing all available remedies against FIRM 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 FIRM 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 FIRM fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the FIRM 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 FIRM a Notice of Termination specifying the nature of the default. The FIRM 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 FIRM 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.

VI. INTEREST OF OFFICIALS AND THE FIRM

- A. No officer, member, or employee of the AGENCY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
 - 1. Participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, any interest; or
 - 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.
- B. The FIRM hereby covenants that it has, at the time of the execution of this Agreement, no interest, and that FIRM shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The FIRM further covenants that in the performance of this work, no person having any such interest shall be employed.

VII. NO PERSONNEL, AGENCY OR COMMISSION

The FIRM warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a

commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by the FIRM for the purpose of securing business. For breach or violation of this warranty, the AGENCY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

VIII. SUBCONTRACTING

- A. The FIRM shall not subcontract or otherwise assign any portion of the work to be performed under this Agreement without the prior written approval of the AGENCY.
- B. In no event shall the FIRM subcontract work in excess of 50% of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing the particular type of project.

IX. INDEPENDENT FIRM

In the performance of the services herein provided for, the FIRM shall be, and is, an independent FIRM and is not an agent or employee of the AGENCY. The FIRM has and shall retain the right to exercise full control and supervision of all persons assisting the FIRM in the performance of said services hereunder. The FIRM shall be solely responsible for all matters relating to the payment of its employees including compliance with social security and income tax withholding and all other regulations governing such matters.

X. SPECIFICATIONS

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

XI. DOCUMENTS/DATA

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

XII. INDEMNIFICATION AND INSURANCE

- A. In respects to all acts, errors, or omissions in the performance of professional services, FIRM agrees to indemnify and hold harmless AGENCY, its elected and appointed officers, employees, and AGENCY designated volunteers from and against any and all claims, demands, defense costs, liability or consequential damages of any kind or nature arising directly out of FIRM's negligent acts, errors or omissions in the performance of his/her professional services under the terms of this Agreement.
- B. As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, FIRM agrees to indemnify, defend (at AGENCY's option), and hold harmless AGENCY, its elected and appointed officers, agents, employees, representatives, and volunteers from and against any and all claims, demands, defense costs, liability, or consequential damages of any kind or nature arising out of or in connection with FIRM's (or FIRM's subcontractors, if any) performance or failure to perform, under the terms of this Agreement; excepting those which arise out of the sole negligence of AGENCY.
- C. Without limiting AGENCY's right to indemnification, it is agreed that FIRM shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:
1. Workers' compensation insurance as required by California law.
 2. Commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), Independent FIRM's Liability (if applicable).
 3. Comprehensive Automobile Liability coverage with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.
- D. AGENCY'S Executive Director is hereby authorized to reduce the requirements set forth above in the event she determines that such reduction is in the AGENCY'S best interest.
- E. Each insurance policy required by this Agreement shall contain the following clause:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to KCAPTA, Clerk of the Board, 610 W 7th Street, Hanford, CA 93230."

In addition, the commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:

“It is agreed that any insurance maintained by Kings County Area Public Transit Agency shall apply in excess of and not contribute with insurance provided by this policy.”

“Kings County Area Public Transit Agency, its officers, agents, employees, representatives and volunteers are added as additional insured as respects operations and activities of, or on behalf of the named insured, performed under contract with Kings County Area Public Transit Agency.”

- F. Prior to commencing any work under this Agreement, FIRM shall deliver to AGENCY insurance certificates confirming the existence of the insurance required by this Agreement, and include the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, FIRM shall provide to AGENCY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory’s company affiliation and title. Should it be deemed necessary by AGENCY, it shall be FIRM’s responsibility to see that AGENCY receives documentation acceptable to AGENCY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. AGENCY has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.
- G. In addition to any other remedies AGENCY may have if FIRM fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, AGENCY may, at its sole option:
1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; or
 2. Order FIRM to stop work under this Agreement and/or withhold any payment(s) which become due to FIRM hereunder until FIRM demonstrates compliance with the requirements hereof; or
 3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies AGENCY may have and is not the exclusive remedy for FIRM’s failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which FIRM may be held responsible for payments of damages to persons or property resulting from FIRM’s or its subcontractor’s performance of the work covered under this Agreement.

XIII. MISCELLANEOUS PROVISIONS

- A. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- B. Prohibition of Assignment: Neither the AGENCY nor FIRM 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 FIRM, or if sent via the United States Postal Service, postage prepaid, addressed as follows:

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

- 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 that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Kings County, California. The FIRM 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 AGENCY and the FIRM as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the AGENCY and the FIRM.
- G. Conflict With Law: 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.

XIV. COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

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

A. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

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

B. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (49 U.S.C § 5323 (I)(1), 31 U.S.C. §§ 3801-3812, 18 U.S.C § 1001, 49 C.F.R. part 31))

1. FIRM acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and United States Department of Transportation ("U.S. DOT") regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this AGREEMENT. Upon execution of this AGREEMENT, FIRM certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this AGREEMENT or the FTA assisted project for which this work is being performed. In addition to other penalties that may be applicable, FIRM 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 FIRM to the extent the Federal Government deems appropriate.
2. FIRM also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with this AGREEMENT that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C §1001 and 449 U.S.C. § 5323(I) on FIRM, to the extent the Federal Government deems appropriate.

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

C. PRIVACY ACT (5 U.S.C. §552)

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

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

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

The following requirements apply to this AGREEMENT:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000e and federal transit law at 49 U.S.C. Section 5332, the FIRM agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, FIRM agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this AGREEMENT:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, FIRM agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the performance of this AGREEMENT. FIRM agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin,

sex (including sexual orientation and gender identity), or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the FIRM agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, FIRM agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, FIRM agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, FIRM agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, FIRM agrees to comply with any implementing requirements FTA may issue.

3. FIRM also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

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

1. This FIRM 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 national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The AGENCY's overall goal for DBE participation is .1%. A separate contract goal has not been established for this procurement.
2. The FIRM shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The FIRM shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the FIRM 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 FIRM signs with a subcontractor must include the assurance in this paragraph (see 49 DFR 26.13(b))
3. The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
4. The FIRM 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 FIRM's receipt of payment for that work from the Kings County Area Public Transit Agency. In addition, the FIRM may not hold retainage from its subcontractors.
5. The FIRM 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 FIRM may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliated without prior written consent of Kings County Area Public Transit Agency

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

FIRM agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

G. FEDERAL CHANGES (49 CFR Part 18)

FIRM shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement dated October, 2017) between AGENCY and FTA, as they may be amended or promulgated from time to time during the term of this PO/Contract. FIRM's failure to so comply shall constitute a material breach of this PO/Contract.

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

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding PO/Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated March 18, 2013, 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 FIRM shall not perform any act, fail to perform any act, or refuse to comply with any AGENCY requests, which would cause AGENCY to be in violation of the FTA terms and conditions.

I. ACCESS TO RECORDS (49 U.S.C. 5325, 2 C.F.R. § 200.333 &, 49 CFR 633)

The following access to records requirements apply to this Contract:

(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.

J. LOBBYING (31 U.S.C. §1352, 2 C.F.R § 200.450, 2 C.F.R part 200 appendix II(J) & 49 CFR Part 20)

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

Language in Lobbying Certification is mandated by 31 U.S.C. § 1352 (b) (5) 9 which provides that FIRMS file the certification required by 49 CFR 20.110(d) and is attached to this Agreement as Exhibit "C".

K. RECYCLED PRODUCTS (42 U.S.C. 6962, 40 CFR Part 247, 2 C.F.R. § 200.322)

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

L. GOVERNMENT-WIDE DEBARMENT & 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 FIRM 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 FIRM shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;

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

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

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The FIRM 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.

M. CLEAN WATER 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 FIRM agrees:

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

N. VIOLATION AND BREACH OF CONTRACT (2 C.F.R. § 200.326 , 2 C.F.R. part 200 Appendix II (A))

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

5. The right to take over and complete the work or any part thereof as agency for and at the expense of the FIRM, either directly or through other contractors;
6. The right to cancel this Contract as to any or all of the work yet to be performed;
7. The right to specific performance, an injunction or any other appropriate equitable remedy; and
8. 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 FIRM mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the FIRM 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 FIRM and the FIRM shall abide by the decision.

Performance During Dispute - Unless otherwise directed by KCAPTA, FIRM 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 FIRM

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

Remedie

Substantial failure of the FIRM 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 FIRM recognizes that in the event of a breach of this Agreement by the FIRM before the AGENCY takes action contemplated herein, the AGENCY will provide the FIRM with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and

will provide the FIRM a reasonable period of time to respond and to take necessary corrective action.

Disputes

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 FIRM mails or otherwise furnishes a written appeal to the Transit Manager. In connection with any such appeal, the FIRM 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 FIRM and the FIRM shall abide by the decision.

Performance during Dispute

Unless otherwise directed by AGENCY, FIRM 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 FIRM 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 FIRM 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.

- O. **EMPLOYEE PROTECTIONS** (49 U.S.C. § 5333 (a), 40 U.S.C. §§ 3141-3148, 29 C.F.R. part 5, 18 U.S.C. § 874, 29 C.F.R. part 3, 40 U.S.C. §§ 3701-3708, 29 C.F.R. part 1926)

The FIRM 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 FIRM 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 FIRM shall require the inclusion of the language of this clause within subcontract of all tiers.

XV. MISCELLANEOUS PROVISIONS

- A. FIRM covenants that he presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder.
- B. FIRM will not discriminate against any employee, or applicant for employment, because of race, color, religion, sex, marital status, or national origin. FIRM 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

Joe Neves, Chairman

Approved as to Form

General Counsel

Attachments:

- Exhibit “A”: Scope of Work
- Exhibit “B” Project Fees