

**ATTACHMENT D**  
**MASTER AGREEMENT 26-02 WITH ABM**

## MASTER AGREEMENT

#26-02

This Master Services Agreement ("**Agreement**") is entered into as of the date last signed below (the "**Effective Date**"), between ABM eMobility USA, LLC, a Delaware limited liability company having a place of business at 14141 Southwest Freeway, Suite 400, Sugar Land, TX 77478 ("**ABM**"), and Kings County Area Public Transit Agency (KCAPTA), a Joint Powers Authority (JPA) having a place of business at 610 W. 7th St., Hanford, CA 93230 ("**Customer**"). ABM and the Customer, as applicable, may be individually referred to as a "**Party**" or collectively as the "**Parties**".

### 1. SERVICES

- 1.1 SOW. ABM and Customer will execute a statement of work, substantially in the form attached as Exhibit A, that describes the specific services to be performed by ABM (as executed, a "**Statement of Work**" or "**SOW**"). ABM will perform the services described in any mutually agreed Statement of Work (the "**Services**"). Each SOW will form a part of this Agreement and will be subject to the terms and conditions contained herein.

- 1.2 Delivery. ABM will deliver to Customer the deliverables specified in an SOW (individually or collectively, "**Deliverables**") in accordance with the delivery schedule and other terms and conditions set forth in the SOW.

### 2. PAYMENT

- 2.1 Fees. Customer will pay ABM as specified in an SOW.
- 2.2 Expenses. Customer will reimburse ABM for expenses incurred as specified in an SOW.
- 2.3 Payment Terms. ABM will invoice Customer on a monthly basis for any fees and expenses payable to ABM. Customer will pay all invoices within thirty (30) days following receipt thereof.

### 3. RELATIONSHIP OF THE PARTIES

- 3.1 Independent Contractor. ABM is an independent contractor and nothing in this Agreement will be construed as establishing an employment or agency relationship between Customer and ABM or any ABM personnel. Neither Party has the authority to bind or obligate the other as a result of the relationship created hereby. ABM will determine, in ABM's sole discretion, the manner and means by which Services are accomplished, subject to the requirement that ABM will at all times comply with applicable law.
- 3.2 Taxes and Employee Benefits. ABM will be solely responsible for the payment of all compensation to all ABM personnel, as well as for the payment of all withholding taxes, social security, workers' compensation, unemployment and disability insurance or similar items required by any government agency. ABM personnel will not be entitled to any benefits paid or made available by Customer to its employees, including, without limitation,

any vacation or illness payments, or to participate in any plans, arrangements or distributions made by Customer pertaining to any bonus, stock option, profit sharing, insurance or similar benefits.

### 4. CONFIDENTIAL INFORMATION

The disclosure and exchange of confidential information under this Agreement will be governed by the terms of the Parties' Nondisclosure Agreement previously executed on or about August 7, 2025 ("**NDA**"), the terms of which are incorporated by reference herein. The term of the NDA will be extended for so long as this Agreement remains in effect.

### 5. WARRANTIES

- 5.1 No Pre-existing Obligations. ABM represents and warrants that ABM has no pre-existing obligations or commitments (and will not assume or otherwise undertake any obligations or commitments) that would be in conflict or inconsistent with or that would hinder ABM's performance of its obligations under this Agreement.
- 5.2 Performance Standard. ABM represents and warrants that Services will be performed in a thorough and professional manner, consistent with high professional and industry standards by individuals with the requisite training, background, experience, technical knowledge and skills to perform Services.
- 5.3 Non-infringement. ABM represents and warrants that the Services will not infringe, misappropriate or violate the rights of any third party, including, without limitation, any intellectual property rights or any rights of privacy or rights of publicity, except to the extent any portion of the Services is created, developed or supplied by Customer or by a third party on behalf of Customer.
- 5.4 Products and Services Warranties. ABM warrants for a period of ninety (90) days from substantial completion (for services) and one (1) year from the earlier of activation or ninety (90) days after delivery (for products) that the products and services provided to Customer shall: (a) be free and clear of all liens and encumbrances, good and merchantable title thereto being vested in Customer; (b) conform to, and be capable of performing as described in

all specifications and requirements set forth or referenced in a SOW; and (c) not incorporate or consist of commercial surplus, used, remanufactured or reconditioned material or components, or material or components of such age or so deteriorated as to impair the usefulness of safety thereof. NOTWITHSTANDING THE FOREGOING, ABM MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY EXCLUDED.

## 6. INDEMNITY

ABM will defend, indemnify and hold Customer and its officers, directors, employees, agents, successors and assigns harmless from and against all claims, damages, liabilities, losses, expenses and costs (including reasonable fees and expenses of attorneys and other professionals) to the extent caused by:

(a) any action by a third party against Customer that is based on a claim that any Services performed under this Agreement, or the results of such Services, or Customer's use thereof, infringe, misappropriate or violate such third party's intellectual property rights; and

(b) any action by a third party against Customer that is based on any act or omission of ABM or any ABM personnel and that results in: (i) personal injury (or death) or tangible or intangible property damage (including loss of use); or (ii) the violation of any statute, ordinance, or regulation.

To the extent permitted by the laws and constitution of California, Customer will indemnify, defend, and hold harmless ABM from and against any and all third party claims, losses, or liabilities for personal injuries or property damages, as well as costs and expenses incurred in the defense thereof, to the extent caused by Customer's negligence, willful misconduct, or other fault.

## 7. TERM AND TERMINATION

7.1 Term. This Agreement will commence on the Effective Date and will remain in effect for three (3) years unless sooner terminated pursuant to the terms of this Agreement (the "Term").

7.2 Termination for Breach. Either Party may terminate this Agreement (including an SOW) if the other Party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days following written notice thereof from the non-breaching Party.

7.3 Termination for Convenience. Either Party may terminate this Agreement (including an SOW) at any time, for any

reason or no reason, upon at least thirty (30) days prior written notice to the other Party.

7.4 Effect of Termination. Upon the expiration or termination of this Agreement for any reason: (i) each Party will promptly return to the other Party all Confidential Information received during the Term of the Agreement; and (ii) Customer will pay ABM any accrued but unpaid fees and expenses due and payable to ABM, plus (if terminated by Customer) any termination or cancellation costs paid by ABM to subcontractors or suppliers as a result of such termination.

7.5 Survival. The rights and obligations of the Parties under Sections 2, 3.2, 4, 5, 6, 7.4, 7.5, and 8 will survive the expiration or termination of this Agreement.

## 8. GENERAL

8.1 Assignment. Neither Party may assign or transfer this Agreement, in whole or in part, without the other Party's express prior written consent. Any attempt to assign this Agreement, without such consent, will be void. Subject to the foregoing, this Agreement will bind and benefit the Parties and their respective successors and assigns.

8.2 Attorneys' Fees. If any action is necessary to enforce the terms of this Agreement, the substantially prevailing Party will be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which such prevailing Party may be entitled.

8.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state in which the Services are performed, excluding its body of law controlling conflict of laws.

8.4 Jurisdiction/Venue/Waiver of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in California. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Kings County, California. The ABM 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.

8.5 Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

8.6 Waiver. The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

8.7 Notices. All notices required or permitted under this Agreement will be in writing and delivered to the Parties at their respective addresses stated above. Written notices will reference this Agreement and will be deemed given: (i) when delivered personally; or (ii) one (1) business day after deposit with a nationally-recognized express courier for overnight delivery, with written confirmation of receipt.

8.8 Entire Agreement. This Agreement and attachments/exhibits and documents, including any SOWs and the NDA, constitutes the complete and exclusive understanding and agreement of the Parties with respect to its subject matter and supersedes all prior understandings and agreements, whether written or oral, with respect to its subject matter. In the event of a conflict between this Agreement and attachment/exhibits and documents including SOW, the terms and conditions of this Agreement will take precedence unless the SOW specifically identifies the provision of this Agreement to be modified and expressly states the Parties' intent to modify such provision of this Agreement. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the Parties hereto.

8.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8.10 Force Majeure. ABM shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in performance of this Agreement when and to the extent such failure or delay is caused by or results from acts of God, flood, fire, earthquake, explosion, governmental actions, utility or regulatory delays (permitting, interconnects, etc.), war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or in ability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown, power outage, or any other cause not within the reasonable control of ABM.

8.11 Hazardous Conditions. ABM is not responsible for any hazardous conditions encountered at a project site. Upon encountering any hazardous conditions, ABM will immediately stop work and notify Customer. To the fullest extent permitted by law, Customer shall indemnify, defend and hold harmless ABM from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorney's fees and expenses, arising out of or resulting from the presence, removal or remediation of hazardous conditions at a project site; provided, however,

that Customer shall not be responsible for hazardous conditions introduced to the project site by ABM.

8.12 Change in Law. In the event of a Change in Law that materially affects ABM's performance of its obligations under this Agreement, increases the cost of performance, or affects the timing or feasibility of an obligation under this Agreement, ABM shall be entitled to an equitable adjustment of the contract price, schedule, or other relevant terms. For this purposes of this Agreement, a "Change in Law" shall mean (i) the enactment, adoption, promulgation, modification, or repeal of any applicable law, regulation, rule, ordinance, code, or standard by any governmental authority after the date of execution of an SOW; or (ii) any change in the interpretation or application of any applicable law by any governmental authority after the date of execution of an SOW.

8.13 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS OR SIMILAR DAMAGES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT SHALL ABM'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY CUSTOMER TO ABM UNDER THIS AGREEMENT DURING THE PRECEDING TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH CLAIM OR LOSS.

8.14 Transfer Title of Equipment. Title to all equipment shall transfer from ABM to Customer upon the earlier of: (a) delivery of the equipment to the project site, or (b) delivery of the equipment to storage for future delivery to the project site. Upon transfer of title, Customer assumes ownership and responsibility for the equipment.

## **9. COOPERATIVE PURCHASING – TIPS COMPLIANCE**

9.1 Cooperative Procurement Basis. This Agreement is executed pursuant to Customer's cooperative purchasing authority as a Member of The Interlocal Purchasing System ("TIPS"), a national purchasing cooperative organized under applicable public procurement laws. All purchases described in an SOW are conducted in full compliance with TIPS procedures and statutory cooperative use requirements.

9.2 Vendor Identification. ABM Buildings Services, LLC and ABM Industry Groups, LLC, including subsidiaries and affiliates, are parties to multiple TIPS Contracts identified below. ABM eMobility USA, LLC, is an affiliate of ABM Buildings Services, LLC and ABM Industry Groups, LLC and an Authorized Reseller in the TIPS Vendor Portal.

- TIPS Contract No. RFP 220201 – Fleet Fueling and Charging Equipment and Facilities
- TIPS Contract No. 220202 – Fleet Fueling and Charging Equipment and Facilities (JOC Part 2)
- TIPS Contract No. 250104 – Trades, Labor, and Materials
- TIPS Contract No. RCSP 250202 – Renewable Energy and Solar Solutions and Services
- TIPS Contract No. RCSP 250201 - Renewable Energy and Solar Solutions and Services (Part 2)

9.3 Contract and Purchase Order Requirements. All SOWs shall reference the applicable TIPS Contract number and shall be submitted to TIPS by ABM in accordance with TIPS policy.

9.4 Pricing and Discounts. All pricing shall conform to the TIPS-approved contract rates and include any discounts or pricing structures required under the applicable TIPS contract.

9.5 Administrative Fee Acknowledgement. ABM agrees to remit the required TIPS administrative fee in accordance with the terms of the applicable TIPS contract upon receipt of payment from Customer.

9.6 Statement of Compliance. This Agreement, including all goods, services and construction work authorized in an SOW, is subject to and governed by the terms and conditions of the applicable TIPS contract listed above. ABM and Customer affirm that this cooperative procurement is legally authorized and executed in accordance with state and local laws, and in adherence to published TIPS purchasing procedures.

*SIGNATURES ON FOLLOWING PAGE*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**ABM EMOBILITY USA, LLC**

**Kings County Area Public Transit Agency  
(KCAPTA)**

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

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

Name:  
Title:  
Date:

Name: Angie Dow  
Title: Managing Director  
Date:

DRAFT

## ATTACHMENT A

### INSURANCE REQUIREMENTS

(to the Master Agreement dated \_\_\_\_\_ between KCAPTA and ABM)

This Attachment A forms part of, and is incorporated into, the Master Agreement between KCAPTA and ABM (the "Agreement"). The following Insurance Requirements are applicable to the Agreement and where required, shall be flowed down to all subcontractor and lower-tier agreements as applicable.

- A. ABM shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by ABM, its agents, representatives, employees, or subcontractors. Agree will not be considered by KCAPTA until all insurance has been obtained that is required under this section and such insurance has been verified by KCAPTA, nor shall ABM allow any Subcontractor to commence work on tis contract until all similar insurance required of the Subcontractor has been so obtained and approved.

#### **Minimum Scope and Limits of Insurance**

ABM shall procure and at all time during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

- Commercial General Liability Insurance with a minimum limit of Three Million Dollars (\$3,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Three Million Dollars (\$3,000,000) per project or location. If ABM is a limited liability company, the commercial general liability coverage shall be amended so that ABM and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insured. The indemnified parties referenced under "Additional Insured" must also be named as additional insured.
- Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If ABM does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, ABM shall obtain a non-owned auto endorsement to the Commercial General Liability policy.
- Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If ABM has no employees while performing services under this Agreement, workers' compensation policy is not required, but ABM shall provide an executed declaration that it has no employees.

- Professional Liability Insurance [or Errors and Omissions Insurance] with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate

#### **Acceptability of Insurers**

The insurance policies required shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements

#### **Additional Insured**

The commercial general, automobile liability, and professional liability insurance policies shall contain an endorsement naming Kings County Area Public Transit Agency, their officers, employees, agents and volunteers (indemnified parties) as additional insureds for all activities arising from this contract.

#### **Primary and Non-Contributing**

The insurance policies required shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to KCAPTA. Any insurance or self-insurance maintained by KCAPTA, its officers, employees, agents or volunteers, shall be in excess of ABM's insurance and shall not contribute with it.

#### **ABM's Waiver of Subrogation**

The insurance policies required shall not prohibit ABM and ABM's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. ABM hereby waives all rights of subrogation against KCAPTA.

#### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be approved by KCAPTA. At KCAPTA's option, ABM shall either reduce or eliminate the deductibles or self-insured retentions with respect to KCAPTA, or ABM shall procure a bond guaranteeing payment of losses and expenses.

#### **Cancellations or Modifications to Coverage**

ABM shall not cancel, reduce or otherwise modify the insurance policies required during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to KCAPTA. If any insurance policy required is canceled or reduced in coverage or limits, AMB shall, within two (2) business days of notice from the insurer, phone, fax or notify KCAPTA via certified mail, return receipt requested, of the cancellation of or changes to the policy.

#### **KCAPTA Remedy for Noncompliance**

If ABM does not maintain the policies of insurance required in full force and effect during the term of this Agreement, or in the event any of ABM's policies do not comply



with the requirements, KCAPTA may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, KCAPTA may, but has no duty to, take out the necessary insurance and pay, at AMB's expense, the premium thereon. AMB shall promptly reimburse KCAPTA for any premium paid by KCAPTA or KCAPTA may withhold amounts sufficient to pay the premiums from payments due to AMB.

#### **Evidence of Insurance**

Prior to KCAPTA's execution of the Agreement, AMB shall furnish a certificate of insurance and all original endorsements evidencing and effecting the coverages required for review by KCAPTA's Executive Director. The certificate of insurance and all original endorsements evidencing and effecting the coverages required must be received and approved by KCAPTA before execution of the Agreement. AMB may provide complete, certified copies of all required insurance policies to KCAPTA. AMB shall maintain current endorsements on file with KCAPTA. AMB shall provide proof to KCAPTA that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. AMB shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

#### **Indemnity Requirements not Limiting**

Procurement of insurance by AMB shall not be construed as a limitation of AMB's liability or as full performance of AMB's duty to indemnify KCAPTA.

#### **Subcontractor Insurance Requirements**

AMB shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the insurance requirements of this Attachment.

#### **B. Builder's Risk Insurance**

Within ten (10) calendar days following KCAPTA's approval of the Phase 2 Statement of Work (SOW) for the construction of the Battery Electric Charging Station and Related Infrastructure, AMB must provide adequate/sufficient Builder's Risk Insurance to protect the indemnified parties referenced under "Additional Insured" from a catastrophic event should one occur. AMB's policy must be submitted to KCAPTA for review and must be deemed acceptable by KCAPTA. KCAPTA reserves the right to require modifications should they be necessary to provide the protection being requested by KCAPTA.

**ATTACHMENT B**  
**FEDERAL CONTRACT CLAUSES**

(to the Master Agreement dated \_\_\_\_\_ between KCAPTA and ABM)

**1. ACCESS TO RECORDS AND REPORTS**

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.

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

Flow Down

These requirements flow down to all tiers

Contract Requirements

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

public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project

### 3. BONDING REQUIREMENTS

#### Flow Down:

These requirements flow down to all third party contractors and their contracts at every tier and subrecipients and their subcontractors at every tier that exceed the simplified acquisition threshold.

#### Contract Requirements:

##### **Bid Guarantee**

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the Kings County Area Public Transit Agency. The amount of such guaranty shall be equal to **5%** of the total bid price.

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

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

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

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

##### **Performance Guarantee**

A Performance Guarantee in the amount of **100%** of the contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By-Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the KINGS COUNTY AREA PUBLIC TRANSIT AGENCY within ten (10) business days from Contract execution. The KINGS COUNTY AREA PUBLIC TRANSIT AGENCY requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the KINGS COUNTY AREA PUBLIC TRANSIT AGENCY and listed as

a company currently authorized under 31 C.F.R part 22 as possessing a Certificate of Authority as describe hereunder. KINGS COUNTY AREA PUBLIC TRANSIT AGENCY may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The KINGS COUNTY AREA PUBLIC TRANSIT AGENCY may secure additional protection by directing the Contractor to increase the amount of existing bond or to obtain an additional bond.

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

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

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

#### **Payment Bonds**

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

#### ***4. BUILD AMERICA, BUY AMERICA ACT REQUIEIMENTS***

Flow Down:

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

Contract Requirements:

The contractor agrees to comply with 49 U.S.C. 5323(j), 49 C.F.R. part 661, Public Law Act 117-58, div 70901-52, and 2 CFR part 184 which provide that Federal funds may not be obligated unless all steel, iron, manufactured products, and construction material used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to Kings County Area Public Transit Agency the appropriate Build America, Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

**5. CARGO PREFERENCE REQUIREMENTS**

Flow Down:

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

Contract Requirements

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

(1) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved; whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

(2) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C. 20590 and the FTA recipient (through the Contractor in the case of a subcontractor's bill-of lading.)

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

**6. CIVIL RIGHTS LAWS AND REGULATIONS**

Flow Down:

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

Contract Requirements:

**Civil Rights and Equal Opportunity**

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

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

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

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

### Flow Down:

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

### Contract Requirements:

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency.

### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

### Federal Water Pollution Control Act

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

## *8. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE*

### Flow Down:

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

### Contract Requirements:

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development

of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## 9. *CONTRACT WORK HOURS AND SAFETY STANDARDS ACT*

### 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.

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

##### **Flow Down**

These requirements flow down to all tiers.

##### **Contract Requirements**

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

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

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

*11. DEBARMENT AND SUSPENSION*

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

#### *12. DISADVANTAGED BUSINESS ENTERPRISE (DBE)*

##### 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

##### Policy and Program Compliance:

It is the policy of the Kings County Area Public Transit Agency (AGENCY) and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, have an equal opportunity to participate in DOT-assisted design-build contracts.

The Design-Builder must fully comply with the DBE requirements throughout construction phases of the contract since the design phase is not funded with federal funds.

##### Contract Assurance:

The Design-Builder shall not discriminate based on race, color, national origin, or sex in the execution of this contract and shall carry out applicable DBE requirements in accordance with 49 CFR Part 26. Failure to comply is a material breach and may result in termination, withholding of payment, or other appropriate remedies.

##### DBE Performance Plan:

As part of the proposal, each Offeror must submit a DBE Performance Plan that details how the Design-Builder will meet the DBE participation goal throughout the duration of the contract.

The plan must include:

1. Construction Phase Strategy – Anticipated scopes for DBE construction subcontracting.
2. Outreach and Engagement Process – Early engagement efforts, meetings, and capacity-building.
3. CUF Monitoring – Methods to verify DBEs perform commercially useful functions.
4. Progress Monitoring and Reporting – Tools and schedule for tracking DBE utilization.

##### DBE Participation Goal:

The DBE participation goal for this contract is 0.65% of the total contract price. The Design-Builder's commitments made in the DBE Performance Plan will be contractually binding upon award.

**Subcontractor Commitment and Substitution:**

No DBE listed in the Performance Plan may be substituted or removed without prior written consent from the AGENCY. Termination must follow a formal process including notice to the DBE and good cause justification.

**Ongoing Compliance and Monitoring:**

The Design-Builder must:

- Submit quarterly DBE utilization reports for both design and construction.
- Provide proof of timely payments to DBE subcontractors.
- Participate in CUF (commercially useful function) reviews and labor interviews.
- Maintain detailed DBE records and documentation.

**Good Faith Efforts (If Goal Not Met):**

If the goal is not met, the Offeror must demonstrate good faith efforts as defined in 49 CFR 26.53, including outreach, solicitation, and negotiation documentation. AGENCY will assess these efforts during proposal review and project execution.

**Reconsideration and Sanction:**

Bidders may request reconsideration within five (5) business days. An independent official will review the request. Continued noncompliance may result in payment suspension or contract termination.

**Recordkeeping and Audit Rights:**

The Design-Builder shall maintain DBE-related records in accordance with project record retention requirements and allow access to the AGENCY, USDOT, and federal auditors as required.

***13. DHS SEAL, LOGO, AND FLAGS*****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.

***14. ENERGY CONSERVATION*****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.

***15. EQUAL EMPLOYMENT OPPORTUNITY***

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.

#### *16. FEDERAL CHANGES*

##### 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.

The Contractor is advised that Federal requirements applicable to this Contract as set forth in federal law, regulations, policies, and related administrative practices may change during the performance of this Contract. Any such changes shall also apply to this Contract and subcontracts at all tiers.

#### *17. FLY AMERICA*

##### Flow Down:

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

##### Contract Requirements:

As used in this clause: "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both

of which are outside the United States. "United States" means the 50 States, the District of Columbia, and outlying areas. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 41.

When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

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

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

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

#### **18. FTA PROTEST PROCUDRES**

##### 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 Transportaiton, 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)

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

##### 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.

## **20. LOBBYING RESTRICTIONS**

### 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

## 21. NOTIFICATION TO FTA/ LEGAL MATTERS CONCERNING A COVERED TRANSACTION

Flow Down:

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

### Contract Requirements:

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

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The AGENCY must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the AGENCY has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the AGENCY and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the AGENCY.

## 22. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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.

### **23. PATENT RIGHTS AND RIGHTS IN DATA**

#### **Flow Down:**

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

#### **Contract Requirements:**

##### **Intellectual Property Rights**

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

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

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

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

##### Flow Down

These requirements flow down to all tiers.

##### Contract Requirements

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

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporations (or any subsidiary or affiliate of such entities).

1. For the purpose of public safety, security of government facilities, physical security surveillance or critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology (or any subsidiary or affiliate of such entities).
  2. Telecommunications or video surveillance services provided by such entities or using such equipment.
  3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of Federal Bureau of Investigation, reasonable believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- D. In implementing the prohibition under Public Law 115-232, section 889, subsection (f) paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonable necessary for those affected entities of transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- E. CONTRACTOR represents and warrants that it has performed a due diligence review of its supply chain and that no such "covered telecommunications equipment or services" shall be provided to KCAPTA that would cause KCAPTA to be in violation of the prohibition contained in the Act.

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

### 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.

## 26. PROMPT PAYMENT

### Flow Down:

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

### Contract Requirements:

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

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

## 27. RECYCLED PRODUCTS

### 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:

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- Competitively within a timeframe providing for compliance with the contract performance schedule;
- Meeting contract performance requirements; or
- At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

## 28. SAFE OPERATION OF MOTOR VEHICLES

### Flow Down:

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

### Contract Requirements:

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

### **Distracted Driving**

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

## **29. SEISMIC SAFETY**

### **Flow Down:**

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

### **Contract Requirements:**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## **30. SENSITIVE SECURITY INFORMATION**

### **Flow Down:**

All third party contractors at every tier

### **Contract Requirements:**

The Contractor acknowledges that certain information made available under this contract may be designated as Sensitive Security Information (SSI), as defined in 49 C.F.R. Part 1520. SSI includes, but is not limited to, security programs and contingency plans, vulnerability assessments, technical specifications of security systems, and any information that, if publicly disclosed, would be detrimental to transportation security.

The Contractor agrees to handle, mark, store, transmit, and dispose of SSI in accordance with the requirements of 49 C.F.R. Part 1520 and any applicable TSA or agency-specific guidance. The Contractor shall:

- Mark all SSI materials as:  
SENSITIVE SECURITY INFORMATION – WARNING: This record contains Sensitive Security Information that is controlled under 49 C.F.R. Part 1520. No part of this record may be disclosed to persons without a "need to know," as defined in 49 C.F.R. Part 1520.5. Unauthorized release may result in civil penalty or other action.

- Limit access to individuals with a legitimate “need to know” as defined by 49 C.F.R. §1520.11.
- Ensure all employees, subcontractors, or agents with access to SSI are trained on SSI handling and confidentiality requirements.

In the event of an unauthorized disclosure or suspected breach of SSI, the Contractor shall immediately notify the Contracting Officer and the applicable Security Office. A written report detailing the nature and scope of the disclosure shall be submitted within 24 hours.

The Contractor shall include this clause, or an equivalent clause that meets all SSI protection requirements, in all subcontracts or consultant agreements where access to SSI may occur.

Upon completion or termination of this contract, the Contractor shall return or destroy all SSI received or generated during performance in accordance with TSA and agency guidelines, and provide certification of such destruction or return.

### *31. SIMPLIFIED ACQUISITION THRESHOLD*

#### Flow Down:

The requirements extend to all third party contractors

#### Contract Requirements:

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

### *32. SPECIAL DOL EEO CLAUSE*

#### Flow Down:

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

#### Contract Requirements

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

### *33. TAX LIABILITY AND FELONY CONVICTIONS*

#### 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.

### **34. TERMINATION**

#### Flow Down:

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

#### Contract Requirements:

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

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the AGENCY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**Termination for Default (Construction)**

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

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

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

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

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

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

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

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

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

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

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

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

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

***35. TRAFFICKING VICTIMS PROTECTION ACT***

**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 engages in, or uses labor recruiters, borkers, or other agents who engage in

1. Severe forms of trafficking in persons
2. The procurement of a commercial sex act during the period of time that the gant, 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.

### *36. VETERANS HIRING PREFERENCE*

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

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

#### Flow Down:

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

#### Contract Requirements:

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

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;

2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of KCAPTA's Transit Manager. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by KCAPTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

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

#### **Remedie**

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

#### **Performance during Dispute**

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

#### **Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is

legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **Remedies**

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

### **Rights and Remedies**

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

**ATTACHMENT C**

**REQUIRED CERTIFICATION**

(to the Master Agreement dated \_\_\_\_\_ between KCAPTA and ABM)

**NONCOLLUSION DECLARATION**

**TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID**

Owner: \_\_\_\_\_

Project: \_\_\_\_\_

The undersigned, certify under penalty of perjury that:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to submit a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or any other person or entity to submit a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with any person or entity to fix the bid price of the bidder or of any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder.

All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid. The bidder has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that they have full power and authority to execute this declaration on behalf of the bidder.

**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ [City], \_\_\_\_\_ [State].

**Signature**

\_\_\_\_\_

**Print Name**

\_\_\_\_\_

**Title**

\_\_\_\_\_

**Company Name**

\_\_\_\_\_

BUY AMERICA BUILD AMERICA ACT CERTIFICATION

REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, MANUFACTURED PRODUCTS, AND CONSTRUCTION MATERIALS

FAILURE OF OFFEROR/BIDDER TO SUBMIT THIS EXECUTED DOCUMENT WITH ITS BID/PROPOSAL MAY BE CONSTRUED BY KINGS COUNTY AREA PUBLIC TRANSIT AGENCY AS A NEGATIVE RESPONSE, AND THE OFFER WILL NOT BE CONSIDERED.

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA AND BUILD AMERICA, BUY AMERICA ACT

This procurement is subject to the Federal Transit Administration (FTA) Buy America requirements under 49 U.S.C. § 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661, as well as the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, Division G, Title IX, Sections 70911–70927, 2021).

These laws and regulations require that all iron, steel, manufactured products, and construction materials used in FTA-funded projects must be produced in the United States, unless a waiver is granted by the appropriate federal agency. In the event a waiver is requested, the bidder/offeror shall provide all documentation requested by Kings County Area Public Transit Agency to support such request.

Please complete **either** the Compliance **or** Non-Compliance certification below:

☐ **Certification of Compliance**

The undersigned hereby certifies that it **will comply** with all applicable Buy America and Build America, Buy America Act requirements, including:

- 49 U.S.C. § 5323(j)(1),
- 49 C.F.R. Part 661,
- Build America, Buy America Act (Pub. L. 117–58, Div. G, Title IX, §§ 70911–70927), and
- Any implementing guidance, including 2 C.F.R. Part 184 and directives issued by the U.S. Department of Transportation and the Federal Transit Administration.

Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

☐ **Certification of Non-Compliance**

The undersigned hereby certifies that it **cannot comply** with the requirements of:

- 49 U.S.C. § 5323(j)(1),
- 49 C.F.R. Part 661,
- Build America, Buy America Act (Pub. L. 117–58, Div. G, Title IX, §§ 70911–70927), and
- Any implementing guidance, including 2 C.F.R. Part 184 and directives issued by the U.S. Department of Transportation and the Federal Transit Administration.

Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_



## 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 sub-awards at all tiers (including subcontracts, sub-grants, 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

## Certification Regarding Debarment, Suspension, and Other Responsibility Matters

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

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

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

*The certification in this clause is a material representation of fact relied upon by Kings County Area Public Transit Agency. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Kings County Area Public Transit Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.*

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

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

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

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



ABM eMobility USA, LLC  
14141 Southwest Fwy., Suite 400  
Sugar Land, TX 77478

Kings County Area Public Transit Agency  
610 W. 7<sup>th</sup> Street  
Hanford, CA 93230

August 21, 2025

## **MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

ABM eMobility USA, LLC and Kings County Area Public Transit Agency and the respective employees of each party intend to provide each other with certain information which is either confidential, proprietary or generally not available to the public ("Confidential Information") pursuant to the terms of this agreement (the "Agreement" or "NDA") and in connection with the parties' expressed interest in a Business Relationship, which may include, but is not limited to design, technical evaluations, feasibility studies, scope development, procurement strategy alignment, and the negotiation of potential agreements related to the development, construction, installation, financing, maintenance, or management of electric vehicle charging infrastructure, fleet electrification, renewable energy solutions, and related services and technologies. Either party to this NDA may be considered a Recipient or Discloser.

As a condition to furnishing Confidential Information, the Recipient agrees as follows:

1. Recipient shall use the Confidential Information (as defined in Section 3) solely in connection with the Business Relationship and the Recipient shall not disclose the Confidential Information to any person other than directors, officers, employees, lenders, counsel, representatives or affiliates of Recipient, if any (collectively, "Representatives"), who need to know the Confidential Information in connection with the Business Relationship. It is understood that (i) such Representatives shall be informed by the Recipient of the confidential nature of the Confidential Information and the requirement that it not be used other than for the purposes described above, (ii) such Representatives shall be required to agree to and be bound by the terms of this Agreement with respect to the confidentiality of such Confidential Information as a condition of receiving the Confidential Information and (iii) in any event, the Recipient shall be responsible for any breach of this Agreement by any of its Representatives. The Confidential Information shall be safeguarded from unauthorized disclosure and shall not be used in any manner by any party except as may be necessary for the purposes set forth in this Section 1. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, individual or other entity.

2. If the Recipient or its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, including but not limited to the California Public Records Act generally and California Government Code Section 7927.605 specifically, the Recipient will promptly notify Discloser of such request or requirement so that Discloser may seek an appropriate protective order or waiver in compliance with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Recipient or its Representatives are, in the written opinion of counsel, compelled to disclose the Confidential Information or else stand liable for contempt or suffer other censure or significant penalty, the





Recipient may disclose only such of the Confidential Information to the party compelling disclosure as is required by law.

3. As used herein, "Confidential Information" means all information, including this Agreement, that is furnished by a Discloser, its affiliates or subsidiaries, including, but not limited to: business agreements, business secrets, business information, business plans, financial and pricing information, business practices, financial statements and reports, project specifications, projections, schematics and drawings, trade secrets, processes, materials, customer lists, supplier lists, sales volume, territories, markets, current, future or potential acquisitions, technical, production, operational, marketing or sales information or any and all other financial, business, organizational and technological information related to the Discloser's business and/or organization, whether or not such information is specifically marked "Confidential" or other similar legend. "Confidential Information" shall include all writings, notes, memoranda, media made by the Discloser or its employees, agents or servants with respect to such Confidential Information. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or its Representatives, (b) information that becomes available on a non-confidential basis from a source other than a party to this Agreement and if Recipient has no reason to believe such source was subject to any prohibition against transmitting such information, or (c) is already known to the Recipient at the time of receiving such Confidential Information or is independently developed by the Recipient without reference to the Confidential Information.

4. Neither this Agreement nor any communications between the parties shall be deemed to create any obligation or liability for either party regarding the Business Relationship, unless and until so agreed in writing. All parties agree that no employment, agency, joint venture, partnership, or other fiduciary relationship shall be deemed to exist or arise with respect to the Business Relationship.

5. Neither party nor any of its employees, agents, officers, directors, lenders, investors, representatives, counsel or other professionals make any representation or warranty as to the accuracy or completeness of the Confidential Information. Neither party nor any of its employees, agents, officers, directors, lenders, investors, representatives, counsel or other professionals will have any liability to the other party, to any of their employees, agents, officers, directors, lenders, investors, representatives, counsel or other professionals, or to any third parties resulting from the use of the Confidential Information or for any other information (oral or written) provided or alleged to have been provided to them.

6. The obligations under this Agreement will survive any termination or expiration of this Agreement indefinitely.

7. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.



ABM eMobility USA, LLC  
14141 Southwest Fwy., Suite 400  
Sugar Land, TX 77478

8. The Recipient acknowledges that any disclosure or misappropriation of any Confidential Information in violation of this Agreement would cause the Discloser irreparable harm, the amount of which would be difficult to ascertain, and therefore agrees that the Discloser shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the Discloser shall deem appropriate consistent with this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity. All parties consent to personal jurisdiction in any action brought in any court, federal or state, within the State of California having subject matter jurisdiction arising under this Agreement.

9. This NDA contains the sole and entire agreement between the parties related to the disclosure of Confidential Information with respect to the Business Relationship. The NDA may only be modified in a writing executed by both parties. Should any provision of this NDA be deemed illegal or otherwise unenforceable, that provision shall be severed and the remainder of this NDA shall remain in full force and effect.

10. Neither party may assign the benefit of this Agreement or any interest hereunder without the prior written consent of the other.

11. If the Discloser of any Confidential Information commences legal proceedings to interpret or enforce this Agreement and prevails in such legal proceedings, it shall be entitled to recover its reasonable attorneys' fees and costs of suit.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of laws rules or principles.

Very truly yours,





ABM eMobility USA, LLC  
14141 Southwest Fwy., Suite 400  
Sugar Land, TX 77478

ABM eMobility USA, LLC

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

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

AGREED AND ACCEPTED AS OF THE DATED FIRST WRITTEN ABOVE:

Kings County Area Public Transit Agency

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

Print: \_\_\_\_\_

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

# EXHIBIT 1

## STATEMENT OF WORK NO. 1

This Statement of Work No. 1 ("**SOW**") is issued under and subject to all of the terms and conditions of the Master Services Agreement dated as of August 18<sup>th</sup>, 2025], between ABM EMOBILITY USA, LLC ("**ABM**") and King's County Area Public Transit Agency ("**Customer**" or "**KCAPTA**").

### Project Overview

The Kings County Area Public Transit Agency (KCAPTA) is advancing its transition to zero-emission transit operations by upgrading its Maintenance Facility at 629 Davis Street, Hanford, CA 93230. The project includes:

- Engineering and installation of utility-approved, DC Fast Chargers for new battery electric buses.
- Construction of new concrete parking lanes with integrated drainage to the existing V-gutter.
- Coordination for a future overhead canopy photovoltaic charging structure.
- Coordination of utility infrastructure upgrades to support charging for sixteen (16) 35-foot and ten (10) 20-foot battery-electric buses (BEBs).

### Scope of Work

The scope is defined primarily by Southern California Edison's Charge-Ready Transport Program, which provides the "make-ready" work – including the utility transformer, service entrance equipment, low-voltage disconnect switches, and associated civil work for installation.

ABM's scope begins at the utility-provided low-voltage disconnect switches and includes all necessary electrical, civil, and structural work to complete the DC Fast Charging installation for KCAPTA's new BEBs. Specific scope includes:

- Installation of 26 DCFC charging ports.
- Heavy concrete paving from the V-gutter to the southern property line near the housing area, and from the SCE takeover point on the east to the westernmost EV charging port.
- Structural allowances for future canopy foundation installation (to be supplied and installed under a separate future project).

### Commissioning and Integration

Upon completion, ABM will commission a Charge Management Software (CMS) system on the DCFCs to optimize performance. Commissioning will verify:

- Interoperability between the vehicles, EVSE and CMS.
- Full system functionality.
- Alignment with project requirements.

### Operations, Maintenance, and Spare Parts

ABM will:

- Submit a formal Operations & Maintenance (O&M) proposal to ensure long-term asset performance.
- Provide a detailed, price list of recommended spare parts for the EV chargers supplied under this SOW. Spare parts should be stored in a conditioned space at the facility.

### Two-Phased Approach

Outlined in this Statement of Work is a structured, two-phased approach to ensure a responsible, scalable, and thorough implementation:

- Phase 1 – Project Development and Engineering (Limited Notice to Proceed)
- Phase 2 – Notice to Proceed (NTP), Procurement, Construction, Commissioning, and Service

The end work product results from a sequence of project phases and milestones required to meet the needs for the implementation and sustainable operation of a ground vehicle charging system.

## **Phase 1 – Project Development and Engineering (Limited Notice to Proceed)**

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### **1.1 Service Tasks**

Upon execution of this SOW, ABM will immediately initiate Phase 1. During this phase, ABM will advance the project through critical engineering and permitting steps to ensure a seamless transition into construction. The key tasks include:

- Develop comprehensive design (electrical, civil, and structural) documentation and equipment specification suitable for permitting and submission to the Authority Having Jurisdiction (AHJ). ABM will prepare an AHJ submission for a setback variance for the EV Charging installation if required by local codes.
- Perform a comprehensive site survey. The findings from this site survey will serve as the verified basis for the development of the 90 % Engineering Drawing Set.
- Coordinate with SCE (the utility) and other relevant stakeholders to secure approval and manage compliance with utility and city requirements.
- Establish final firm pricing based on the progressive engineering drawings. This pricing will support project cost certainty by integrating material, labor, and overhead costs.

### **1.2 Deliverables – Detailed Design & Limited Notice to Proceed Engineering**

Upon completion of the tasks laid out in this phase, ABM will provide the key deliverables necessary to move the project into Phase 2:

- 90% Engineering Drawings** – Prepare engineering drawings by the Engineer of Record (EOR) for review. These drawings will be finalized to a 90% completion level, ready for permitting and construction planning.
- Design Reviews with Customer** – Conduct structured design reviews with Customer to align on project specifications, identify potential refinements, and ensure all engineering aspects meet project objectives.
- Presentation** of two distinct implementation solutions for Owner’s review, each including scope, methodology, and cost implications. ABM will provide a structured comparison, highlighting advantages, challenges, and alignment with project objectives, enabling informed selection of the preferred solution
- Firm Pricing** – Deliver a firm fixed price to Customer for Phase 2. Pricing will reflect the scope of work determined in conversations with Customer, as dictated by the SCE Charge-Ready Transport Program, and scope of work defined as a result of the efforts completed in Phase 1 of this SOW. ABM will work with Customer and use its best efforts to align the pricing breakdown with funding requirements, Customer procurement standards, and other compliance measures. This document will provide a structured cost allocation, supporting budgeting and financial decision-making, including costs associated with billing milestones.



- e. **Project Schedule Development** – Produce a project schedule with major milestones defined.

### 1.3 Cost and Payment Structure

The cost for Phase 1 is **\$278,574**. At the conclusion of Phase 1, Customer agrees to pay ABM the specified amount within thirty (30) days after receiving the documentation outlined in Section 1.2.

## **Phase 2 – Notice to Proceed (NTP), Procurement, Construction, Commissioning, and Service**

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### 2.1 Service Tasks

Phase 2 will commence when ABM and Customer mutually execute a Notice to Proceed (“NTP”) which states the agreed upon firm fixed price and construction scope of work. This phase marks the transition from development to full execution, covering all aspects of procurement, installation, and commissioning. In collaboration with Customer, ABM will develop a construction execution strategy and implementation phasing plan. The tasks and resulting timelines associated with this phase will be defined during Phase 1, but will include:

- a. **100% Construction Drawings** – Finalized, signed, and sealed by the EOR, incorporating any required updates for construction execution.
- b. **Perform power systems studies** – (Arc Flash, Short Circuit Fault Current, and Coordination Studies) to ensure electrical safety and compliance in coordination with SCE scope of supply.
- c. **Procurement & Logistics** – Sourcing and acquisition of all necessary equipment and materials for installation.
- d. **Installation & Construction** – Execution of all engineering, procurement, and construction (EPC) activities as per the approved design.
- e. **Project Management and Coordination** with an ABM assigned project manager.
- f. **Commissioning & Validation** – ABM will define and implement a commissioning strategy. The finalization of this strategy will be included in the construction agreement and will include:
  - o testing and validation of all installed electrical components at startup
  - o verification of functional operation and adherence to OEM specifications
  - o ensuring all work aligns with approved project drawings and applicable codes
- g. **Ensure full compliance** with all safety and quality standards as mandated by industry regulations and best practices.
- h. **Long Term Service Agreement** – ABM will outline the terms for ongoing maintenance and support, define the duration and scope of services, and include pricing and payment terms.

### 2.2 Deliverables

- a. Completed project on time – by TBD deadline.
- b. Service Agreement for long-term Operations & Maintenance.

### 2.3 Cost Summary

Total Cost is TBD and will be defined upon completion of 90% engineered drawings in Phase 1. Based upon ABM’s initial analysis of the project, the cost is estimated to **not-to-exceed \$4,197,945**. This Not-

To-Exceed (NTE) amount reflects two potential solution pathways. The final determined solution will be contingent upon confirmation from Southern California Edison (SCE) regarding acceptable equipment, which may require a site redesign and an associated adjustment to the project timeline.

### **3.0 Reporting Requirements and Federal Grant Requirement Compliance**

ABM will help Customer meet California State reporting requirements, as outlined in Section 1. ABM shall assist Customer in preparing grant-aligned milestone reports and documentation for infrastructure installation, commissioning, and operational readiness.

IN WITNESS WHEREOF, the Parties have executed this SOW as of the date of last signature below.

**ABM EMOBILITY USA, LLC**

**KING'S COUNTY AREA PUBLIC TRANSIT  
AGENCY**

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

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

Name:

Name:

Title:

Title:

Date:

Date: