

CITY OF SAN LUIS OBISPO
AGREEMENT FOR TRANSIT OPERATION AND MAINTENANCE SERVICES

This Agreement is made and entered into in the City of San Luis Obispo on _____, by and between the City of San Luis Obispo, a municipal corporation, hereinafter referred to as CITY, and MV Transportation, Inc., hereinafter referred to as CONTRACTOR.

WITNESSETH:

WHEREAS, on November 20, 2025, CITY requested proposals for transit operation and maintenance services.

WHEREAS, CONTRACTOR is qualified to perform this type of service and has submitted a proposal to do so which has been accepted by CITY.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. **TERM.** The term of this Agreement shall be for four (4) years commencing on July 1, 2026, through and including June 30, 2030. The term of this Agreement may be extended by mutual consent for an additional four (4) option terms of one (1) year each for a maximum term, including the initial term, of eight (8) years.
2. **INCORPORATION BY REFERENCE.** CITY Request for Proposals (including the terms of all addenda, exhibits, and attachments) and CONTRACTOR's proposal are hereby incorporated in and made a part of this Agreement, attached as Exhibit A. The CITY's insurance requirements are hereby incorporated in and made part of this Agreement, attached as Exhibit B. The Federal Transit Administration Third-Party Contracting Provisions are hereby incorporated in and made part of this Agreement, attached as Exhibit C. To the extent that there are any conflicts between the CONTRACTOR's fees and scope of work and the CITY's terms and conditions as stated herein, the CITY's terms and conditions shall prevail unless specifically agreed otherwise in writing signed by both Parties.
3. **CITY'S OBLIGATIONS.** For providing services as specified in this Agreement, and upon receipt of an invoice, the maximum cost CITY will pay and CONTRACTOR shall receive shall not exceed \$5,973,074 in Year One; \$5,869,883 in Year Two; \$6,219,832 in Year Three; and \$6,631,484 in Year Four as set forth in CONTRACTOR's proposal and pursuant to the payment terms set forth in Exhibit A and in Section 4 of this Agreement.
4. **PRICE FORMULA.** CITY agrees to pay CONTRACTOR for performance of the services set forth in this agreement as follows:
 - a. Payment of a fixed hourly rate per vehicle service hour of \$90.33 in Year One; \$95.78 in Year Two; \$102.41 in Year Three; and \$107.71 in Year Four. A vehicle service hour is defined as a vehicle providing passenger service for one hour during the service

hours specified herein. A vehicle service hour shall be deemed to have commenced when a vehicle leaves CITY's Transit Center located at 990 Palm Street to provide the services required herein and shall not include any out-of-service vehicle time used for vehicle operator breaks or lunches. A vehicle service hour shall terminate when a vehicle returns to CITY Transit Center prior to any cleaning, servicing or fueling of the vehicle. The hourly rate shall include vehicle operator wages, fringe benefits, indirect labor and all consumable material costs that can be tracked by vehicle service hour such as vehicle maintenance parts and supplies including oil, and cost incurred in providing all vehicle and general liability insurance required under this Agreement as such insurance is defined in this Agreement..

- b. Payment of a fixed monthly rate of \$132,813.10 in Year One; \$131,903.73 in Year Two; \$136,350.28 in Year Three; and \$141,018.41 in Year Four to compensate CONTRACTOR for all work to be performed under this agreement as defined in Exhibit A, except that which is included under Paragraph 5(a) and Paragraph 7 of this Agreement including, but not limited to: vehicle operator non-service wages; management, controller and maintenance employee wages and said employees fringe benefits and indirect labor costs; bus washing and cleaning supplies; uniforms; report reproduction; office supplies; project telephones; all other related operational costs; and the contract management fee.
 - c. Payment of a fixed rate not to exceed \$336,274.06 in Year One to compensate CONTRACTOR for all work performed during the start-up and transition period as defined in Exhibit A. This amount shall be invoiced separately and is in excess of the fixed rates as defined herein.
 - d. Compensation for those items and services provided by CITY and which are specified in Exhibit A shall not be included in the hourly or monthly rates as defined above. Such items and services include but are not limited to tires; radios including connection fees and service agreements; CITY-owned vehicles; licenses for radios and vehicles; routine maintenance of radios; major facility furnishings; telephone system, building security, office copy machine; all major vehicle components which are engines, transmissions, differentials, and design retrofits; and office, garage, and parking facilities.
 - e. Additionally, CITY shall provide all marketing, tickets, passes, brochures, and related collateral service materials.
5. **EXTRA SERVICES.** Special promotional and community services shall be considered extra services and will be provided only with the authorization of CITY and the mutual consent of the CONTRACTOR. Such services shall be defined as those non-permanent service hours operated outside of the services identified in Exhibit A. Extra services shall be considered a change to this agreement as defined herein and shall be in excess of the maximum price defined in Section 3 of this Agreement. The costs for extra services will be determined at a rate per vehicle service hours of \$90.33 in Year One; \$95.78 in Year Two; \$102.41 in Year Three; and \$107.71 in Year Four and billed separately from the services specified in Exhibit A.

6. **CONTRACTOR'S OBLIGATIONS.** For and in consideration of the payments and agreements herein before mentioned to be made and performed by CITY, CONTRACTOR agrees with CITY to do everything required by this Agreement including that work as set forth in Exhibit A.
7. **PAYMENT OF TAXES.** The contract prices shall include full compensation for all taxes that the Contractor is required to pay.
8. **PERMITS AND LICENSES.** The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary. At its sole cost and expense, CONTRACTOR shall obtain any and all permits, licenses, certificates, or entitlement to operate as are now or hereafter required by any agency, specifically including, but not limited to, those that may be required by the California Public Utilities Commission, the California Highway Patrol, the Department of Motor Vehicles and local jurisdictions, to enable CONTRACTOR to perform this agreement. Copies of all such entitlements shall be provided to CITY when received by CONTRACTOR. In the event that any aspect of this agreement requires prior approval by the PUC, the CONTRACTOR shall submit the necessary application forms. Both parties shall appear as necessary and cooperate in the commission approval process. CITY reserves the right to oppose, support or be neutral on any such request and on the PUC's ruling thereon. CONTRACTOR covenants to obtain all such approvals before commencing operations, and to conform to the PUC ruling thereon, at its sole cost and expense.
9. **COMPLIANCE WITH LAW.** The Contractor shall keep itself informed of and shall observe and comply with all applicable State and Federal laws and regulations, and County and City of San Luis Obispo ordinances, regulations and adopted codes, which in any manner affect those employed by Contractor or in any way affect the performance of the Services pursuant to this Agreement. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section. Failure to comply with local ordinances may result in monetary fines and cancellation of this Agreement.
10. **COMPLIANCE WITH INDUSTRY STANDARD.** Contractor shall provide services acceptable to City in strict conformance with the Agreement. Contractor shall also provide in accordance with the standards customarily called for under this Agreement using the degree of care and skill ordinarily exercised by reputable providers of such services. Where approval by the City, the City Manager, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.
11. **INDEPENDENT CONTRACTOR.**
 - a. CONTRACTOR is and shall at all times remain as to CITY a wholly independent contractor. The personnel performing the Services under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this Agreement. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of CITY. CONTRACTOR shall not incur or have

the power to incur any debt, obligation, or liability whatsoever against CITY, or bind CITY in any manner.

- b. No employee benefits shall be available to CONTRACTOR in connection with the performance of this Agreement. Except for the fees paid to CONTRACTOR as provided in the Agreement, CITY shall not pay salaries, wages, or other compensation to CONTRACTOR for performing the Services hereunder for CITY. CITY shall not be liable for compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.
- c. CONTRACTOR's duties and services under this Agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. CONTRACTOR's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. CONTRACTOR shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this Agreement."

12. **PRESERVATION OF CITY PROPERTY.** CONTRACTOR shall provide and install suitable safeguards, approved by CITY, to protect CITY property from injury or damage. If CITY property is injured or damaged resulting from the CONTRACTOR's operations, it shall be replaced or restored at the CONTRACTOR's expense. The facilities shall be replaced or restored to a condition as good as when the CONTRACTOR began work.
13. **IMMIGRATION ACT OF 1986.** CONTRACTOR warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United State pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
14. **NON-DISCRIMINATION.** In the performance of the Services, CONTRACTOR Agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.
15. **INVOICES.** All hourly costs shall be invoiced to CITY monthly following the service month provided. Said invoices shall specify the dates of service and the number of vehicle service hours claimed. Hourly costs shall be directly traceable by dispatcher and/or driver trip sheets and/or employee timecards, copies of which will be submitted to CITY monthly with each invoice. The monthly fixed rate and insurance rate shall be invoiced monthly following the service month provided. All reports and submissions required under this Agreement shall be accurately completed and submitted to CITY prior to payment of said monthly rate invoices. Any extra services provided under this Agreement shall be invoiced separately following the

provision of such services. Copies of all appropriate passenger and service logs shall be attached to each extra service invoice prior to payment.

16. **PAYMENT TERMS.** CITY's payment terms are thirty (30) days from the receipt of an original invoice and acceptance by CITY of the materials, supplies, equipment, or services provided by CONTRACTOR (Net 30). CONTRACTOR will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Final June invoices shall be received no later than the 5th business day of July to meet CITY fiscal year-end deadlines. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If CITY disputes any of CONTRACTOR's fees it shall give written notice to CONTRACTOR within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within forty-five (45) days of receipt of an invoice, therefore.
17. **INSPECTION.** CONTRACTOR shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONTRACTOR are being performed in accordance with the requirements and intentions of this contract. All work done, and all materials furnished, if any, shall be subject to the CITY's inspection and approval. The inspection of such work shall not relieve CONTRACTOR of any of its obligations to fulfill its contract requirements.
18. **OWNERSHIP OF DOCUMENTS.**
 - a. CONTRACTOR shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of the Services under this Agreement. CONTRACTOR shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONTRACTOR shall provide free access to the representatives of CITY or its designees at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.
 - b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services under this Agreement shall become the sole property of CITY and may be used, reused, or otherwise disposed of by CITY without the permission of CONTRACTOR. With respect to computer files, CONTRACTOR shall make available to CITY, at CONTRACTOR's office and upon reasonable written request by CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONTRACTOR hereby grants to CITY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models,

computer files, surveys, notes, and other documents prepared by CONTRACTOR in the course of providing the Services under this Agreement.

19. INDEMNIFICATION AND DEFENSE. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), CONTRACTOR shall indemnify, defend, and hold harmless CITY, and its elected officials, officers, employees, volunteers, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the CONTRACTOR's performance or CONTRACTOR's failure to perform its obligations under this Agreement or out of the operations conducted by CONTRACTOR, including the CITY's passive negligence, except for such loss or damage arising from the sole or active negligence or willful misconduct of CITY. In the event CITY Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from CONTRACTOR's performance of this Agreement, CONTRACTOR shall provide a defense to CITY Indemnitees or at CITY's option, reimburse CITY Indemnitees the of costs of defense, including reasonable legal fees, incurred in defense of such claims. The review, acceptance or approval of the CONTRACTOR's work or work product by any indemnified party shall not affect, relieve or reduce the CONTRACTOR's indemnification or defense obligations. This Section survives the completion of the services or the termination of this contract. The provisions of this section are not limited by and do not affect the provisions of this contract relating to insurance. CONTRACTOR's indemnification obligations under this section extend to any claims arising out of or related to the negligence, recklessness, or willful misconduct of any sub-Contractors/subcontractors.

20. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

- a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least sixty (60) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.
- b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City pursuant to Section 14.

21. TERMINATION FOR CAUSE. If, during the term of the Agreement, the City determines the Contractor is not faithfully abiding by any term or condition contained herein, the City may notify the Contractor in writing of such defect or failure to perform. This notice must give the Contractor a thirty (30) calendar day notice of time thereafter in which to perform said work or cure the deficiency.

- a. If the Contractor has not performed the work or cured the deficiency within the thirty (30) days specified in the notice, such shall constitute a breach of the Agreement and the City may terminate the Agreement immediately by written notice to the Contractor to said effect (“Notice of Termination”). Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the Agreement except to comply with the obligations upon termination.
 - b. In said event, the Contractor shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City’s Notice of Termination, minus any offset from such payment representing the City’s damages from such breach. “Reasonable value” includes fees or charges for goods or services as of the last milestone or task satisfactorily delivered or completed by the Contractor as may be set forth in the Agreement payment schedule; compensation for any other work or services performed or provided by the Contractor shall be based solely on the City’s assessment of the value of the work-in-progress in completing the overall scope.
 - c. The City reserves the right to delay such payment until completion or confirmed abandonment of the project, as may be determined in the City’s sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall the Contractor be entitled to receive in excess of the not to exceed amount shown in this Agreement.
22. **INSURANCE.** CONTRACTOR shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached to and made part of this Agreement.
23. **BUSINESS LICENSE & TAX.** CONTRACTOR must have a valid City of San Luis Obispo business license & tax certificate before execution of the contract. Additional information regarding the City’s business tax program may be obtained by calling (805) 781-7134.
24. **SAFETY PROVISIONS.** CONTRACTOR shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
25. **PUBLIC AND EMPLOYEE SAFETY.** Whenever CONTRACTOR’s operations create a condition hazardous to the public or CITY employees, it shall, at its expense and without cost to CITY, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.
26. **UNDUE INFLUENCE.** CONTRACTOR declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of CITY in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of CITY has or will receive compensation, directly or indirectly, from CONTRACTOR, or from any officer, employee or agent of CONTRACTOR, in connection with the award of this Agreement or any work to be conducted as

a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling CITY to any and all remedies at law or in equity.

27. **ASSIGNMENT.** CONTRACTOR shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of CITY.
28. **OPERATING REVENUES.** All operating revenues collected by CONTRACTOR are the property of CITY. Operating revenues include, but are not limited to, all fares and the proceeds from the sale of tickets and passes. Operating revenues shall be counted and kept separately under appropriate security. Within one working day from collection, unless otherwise agreed upon, CONTRACTOR shall deposit fares at a banking institution as directed by CITY. Reports on the revenues collected and deposited shall be provided to CITY on a timely basis. CITY shall be provided with a written description of CONTRACTOR'S procedures regarding the collection, counting and controlling of fare revenues. These procedures are subject to CITY's audit and approval.
29. **CONTROL.**
 - a. All services to be rendered by CONTRACTOR under this agreement shall be subject to the control of CITY. CONTRACTOR shall advise CITY of matters of importance and make recommendations when appropriate; however, final decision shall rest with CITY.
 - b. CITY shall not interfere with the management of CONTRACTOR'S normal internal business affairs and shall not attempt to directly discipline or terminate CONTRACTOR employees. CITY may notify CONTRACTOR of the performance of any employee having a negative effect on the service being provided.
30. **RESOLUTION OF PROCUREMENT ISSUES.** The Federal Acquisition Regulations shall be used where applicable to define, resolve, and settle procurement issues. Unless otherwise directed by CITY, CONTRACTOR shall continue performance under this Agreement while matters in dispute are being resolved.
31. **CHANGES.** CITY, without invalidating this Agreement may order additions to or deletions from the work to be performed. Such changes shall be specified to CONTRACTOR in writing. If justified, the "CITY's Obligation" will be adjusted accordingly. New provisions must be mutually agreeable to both CITY and CONTRACTOR. A shift of vehicle service hours between services within the maximum value or an increase or decrease of up to twenty percent (20%) within the current span of service would not constitute a change as defined in this Agreement, but any such shift or change shall only occur at the direction of CITY. In the event that any federal, state, or local law enacted or amended after the effective date of this AGREEMENT modifies the applicable minimum wage or benefits required to be paid to CONTRACTOR's employees subject to this AGREEMENT, the Parties agree to negotiate in good faith an equitable adjustment to the rates under this AGREEMENT to reflect the modified labor costs directly attributable to such change.
32. **FORCE MAJEURE.** CONTRACTOR shall not be held responsible for losses, failure to perform, or excess costs caused by events beyond the control of CONTRACTOR. Such events may

include, but are not restricted to, the following: fire, epidemics, earthquake, flood, or other natural disaster; acts of the government; riots, strikes, war or other civil disorders; or fuel shortages. In every case, CONTRACTOR shall resume performance at the earliest possible date following the cessation of such unforeseen causes or events. CONTRACTOR shall be entitled to no compensation for any service, the performance of which is excused pursuant to this paragraph.

33. **EMERGENCY PROCEDURES.** In the event of a major emergency such as an earthquake, flood, or man-made catastrophe, CONTRACTOR shall make transportation and communication resources available to the maximum extent practical for emergency assistance. If the normal line of direct communication from CITY is intact, CONTRACTOR shall follow instruction of CITY. If the normal line of direct communication is broken, and for the period it is broken, CONTRACTOR shall make best use of transportation resources following to the degree possible the direction of an organization such as the San Luis Obispo Office of Emergency Services, CITY Police Department, Red Cross, or National Guard, which appears to have assumed responsibility within CITY's service area. Emergency uses of transportation may include evacuation, transportation of injured, and movement of people to food and shelter. CONTRACTOR shall be reimbursed in accordance with the normal "Price Formula" and "Payment" or, if the normal method does not cover the types of emergency services involved, then on the basis of fair, equitable and prompt reimbursement of CONTRACTOR'S actual costs. Reimbursement for such major emergency services shall be over and above the "CITY's Obligation" of this contract. Immediately when the emergency condition ceases, CONTRACTOR shall reinstate normal transportation services.
34. **TRANSFER OF TITLE TO EQUIPMENT.** All equipment, parts, and supplies purchased by CONTRACTOR under this Agreement, either as a direct charge expense or within the defined scope of services, shall become the property of CITY upon either the payment of the direct charge invoice or the expiration or termination of this Agreement for any reason unless otherwise specified in writing. CONTRACTOR shall maintain a perpetual inventory of all such equipment and supplies purchased under this, to be submitted for review on or before August 31 of each year. CONTRACTOR shall be responsible for the replacement of any equipment, parts and supplies purchased or provided, either by CITY or CONTRACTOR, under this Agreement that is lost or unreasonably destroyed while under the control of CONTRACTOR.
35. **TRANSPORTATION DATA REPORTING.** CONTRACTOR shall report to CITY accurate, timely, and complete operating, financial, and performance data in accordance with all applicable federal and state laws, rules, and reporting standards, including without limitation the California Public Utilities Code, Chapter 4, Section 99243 and Section 99243.5; the California Code of Regulations, Title 21, Chapter 3, Subchapter 2, as required under California Transportation Development Act; the National Transit Database (NTD) reporting requirements under 49 C.F.R. Part 630 and the current NTD Reporting Policy Manual; and any successor, replacement, or conforming federal state, or regulatory requirements, and any updates, amendments, or revisions to the foregoing.
36. **TRANSITION TO FUTURE OPERATOR.** Up to and for a minimum of thirty (30) days following the effective date of termination or expiration of this Agreement, CONTRACTOR shall provide

to either CITY or any future operator selected by CITY, CONTRACTOR's full cooperation in the transition to the successor operator. This shall include, at a minimum, consultation regarding labor and management issues (including a delineation of wages and benefits by employee category), access to non-confidential personnel files and maintenance records. CONTRACTOR shall provide its best professional effort to assure a smooth transition from CONTRACTOR's services to those provided by the new operator and shall cooperate fully with CITY and the new operator to this end.

37. **SEVERABILITY.** If any provision of this Agreement is held invalid or unconstitutional by any court of competent jurisdiction, such decision shall have no effect on the validity of the remaining provisions of this Agreement and such remaining provisions shall continue to remain in full force and effect.
38. **MISCELLANEOUS TERMS.** In the case of dispute, the prevailing party in any action between the parties to this Agreement, brought to enforce the terms of this Agreement, may recover from the other party its reasonable costs and attorneys' fees in connection with such an action. CITY's failure to insist in any one or more instances upon the performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of CITY's right to such performance or to future performance of such a term or terms, and CONTRACTOR'S obligations in respect thereto shall continue in full force and effect. Time shall be of the essence.
39. **AMENDMENT.** Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the appropriate review authority according to the City's Financial Management Manual. CONTRACTOR shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized by CITY in advance and in writing.
40. **COMPLETE AGREEMENT.** This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete Agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.
41. **NOTICE.** All notices to the Parties hereto under this Agreement shall be in writing and shall be sent either by (i) personal service, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) United States Mail, certified, postage prepaid, return receipt requested. All such notices shall be delivered to the addressee or addressed as set forth below:

City

City of San Luis Obispo
990 Palm Street
San Luis Obispo, CA 93401

Contractor

Company Name

Address Line 1

Address Line 2

42. **GOVERNING LAW.** Any action arising out of this Agreement shall be brought in the Superior Court of San Luis Obispo County, California, regardless of where else venue may lie. The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

43. **AUTHORITY TO EXECUTE AGREEMENT.** Both CITY and CONTRACTOR do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

CITY OF SAN LUIS OBISPO:

By: _____

Whitney McDonald

City Manager

APPROVED AS TO FORM:

CONTRACTOR:

By: _____

Christine Dietrick

City Attorney

By: _____

Name of CAO / President

Its: CAO / President

EXHIBIT A

[Placeholder for City Request for Proposals and for Contractor Proposal]

EXHIBIT B

Insurance Requirements

Without limiting Contractor's indemnification of City, and prior to commencement of work, Contractor shall obtain, and maintain at its own expense during the term of this Agreement, policies of insurance of the types and amounts described below and in a form that is satisfactory to City.

General liability insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$10,000,000 per occurrence, \$10,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Said policy shall include coverage for premises, specifically including dangerous condition of public property, as well as coverage for the facility and property provided by city for contractors used during the term of this contract.

Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$10,000,000 combined single limit for each accident. Coverage will also include collision and comprehensive physical damage with a deductible not to exceed \$50,000. Any deductible will be the responsibility of the Contractor. In case of damage, destruction or loss of any vehicle or equipment provided by city under the terms of this agreement, the CITY agrees that the liability of Contractor for said damage or destruction shall be limited to the fair market value of the vehicle or equipment at the time of loss.

Employee Crime / Theft Insurance. Contractor shall maintain an insurance policy or fidelity bond in an amount not less than \$50,000 covering any loss of money, securities or property resulting from the dishonest acts of an employee, official or board member.

Umbrella or excess liability insurance. [If required to meet higher limits]. Contractor may obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
- "Pay on behalf of" wording as opposed to "reimbursement";
- Concurrency of effective dates with primary policies.

Excess insurance. Should Contractor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, automobile liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

Notice of cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Contractor's insurers are unwilling to provide such notice, then Contractor shall have the responsibility of notifying the City immediately in the event of Contractor's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. Undisclosed coverage limitations are prohibited. None of the coverages required herein shall comply with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing. The additional insured endorsement will explicitly include coverage for both ongoing and completed operations.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Contractor (hereinafter collectively "subcontractor"), provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Contractor's subcontractor cannot comply with this requirement, which proof must be submitted to the City, Contractor shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor's scope of work and services, with limits less than required of the Contractor, but in all other terms consistent with the Contractor's requirements under this agreement.

This provision does not relieve the Contractor of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Contractor with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Contractor under this agreement given the limited scope of work or

services provided by the subcontractor. Contractor agrees that upon request, all agreements with subcontractors, and others engaged in the project, will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

Timely notice of claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

Verification of Coverage. Contractor shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage, as well as endorsements effecting general liability and vehicle coverage. All endorsements are to be received and approved by the City before work commences.

EXHIBIT C

Federal Transit Administration Third-Party Contracting Provisions

- 1. FLY AMERICA REQUIREMENTS.** CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
- 2. BUY AMERICA REQUIREMENTS.** CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
- 3. CHARTER BUS REQUIREMENTS.** CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.
- 4. SCHOOL BUS REQUIREMENTS.** Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.
- 5. ENERGY CONSERVATION REQUIREMENTS.** 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.

6. CLEAN WATER REQUIREMENTS.

- a. 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 . CONTRACTOR agrees to report each violation to CITY and understands and agrees that CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7. LOBBYING REQUIREMENTS. CONTRACTOR shall comply with 31 U.S.C. 1352, which provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: 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. CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

8. ACCESS TO RECORDS AND REPORTS. The following access records requirements apply to this Agreement:

- a. In accordance with 49 C. F. R. 18.36(i), CONTRACTOR agrees to provide CITY, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. CONTRACTOR also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or their authorized representatives including any PMO Contractor, access to CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- b. CONTRACTOR agrees to 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 CONTRACTOR agrees to maintain same until CITY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
9. **FEDERAL CHANGES.** 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 the CITY 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 Agreement.
10. **CLEAN AIR REQUIREMENTS.**
 - a. 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. CONTRACTOR agrees to report each violation to CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
 - b. CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
11. **RECYCLED PRODUCTS.** CONTRACTOR agrees to comply with all of the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. CONTRACTOR agrees to include these requirements in every subcontract.
12. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** In accordance with 40 USC 3701 et. seq., 29 CFR Part 5, and 49 CFR 18.36; CONTRACTOR hereby certifies compliance with the following provisions related to employment of laborers and mechanics under the Contract Work Hours and Safety Standards Act.
 - a. **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.
 - b. **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5, the contractor and any subcontractor responsible therefore 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 subparagraph (b)(1) of 29 CFR Section 5.5, in the sum of \$33 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 subparagraph (b)(1) of 29 CFR Section 5.5.

- c. **Withholding for Unpaid Wages and Liquidated Damages.** CITY 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 subparagraph (b)(2) of 29 CFR Section 5.5.
- d. **Non-Construction Grants.** The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, 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. Further, the recipient shall require the contracting Officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by contractor or subcontractor for inspection, copying, or transcription by authorized representatives of Department of Transportation (DOT) and the Department of Labor and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- e. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (a) through (e) 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 subparagraphs (a) through (e) of this section.

13. AMERICANS WITH DISABILITIES ACT (ADA) ACCESS REQUIREMENTS. CONTRACTOR agrees to comply with the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; and USDOT regulations at 49 CFR Parts 27, 37, and 38. CONTRACTOR agrees that, consistent with the objectives of these statutes and regulations, services, programs, vehicles, and facilities provided under this contract will be accessible to and usable by individuals with disabilities. CONTRACTOR further agrees to include these requirements in all subcontracts financed in whole or in part with Federal assistance provided by FTA.

14. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

- a. CITY 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 CITY, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

15. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS.

- a. 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, 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, CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on CONTRACTOR to the extent the Federal Government deems appropriate.
- b. 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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on CONTRACTOR, to the extent the Federal Government deems appropriate.
- c. 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.

16. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION.

- a. **Suspension and Debarment.** This contract is a covered transaction for purposes of 49 CFR Part 29. As such, CONTRACTOR is required to verify that none of 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. CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- i. The certification in this clause is a material representation of fact relied upon by CITY. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to CITY, 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.

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

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

18. CIVIL RIGHTS REQUIREMENTS.

- a. **Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. CONTRACTOR shall promptly notify CITY of any discrimination complaints.
- b. **Equal Employment Opportunity.** The following equal employment opportunity requirements apply to the underlying contract:
 - (i) **Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment

Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

19. BREACHES AND DISPUTE RESOLUTION.

a. **Disputes.** 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 (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, CONTRACTOR mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon CONTRACTOR and CONTRACTOR shall abide by the decision.

b. **Performance During Dispute.** Unless otherwise directed by CITY, CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved.

c. **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 their employees,

agents, or others for whose acts they are legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

- d. **Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between CITY and 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 CITY is located.
- e. **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 CITY OR CONTRACTOR shall constitute a waiver of any right or duty afforded by 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.

20. **TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS.** CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

- a. **General Transit Employee Protective Requirements.** To the extent that FTA determines that transit operations are involved, CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. CONTRACTOR to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (i) and (ii) of this section.

- i) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities.** If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms

and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

ii) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas.** If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

b. CONTRACTOR also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

21. DISADVANTAGED BUSINESS ENTERPRISE (DBE).

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and CITY's DBE program..

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

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

d. CONTRACTOR must promptly notify CITY 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. 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 CITY.

22. SAFE OPERATION OF MOTOR VEHICLES / DISTRACTED DRIVING.

a. **Seat Belt Use.** In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, CONTRACTOR is required 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 vehicle owned or lease by CONTRACTOR or by CITY.

- b. **Distracted Driving.** In accordance with the provisions of Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, and U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; CONTRACTOR is required 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 or when performing any work for or on behalf of CITY.

23. DRUG AND ALCOHOL TESTING. CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or CITY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. CONTRACTOR agrees further to certify annually its compliance with Parts 653 and 654 and to submit the Management Information System (MIS) reports before MARCH 1 of each year to CITY. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

24. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS. The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E 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. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause CITY to be in violation of the FTA terms and conditions.