

**ATTACHMENT A**

**DRAFT AGREEMENT**

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**DRAFT AGREEMENT  
FOR THE OPERATION AND MAINTENANCE  
OF CALAVERAS CONNECT**

THIS AGREEMENT (Agreement) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Calaveras Transit Agency, a California Joint Powers Authority, hereinafter referred to as the CTA and \_\_\_\_\_ hereinafter referred to as the CONTRACTOR.

**1 BASIC SERVICES**

Contractor shall furnish and perform a variety of services as requested by and in a manner satisfactory to the CTA Executive Director or his/her designee (for the purposes of this Agreement, this individual shall be referred to as the "CTA Contract Manager") including, but not limited to, the Operation and Maintenance of Calaveras Connect, as more fully described in Section 6 of Exhibit 7.

Contractor shall provide certain equipment, personnel, labor and materials necessary to provide the foregoing services in accordance with this Agreement.

In the event of any conflict between any provisions of this Agreement (including Exhibits), the provision that requires the highest level of performance from the Contractor for the CTA's benefit shall prevail.

The CTA Contract Manager may approve modifications of the allocation of funds between the tasks and subtasks (if any) set forth above, provided that there is no increase in the total compensation as set forth in Section 7 of this Agreement. Modifications to the terms, billing rates, and allocation of funds between tasks and subtasks which result in a change to the total compensation must be approved by the CTA Board of Directors.

**2 CONTRACT DOCUMENTS**

The total Agreement between the parties consists of this Agreement and the following additional documents, copies of which are attached hereto and incorporated herein by reference:

Exhibit 1: CTA-Provided Vehicles and Maintenance /Repair Requirements

Exhibit 2: CTA-Provided Equipment

Exhibit 3: Performance Standards, Records and Reports

Exhibit 4: FTA Required Provisions

Exhibit 5: Certification Regarding Lobbying

Exhibit 6: Contractor's Proposal, as accepted by the CTA

Exhibit 7: Request for Proposals, dated [ ], including Attachments B through E, and Addenda.

In the event of a conflict or ambiguity arising between such documents or any term therein, the document executed later in time shall prevail over the document executed earlier in time.

### **3 RECITALS**

#### **3.01 Ownership**

The CTA is the owner of Calaveras Connect and desires to enter into an Agreement with the Contractor to provide professional services for the operation and maintenance of Calaveras Connect.

#### **3.02 Facility**

CTA currently leases a facility located at 750 Industrial Way, San Andreas CA, to house the management, operations and fleet maintenance of Calaveras Connect ("Transit Facility"); and

#### **3.03 Issuance of RFP**

On [ ], the CTA issued its "Request for Proposals" (hereinafter referred to as "RFP") to provide such services.

#### **3.04 Proposal Receipt**

The Contractor submitted a Proposal, dated \_\_\_\_\_, (hereinafter referred to as "Proposal"), responsive to said RFP, to provide such services in the method and manner and at the costs set forth in the Proposal.

#### **3.05 Qualification of Contractor**

Contractor represents hereby that it is in the business of, and fully qualified in the field of public transit, and is fully willing and able to satisfy the requirements of the CTA by performing this Agreement at the costs specified herein, and with the level of service and operating quality specified herein. CTA has awarded this Contract in reliance on such representations, and on Contractor's particular skills, experience and abilities as represented by Contractor in the Proposal.

#### **3.06 Agreements**

Contractor agrees to manage, operate, and maintain CTA's Public Transportation System, Calaveras Connect, to the CTA's satisfaction, as set forth in the covenants and conditions below and the Scope of Work which is contained in Section 6 of the Request for Proposals. The CTA agrees to compensate Contractor as specified herein below and in accordance with the Request for Proposals, the Contractor's Proposal and all such other documents referred to herein and made a part hereof by specific reference.

The CTA and the Contractor, for the consideration hereinafter described, mutually agree as follows:

### **4 TERM OF AGREEMENT**

The Base Term of this Agreement is three (3) years and six (6) months. The first six months of the Base Period will commence on January 1, 2020 and continue through June 30, 2020. The first full year of the Base Term of the Agreement will commence on July 1, 2020 and continue through June 30, 2021. The second full year of the Base Term of the Agreement will commence on July 1, 2021

and continue through June 30, 2022. The third full year of the Base Term will commence on July 1, 2022 and continue through June 30, 2023.

Option period one will commence on July 1, 2023 and continue through June 30, 2025. Option period two will commence on July 1, 2025 and continue through June 30, 2027. Option period three will commence on July 1, 2027 and continue through June 30, 2029.

The CTA may exercise each option to renew this Agreement for a two-year period upon written consent within ninety (90) calendar days prior to the termination of the current contract period.

## **5 CONTRACTOR 'S RESPONSIBILITIES**

### **5.01 Time of Performance**

The Contractor shall commence providing transportation services on January 1, 2020.

### **5.02 Scope of Work**

Contractor shall provide services as described and required herein below and in accordance with the Contractor's proposed Scope of Work, attached hereto as Exhibit 6, the Contractor's Proposal and all such other documents referred to herein and made a part hereof by specific reference.

### **5.03 Maintenance and Repair of Vehicles and Equipment**

Contractor shall be responsible for the maintenance of all vehicles and all other equipment, furnishings and accessories required in connection with its operation of CTA transit services in a clean, safe, sound and operable condition at all times, and fully in accord with any manufacturer's recommended maintenance procedures and specifications, as well as with the applicable requirements of any Federal or State statute.

Contractor agrees to fund one hundred percent (100%) of all maintenance and repair costs of vehicles and equipment, and shall be compensated by the CTA as provided for in Section 7 of this Agreement with the exception of major components. In this regard, Contractor shall provide all labor, lubricants, solvents, repairs, parts, supplies, maintenance and repair tools and equipment, and such other components, facilities and services which may be required to fulfill its maintenance and repair responsibilities, at Contractor's sole cost and expense. CTA will reimburse Contractor for pre-approved expenditures for major component repair or replacement.

Contractor shall follow the conditions specified in Exhibit A, "CTA-Provided Vehicles and Maintenance/Repair Requirements" and Exhibit B, "CTA-Provided Equipment."

### **5.04 Control**

All services to be rendered by Contractor under this Agreement shall meet the performance criteria as set by the CTA. Contractor shall provide top management involvement when making suggestions on how to improve the system. Any decisions on how the system will be changed will rest with the CTA.

CTA shall not interfere with the management of Contractor's normal internal business affairs. CTA may advise Contractor of any employee's inadequate performance which has a negative effect on the service being provided, and Contractor shall take prompt action to remedy the situation. In extreme cases, CTA may demand removal of a Contractor's employee.

The Executive Director or his/her designee may request changes in Contractor's reporting requirements, training/safety program, preventive maintenance and repair program, inventory requirements, testing procedures, and/or other operating details not resulting in changes in the number of vehicle service hours. If Contractor declines such requests, or such request would result in a material increase in Contractor's costs or in the time required for performance, Contractor shall notify CTA within seven (7) days after receipt of such request and shall submit a claim detailing such objections and/or increases. The parties shall negotiate an equitable settlement of Contractor's claim, which reflects actual increases or decreases in Contractor's total costs to perform this Agreement caused by the change in question

#### **5.05 Management**

During the term of this Agreement, Contractor shall provide sufficient executive and administrative personnel specializing in transportation services as shall be necessary and required to perform its duties and obligations under the terms hereof. Contractor shall assess its responsibilities under this Agreement and independently determine the personnel levels needed to satisfactorily manage and operate Calaveras Connect.

Contractor shall provide all management and personnel necessary to responsibly manage and operate the Calaveras Connect. Such responsibilities shall include employee recruitment, screening, selection, training, supervision, employee relations, evaluations, retraining and termination. Employees shall at all times be and remain the sole employees of Contractor, and Contractor shall be solely responsible for payment of all employees' wages and benefits. Contractor, without any cost or expense to CTA, shall faithfully comply with the requirements of all applicable State and Federal enactments with respect to employees' liability, workers' compensation, unemployment insurance and other forms of Social Security and also with respect to withholding of income tax at its source from the wages of said employees and shall indemnify and hold harmless CTA from and against any and all liability, damages, claims costs and expenses of whatever nature rising from alleged violation of such enactments or from any claims of subrogation provided for in such enactments or otherwise.

Contractor shall use the best methods for recruitment, and shall not discriminate in its recruitment, hiring, promotion, demotion or termination practices on the basis of race, religion, creed, medical condition, color, marital status, ancestry, gender, age, national origin or physical or mental disability in the performance of any agreement with the CTA. Contractor shall comply with the provisions of the State Fair Employment Practices Act, the Federal Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990, and all amendments thereto.

Contractor shall use appropriate employee screening and selection criteria. These criteria will include Department of Motor Vehicle license checks and physical examinations, including drug screening. All employees must pass a Department of Justice fingerprint screen as required for General Public Transit Vehicle certification.

Contractor shall designate an agent authorized to bind the Contractor in all aspects of Contractor's performance of this Agreement, who shall be available at all times, either by phone or in person, to make decisions or provide coordination as necessary.

**5.06 Professional Standards**

Contractor warrants and guarantees that the work provided under this Agreement shall be performed in a professional manner.

**5.07 Maintenance and Operations Facility**

Contractor shall establish its operations and maintenance headquarters for CTA at the CTA-leased operating base located at 750 Industrial Way, San Andreas, California. Except for items expressly identified to be provided and/or maintained by CTA, the Contractor shall equip the facility with all tools and equipment necessary for maintenance and repair of CTA vehicles in accordance with this Agreement. All out-of-service CTA vehicles on Contractor's premises shall be stored at all times within a fenced and security lit outside storage area.

**5.08 Future Budgets**

Contractor shall submit to the CTA for review, no later than March 31 of each Agreement year, a proposed budget for the upcoming year. This budget submittal is for Agreement compliance analysis only and will not affect payment.

**5.09 Medical Assistance to Passengers**

Contractor's employees shall not be required to perform any medical or quasi-medical functions for passengers. In the event of illness on board a vehicle, the driver shall advise the dispatcher by radio or other communication system and may proceed immediately to a medical facility for help.

**5.10 Qualification for Future Contracts**

As a result of having entered into this Agreement, Contractor shall not be inhibited, penalized or disqualified from proposing subsequent transportation management and operation programs under the jurisdiction of CTA.

**5.11 Proprietary Rights**

All inventions, improvements, discoveries, proprietary rights, patents and copyrights made by Contractor under this Agreement shall be made available to CTA with no royalties, charges or other costs, but shall be owned by the Contractor. All manuals prepared by Contractor under this Agreement shall be made available to CTA, at no charge, but shall be owned by Contractor and shall not be copied, disclosed or released by CTA or CTA's representative or participating organization without prior consent of Contractor, except as otherwise required by law. Reports are excluded from this provision, and shall be owned by CTA. Contractor, however, shall have the right to print and issue copies of these reports. Contractor may make presentations and releases relating to this Agreement. Papers and other formal publications shall be approved by CTA before they are released.

**5.12 Emergency Procedure**

In the event of a major emergency such as a natural disaster or man-made catastrophe, Contractor shall make transportation and communication resources available to the CTA to the degree possible for emergency assistance. If the normal line of direct authority from CTA is intact, Contractor shall follow instruction of CTA. If the normal line of direct authority is broken, and for the period while it is broken, Contractor shall make best use of transportation resources following, to the degree possible, the direction of the organization which appears to have assumed responsibility, such as the Sheriff's Department, Police, Red Cross or National Guard. Emergency use of transportation may include evacuation, transportation of injured and movement of people to food and shelter.

Contractor shall be reimbursed in accordance with the current rate per vehicle service hour 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 "Maximum Obligation" of this Contract.

Immediately after the emergency condition ceases, Contractor shall reinstate normal transportation services. Payment will be based on a written report showing services and cost breakdown related to emergency services including such detail as employee time sheets, expense receipts, or other documentation of expenses.

#### **5.13 Records, Audits and Reports**

The Contractor shall maintain all records and submit all reports as detailed in Exhibit 3 of this Agreement. CTA, other authorized governmental agency or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts and transcriptions of Contractor's files. Contractor shall maintain all these records for a period of at least four (4) years following the expiration or termination of this Agreement.

#### **5.14 Permits to Operate**

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 Federal, State and local laws and ordinances to enable Contractor to perform this Agreement, and shall provide copies of all such entitlement to CTA when received by Contractor. The Contractor shall ensure that the drivers of CTA vehicles have all required permits and licenses.

#### **5.15 Federal, State and Local Laws**

In the performance of the services required by this Agreement, Consultant shall take reasonable care to comply with all applicable Federal, State, and CTA statutes, ordinances, regulations, directives and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California.

#### **5.16 Incorporation of Federal Transit Administration (FTA) Required Provisions**

The parties understand and acknowledge that a portion of the funding for the management and operation of Calaveras Connect is provided by the Federal Transit Administration ("FTA") through the California Department of Transportation ("DOT"). In exchange for these funds, specific provisions are required to be incorporated into this Agreement. These provisions are set forth in Exhibit 4 and incorporated herein.

The required provisions include, in part, certain Standard Terms and Conditions required by FTA and DOT, whether or not expressly set forth in Exhibit 4. In addition, all contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA and DOT 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 CTA requests which would cause CTA to be in violation of the FTA-DOT terms and conditions.



**5.17 Notification of Actions**

The Contractor hereby covenants and agrees to notify the CTA of any and all actions filed against the Contractor, for any agent, servant or employee of the Contractor, for any cause whatsoever arising out of the operations to be conducted by the Contractor pursuant to this Agreement. Said notification should occur within 24 hours time after notification to the Contractor, but in no event shall exceed 72 hours.

**5.18 Insurance Claims**

The Contractor shall pursue insurance claims at its own expense for CTA-provided vehicles or equipment damaged or destroyed while in the Contractor's possession. In its own behalf, Contractor may pursue any insurance claims which may exist by virtue of the damage or destruction for the full value of the loss.

**5.19 Transfer of Title to Equipment**

Equipment and supplies purchased by the Contractor as a direct charge item (i.e., items bought for the CTA by the Contractor and paid for by the CTA by invoice separate from normal monthly or hourly compensation) in connection with the performance of this Agreement shall become the property of CTA upon payment of invoice for that equipment and supplies submitted. Thus, maintenance parts, materials, and supplies remain the property of the Contractor.

**5.20 Transfer of Agreement**

Whereas this Agreement is made in reliance by the CTA upon the qualifications and responsibility of the Contractor, the performance by the Contractor of this Agreement may not be assigned, or in any way subcontracted on a continuing basis, except upon the prior written approval of the CTA.

**5.21 Transition**

For up to fifteen (15) calendar days prior to the termination or expiration of, and for up to fifteen (15) days following the termination or expiration of this Agreement, Contractor shall provide to either the CTA or any future contractor selected by the CTA, Contractor's full cooperation in the transition to the successor contractor. This shall include, as a minimum, consultation regarding labor and management issues, providing access to non-confidential information and providing access to CTA-provided vehicles and equipment as may be necessary to the successor contractor's start-up preparations. Contractor shall provide its best professional effort to assure a smooth transition from Contractor's service to the successor contractor's services and shall cooperate fully with the CTA and with the successor operator to this end.

**5.22 Sanctions for Non-Compliance**

In the event of the Contractor's non-compliance with the provisions of this Agreement, the CTA shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

- A. Withholding of payments due to the Contractor under this Agreement until the Contractor complies to the CTA's satisfaction, and/or
- B. Cancellation, termination or suspension of this Agreement, in whole or in part.

## 6 CTA'S RESPONSIBILITIES

### 6.01 *Administration of Contract*

The CTA shall administer the provisions of this Agreement. The CTA, in order to accommodate public demand, and to meet its financial capabilities, reserves the right to make such changes as it deems appropriate with respect to transit services specified herein including, but not limited to, the following: hours of operation, routes, schedules, fares, operating policy, and promotional programs to increase transit patronage. It is recognized by the parties hereto that during the term of the Agreement that the CTA may increase or decrease the number of buses, routes, schedules, hours and days of service, and establish new fare structures without the consent of the Contractor.

The CTA and the Contractor acknowledge and agree that the CTA has designated the CTA Executive Director as its Contract Manager for the purposes specified.

### 6.02 *Fuel*

The CTA shall be responsible for the cost of fuel utilized in CTA-owned vehicles by the Contractor in the performance of its duties as required by this Agreement. The CTA shall provide one fuel card per service vehicle and one additional spare card for emergency purposes. The Contractor will be responsible for maintaining the condition of the fuel cards. In the event that a fuel card is inoperable, the Contractor will contact the CTA to replace the card. The CTA will manage the fuel account. The Contractor is responsible for the appropriate use of the cards and is wholly responsible for the repairs and damages associated with operating a vehicle with the wrong fuel. The Contractor shall maintain a fuel and mileage log for each vehicle in the ZOOM! management software provided by CTA.

### 6.03 *Farebox Revenues*

Tickets will be produced by the CTA and provided to the Contractor for sale at the Customer Service Center and onboard the buses by drivers. All fares collected by the Contractor are the property of the CTA. The CTA reserves the right to set fare rates for passengers. Such rates may be revised from time to time by the CTA, and set at such levels as may be determined to be in the best interest of the CTA. The CTA shall provide the Contractor with written direction revising fare rates at least ten (10) calendar days before such rates are to become effective.

Fares shall be collected and processed by the Contractor as directed by the CTA. The Contractor shall ensure that each transit patron pays the appropriate fare prior to being provided transportation. The Contractor shall, in accordance with a procedure specified by the CTA, account for revenues collected on the CTA's transit vehicles. The Contractor shall remove farebox vaults from the vehicles daily and the vault contents shall be kept separately under appropriate security. The Transit Manager shall be custodian of the vault key and responsible for counting the money. The Contractor shall count, process and deposit farebox, as directed by the CTA, as soon as is reasonably possible after fares are received. Deposits of fares shall be made at least twice each week. The CTA reserves the right to oversee money counting activities, independently count revenues or otherwise verify the fares collected.



**6.04 Planning Responsibilities**

CTA shall be responsible for all planning activities relative to Calaveras Connect routes, schedules, days and hours of operations, bus stop locations, location of street furnishings and other such activities relative to overall system administration.

**6.05 Invoicing**

The CTA shall compensate the Contractor with one lump sum payment per month.

**6.06 CTA-Provided Vehicles and Equipment**

The CTA shall provide the vehicles and equipment listed in Exhibit 1, “CTA-Provided Vehicles and Maintenance/Repair Requirements” and Exhibit 2, “CTA-Provided Equipment,” to the Contractor for the performance of this Agreement. By execution of this Agreement, Contractor acknowledges receipt of the vehicles and equipment listed in Exhibit’s 1 and 2, and that each and every item has been received in good working condition.

Any vehicles and/or equipment added or deleted from Exhibit 1 and Exhibit 2 of this Agreement, may be added or deleted from the Agreement by a Letter of Agreement between the Contractor and CTA. The Executive Director, or his or her designee, shall sign for the CTA.

**6.07 Lease of CTA Vehicles and Equipment**

The CTA leases, for purposes of complying with requirements of this Agreement, the vehicles and equipment listed in Exhibit 1, “CTA-Provided Vehicles and Maintenance/Repair Requirements”, and Exhibit 2, “CTA-Provided Equipment”, to the Contractor for the term of the Agreement for a cost of \$1.00 per Agreement Year. Upon termination of this Agreement, Contractor shall return all CTA-owned equipment to CTA, with no deferred maintenance, repair or damage, less reasonable wear and tear.

**7 COMPENSATION AND REIMBURSEMENT OF EXPENSES**

The CTA agrees to compensate the Contractor a fixed monthly rate plus a fixed hourly rate per vehicle revenue hour and service mile for the total number of vehicle service hours and miles provided, which shall be full compensation as set forth in this Agreement. The fixed monthly rate and fixed price per Vehicle Revenue Hour and Vehicle Service Mile to be paid by the CTA to the Contractor, as defined in Section 7.1 of this document, shall be as follows:

	Base Term (3 Years, 6 Months)				Option Term 1		Option Term 2		Option Term 3	
Cost Per:	6 mon	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
Month Fixed										
Revenue Hour										
Service Mile										

This rate may be adjusted by Letter of Agreement between the Contractor and the CTA to adjust for number of vehicles insured or substantial changes in operating service hours, as specified in Section 6.1 of the RFP titled *Base Level of Service and Changes*. In the event of an increase or decrease of more than 20 percent in the number of anticipated annual vehicle revenue hours, CTA and Contractor shall meet to determine an equitable adjustment to Contractor’s consideration.

## **7.01 Vehicle Revenue Hours**

Vehicle Revenue Hours are defined as follows:

### ***Deviated Fixed Route***

Deviated Fixed Route service time is calculated from first timed stop to last timed stop. This time does not include vehicle check-in/check-out time, time required to travel to and from the vehicle storage facility, time needed for fueling the vehicles, driver breaks, time when vehicle is inoperable on the road or schedule gaps of more than 20 minutes. Price paid per vehicle revenue hour (VRH) shall include full compensation for furnishing all administration, management, facilities, services and items, including labor, materials, tools, equipment and incidentals as required by this Agreement.

Service time shall include time delays as a result of route deviations, unforeseen traffic conditions and inclement weather, only when the vehicle is operating in route service. Service time lost as a result of *force majeure* is described within Section 28 herein.

Calaveras Transit Agency will be undertaking an update to the Short Range Transit Plan soon which could potentially result in the addition of services such as Demand Response Services, which may include, but not be limited to, Dial-A-Ride Services. If such service is added to the mix of Calaveras Connect Services, the VRH shall begin when the vehicle enters revenue service at the Transit Facility, until the vehicle returns to the Transit Facility after dropping off the last client. For the purposes of this section, "deadhead" time shall be defined as the actual time required to travel directly from the Transit Facility to pick up the first revenue passenger and to travel directly to the Transit Facility after dropping off the last revenue passenger.

### ***Specialized Services***

In addition to regular Calaveras Connect operations, the Contractor may from time to time be requested by CTA to provide special transportation services within CTA service area using CTA vehicles, provided that such special services are determined by CTA to be in the public interest and do not interfere with regular Calaveras Connect operations, and are in compliance with applicable federal and state statutes. This may include but not be limited to parades, transit rodeos, fairs, concerts, farmers market, or other community activities.

Contractor shall be entitled to compensation for such services at the current rate per vehicle revenue hour to recapture drivers' wages and benefits. The costs will be billed separately from this Agreement's vehicle revenue hours and shall be in excess of the maximum price defined under "Maximum Obligation."

## **7.02 Vehicle Revenue Miles**

### ***Deviated Fixed Route and Demand Response***

Deviated Fixed Route service miles are calculated from the vehicle departure from the Contractor parking location (yard) until the vehicle returns to the parking location. Price paid per vehicle service mile (VSM) shall include full compensation for those items specified in the contract pricing schedule related to vehicle maintenance.

**Specialized Services**

In addition to regular Calaveras Connect operations, the Contractor may from time to time be requested by CTA, to provide special transportation services within Calaveras CTA using Calaveras Connect vehicles, provided that such special services are determined by CTA to be in the public interest and do not interfere with regular Calaveras Connect operations, and are in compliance with applicable federal and state statutes. This may include but not be limited to parades, transit rodeos, fairs, concerts, farmers market, or other community activities.

Contractor shall be entitled to compensation for such services at the current rate per vehicle revenue mile to recapture maintenance expenses. The costs will be billed separately from this Agreement's vehicle revenue miles, and shall be in excess of the maximum price defined under "Maximum Obligation."

**8 MAXIMUM OBLIGATION**

The CTA agrees to pay the Contractor in consideration for its services as described herein:

The first budget period shall be six (6) months and begin on January 1, 2020 and end June 30, 2020. The maximum amount payable for this budget year, notwithstanding any other provision within this Agreement, shall be \$\_\_\_\_\_ for a maximum of [ 5,912. [half of annual total]

The first full year of the base term of the Agreement shall begin July 1, 2020 and end June 30, 2021. The maximum amount payable for this budget year, notwithstanding any other provision within this Contract, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

The second full year of the base term of the Agreement year shall begin July 1, 2021 and end June 30, 2022. The maximum amount payable for this budget year, notwithstanding any other provision within this Contract, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

The third full year of the base term of the Agreement year shall begin July 1, 2022 and end June 30, 2023. The maximum amount payable for this budget year, notwithstanding any other provision within this Contract, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

The maximum amount payable for the optional Period One Year one, notwithstanding any other provision within this Agreement, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

The maximum amount payable for the optional Period One Year Two, notwithstanding any other provision within this Agreement, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

The maximum amount payable for the optional Period Two Year one, notwithstanding any other provision within this Agreement, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

The maximum amount payable for the optional Period Two Year Two, notwithstanding any other provision within this Agreement, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

The maximum amount payable for the optional Period Three Year One, notwithstanding any other provision within this Agreement, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

The maximum amount payable for the optional Period Three Year Two, notwithstanding any other provision within this Agreement, shall be \$\_\_\_\_\_ for 11,824 Vehicle Revenue Hours, unless adjusted based on the maximum Vehicle Revenue Hours.

## **9 METHOD OF PAYMENT**

The billing period shall run from the first day of the calendar month through the last day of the calendar month. All invoices for services provided the previous month shall be submitted by the Contractor to the CTA Contract Manager by the 10<sup>th</sup> of the month following, along with sufficient documentation to support the charges. Invoices shall be paid by the CTA within thirty (30) calendar days from final approval of the invoice by the CTA Contract Manager. Invoices shall break out the total vehicle revenue hours and vehicle service miles with sufficient back up documentation of actual hours and miles provided during the time period specified, and the associated cost for each service.

## **10 DISPUTES**

Any controversy or claim arising out of, or relating to, the provisions of this Agreement, or the breach thereof, shall be settled by arbitration at the election of either party in accordance with the rules of the American Arbitration Association at San Andreas, California and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The parties shall share equally all arbitration costs, excluding the parties' own attorneys fees. Only the party prevailing on all issues submitted, either to a court of law or arbitrator shall be entitled to reasonable attorneys fees.

The Federal Procurement Regulations shall be used where applicable to define, resolve and settle procurement issues.

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

## **11 MATERIAL BREACH**

CTA reserves the right to terminate this Agreement immediately in the event of material breach by the Contractor. A "material breach" for this purpose shall include, but not be limited to, the following items:

- A. Repeated failure by Contractor to operate service on time or to complete trips per the published bus schedule requirements of these Agreement documents.
- B. Repeated failure by the Contractor to maintain a sufficient number of operable, clean and road-worthy buses to operate full service on all routes then in effect. "Road-worthy" for this purpose means buses which conform to all safety requirements of the California Highway Patrol and other applicable regulatory agencies, and which are fully operable.

- C. Failure by the Contractor to operate a safe service (e.g., less than one preventable vehicle accident per 30,000 vehicle service miles in two consecutive quarters).
- D. Failure by the Contractor to provide a preventive maintenance and repair program which in all respects conforms to the requirements of this Agreement, the California Highway Patrol and other applicable regulatory agencies, and results in an acceptable number of road calls.
- E. Invalidation or reduction of warranty coverage on CTA-provided buses or equipment due to Contractor's negligence in complying with warranty requirements.
- F. Failure by the Contractor to provide qualified personnel, training, facilities, tools, supplies or equipment required by this Agreement.
- G. Repeated failure by the Contractor to provide service to the public in a courteous and professional manner.
- H. Failure by the Contractor to make the corrections specified by the CTA in Notices of Deficiencies by the time specified.
- I. Failure by the Contractor to submit required reports on time or in a truthful, accurate format.
- J. Failure by the Contractor to expeditiously repair or replace CTA-provided vehicles or equipment damaged or destroyed while in Contractor's possession.
- K. Contractor's use of CTA-provided vehicles or equipment for purposes other than those authorized by this Agreement.
- L. Failure by the Contractor to maintain required insurance.

Prior to termination for a material breach, CTA shall provide Contractor with a written notice outlining the cause of the breach. CTA shall provide Contractor with a period of ten (10) days to cure said breach prior to terminating this Agreement.

## **12 CTA'S REMEDIES ON BREACH**

It is understood and agreed that in the event of failure by Contractor to perform services required by this Agreement, in addition to other remedies, penalties and damages provided by law, CTA may provide such services, and deduct the cost of doing so from the amounts due or to become due to the Contractor. The costs to be deducted shall be the actual costs to CTA to provide such services, or the Agreement proposal price per vehicle revenue hour and vehicle service mile as shown in the Contractor's Proposal, whichever is greater. The CTA may also, at its discretion, exercise the provisions for liquidated damages and incentives as specified in Exhibit 3, "Performance Standards, Records and Reports," of this Agreement.

## **13 SUSPENSION**

In the event CTA is delinquent in paying the Contractor by more than forty-five (45) calendar days and has received a statement by certified mail of the delinquency from the Contractor, the Contractor may serve, by certified mail, a notice of its intent to suspend operations at least seven (7) calendar days subsequent to the receipt of notice by CTA. If CTA does not correct the delinquency or if the parties do not agree to arbitrate the dispute under the provisions of this Agreement, the Contractor may suspend operations without further notice or penalty on the date indicated by the notice.

## **14 TERMINATION**

### **14.01 Termination for Convenience**

CTA, by ninety (90) calendar day written notice, may terminate this Agreement, in whole or in part, when it is in CTA's interest. If this Agreement is terminated, CTA shall be liable only for payment under the payment provisions of this Agreement for services rendered

before the effective date of termination. In the event the Agreement is terminated, all pertinent data prepared for the project shall be made available to CTA without additional cost.

#### **14.02 Termination for Default**

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

If, after termination for failure to fulfill contractual 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 CTA.

#### **14.03 Opportunity to Cure**

CTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days 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 CTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Contractor of written notice from CTA setting forth the nature of said breach or default, CTA shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude CTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

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

### **15 NON-DISCRIMINATION IN SERVICES AND BENEFITS**

Contractor certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and CTA laws and regulations and any administrative directives established by the CTA Board of Supervisors or the CTA Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition



which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

## **16 INDEMNIFICATION**

- A. The Contractor shall indemnify, defend, save, protect and hold harmless CTA, its elected representatives, officers, agents, employees, and volunteers from and against any and all claims, demands, losses, defense costs (including reasonable attorney fees), expenses or liability of any kind or nature, including, but not limited to, death, personal injury or property damage to the extent arising directly or indirectly out of:
  - 1. Any negligent act, error or omission by Contractor, its officers, agents, or employees, in performing the services, responsibilities or duties required of CTA by this Agreement; or
  - 2. Any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of CTA by this Agreement.
- B. CTA shall indemnify and hold harmless, Contractor, their representatives, officers, agents, and employees from and against claims, demands, losses, defense costs (including reasonable attorney fees), expenses or liability of any kind or nature, for personal injury or property damage to the extent arising out of:
  - 1. Any negligent act, error or omission by CTA, its officers, agents, or employees, in performing services, responsibilities or duties required of CTA by this Agreement; or
  - 2. Any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of CTA by this Agreement.

Provided, however, that CTA's indemnification obligations do not extend to or include any claims or other matters based in whole or in part upon any act or omission of CTA in selecting, supervising or retaining Contractor, its officers, agents or employees.

In providing any defense under this Section, the indemnifying party shall use counsel reasonably acceptable to the indemnified party.

This indemnification clause shall survive any expiration or termination of this Agreement.

## **17 INSURANCE**

During the term of this Agreement, Contractor shall at all times maintain, at its expense, commercial general liability insurance, commercial automobile liability insurance, Workers' Compensation and Employers' Liability insurance as required by the State of California, Employee Dishonesty Insurance, and comprehensive and collision coverage for automobile physical damage. The comprehensive general liability insurance shall include broad form property damage insurance.

With respect to performance of work under this Agreement, Contractor shall maintain, and shall require all of its subcontractors to maintain, during the life of this Agreement, the following stated insurance policies:

**17.01 Worker's Compensation**

The Contractor shall provide Worker's Compensation Insurance and Employer's Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized subcontractor to obtain such insurance for its employees).

Prior to commencing services pursuant to this Agreement shall file the following statement with the CTA Contract Manager in a form substantially as set forth below.

**WORKERS' COMPENSATION CERTIFICATION**

I am aware of the provisions of Paragraph 3700 of the Labor Code, which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Consultant affirmatively represents that he/she has the requisite legal authority to do so on behalf of Consultant, both the person executing this Agreement on behalf of Consultant and Consultant understand that the CTA is relying on this representation in entering into this Agreement.

Initials: \_\_\_\_\_

**17.02 General Liability**

The Contractor shall provide commercial general liability insurance with a limit of not less than ten million dollars (\$10,000,000) combined single limit bodily injury and property damage per occurrence. Said policy or policies shall include, but not be limited to, coverage for: commercial general liability including premises and operations, personal injury, blanket contractual, and independent contractors.

**17.03 Automobile Liability**

The Contractor shall provide commercial automobile liability including owned, hired or leased and non-owned automobiles with limit of not less than ten million dollars (\$10,000,000) combined single limit for bodily injury and property damage per occurrence. A combination of primary and umbrella excess policies may be utilized to provide the \$10,000,000 limit. In no case shall the umbrella excess policy coverage be more limited in scope than the primary policy(ies), the primary automobile policy shall be extended to provide uninsured and underinsured motorists coverage and medical payments to the minimum amounts required by the State of California.

**17.04 Automobile Physical Damage**

The Contractor shall provide comprehensive and collision coverage for fair market value cost with a maximum deductible of ten thousand dollars (\$10,000) per occurrence for all vehicles set forth in Exhibit A.

**17.05 Employee Dishonesty Insurance**

The Contractor shall provide a policy of employee dishonesty insurance covering Contractor's officers, agents and employees, and protecting the CTA from theft in the amount of ten thousand dollars (\$10,000) with respect to any one occurrence. Contractor may provide a Fidelity Bond in the same amount, protecting CTA from employee theft with respect to any one occurrence by Contractor's employees.

**17.06 Garage Keeper's Liability**

The Contractor shall provide Garage Keeper's Liability insurance covering CTA vehicles in Contractor's possession and covering all circumstances associated with vehicle repairs and protection of the fleet while in Contractor custody.

**17.07 Required Provisions**

All insurance shall contain the following provisions:

- A. Said policies shall remain in force through the life of this Agreement and shall be payable on a "per occurrence" basis.
- B. CTA, its elected or appointed governing board members, representatives, officers, agents, employees and volunteers shall be named as additional insured on the commercial general and automobile liability insurance policies.
- C. Any deductibles or retentions must be declared to and are subject to the approval of the CTA Executive Director. At CTA's option, the Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- D. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, return receipt requested, has been given to the CTA Contract Manager.
- E. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII, unless otherwise approved by the CTA Contract Manager.
- F. Any insurance maintained by CTA shall apply in excess of, and not contribute with, insurance provided by Consultant's liability insurance policy.
- G. Any failure to comply with reporting revisions of the policies shall not affect coverage provided to the additional insured.

**17.08 Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the Executive Director. At CTA's option, the Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

**17.09 Evidence of Insurance**

The Contractor shall provide policies and certificates of insurance with original endorsements or other evidence of insurance coverage as required by the Contract Manager. Required evidence of insurance shall be filed with the Contract Manager on or before commencement of performance of this Agreement. Current evidence of insurance shall be kept on file with the Contract Manager at all times during the term of this Agreement.

**17.10 Unsatisfactory Policies**

If at any time any of the policies or endorsements be unsatisfactory as to form or substance, or if an issuing company shall be unsatisfactory, a new policy or endorsement shall be promptly obtained and evidence submitted to the Contract Manager for approval.

**17.11 Failure to Comply**

Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

**18 REPRESENTATIVES; NOTICE**

- A. Each party shall designate an officer, employee or other authorized representative to act on that party's behalf with respect to the work. This representative shall have the authority to approve changes in the scope of the work, provided that such are consistent with this Agreement, and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner. Each party has the right to change its representative at any time; provided, however, that a party wishing to change its designated representative shall endeavor to notify the other party in writing not less than ten (10) days before making any such change. At the time this Agreement is executed, the parties' designated representatives shall be as follows:

CTA: Amber Collins, Executive Director [Contract Manager]  
Calaveras Transit Agency

CONTRACTOR: Title  
Contractor

- B. All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of CTA and Contractor at their respective address as follows:

CONTRACTOR: Address

Attention:

CTA: Calaveras Transit Agency  
PO Box 280  
444 East St. Charles Street/Highway 49  
San Andreas, CA 95249  
Attn: Amber Collins, Executive Director

- C. In lieu of written notice to the above addresses, any party may provide notices through the use of facsimile machines provided confirmation of delivery is obtained at the time of transmission of the notices and provided the following facsimile telephone numbers are used:

TO CONTRACTOR: Fax: (xxx) xxx-xxxx Contact No: (xxx) xxx-xxxx

TO CTA: Fax: (209) 754-2096 Contact No: (209) 754-2094

Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

- D. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5<sup>th</sup>) day following deposit in the mail if sent by first class mail.

**19 COVENANT AGAINST CONTINGENT FEES**

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the CTA shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**20 ASSIGNMENT AND SUBCONTRACTS**

The services and obligations required of Contractor under this Agreement are not assignable in whole or in part. In addition, Contractor shall not subcontract any portion of the services required of Contractor by this Agreement without the express written consent of CTA Contract Manager. If any portion of the services required of Contractor is subcontracted, the subcontractor(s) shall maintain the same insurance as required of Contractor by this Agreement and Contractor shall be fully responsible to the CTA for all work undertaken by subcontractor(s). All subcontractor(s) shall adhere to all local, state and federal requirements as identified in this Agreement and Request for Proposal documents.

**21 STATUS OF CONTRACTOR**

- A. It is understood and agreed by all the parties hereto that Contractor is an independent Contractor and that no relationship of employer-employee exists between CTA and Contractor. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of CTA. Contractor hereby indemnifies and holds CTA harmless from any and all claims that may be made against CTA based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.
- B. It is further understood and agreed by all the parties hereto that (1) except as specifically authorized by this Agreement, neither Contractor nor Contractor's assigned personnel shall have any right to act on behalf of CTA in any capacity whatsoever as an agent; and (2) neither Contractor nor Contractor's assigned personnel shall have any right to bind CTA to any obligation whatsoever.
- C. It is further understood and agreed by all the parties hereto that Contractor must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Contractor's assigned personnel.
- D. There are no third-party beneficiaries of this Agreement, and no one except the parties to this Agreement may seek to enforce its terms.

**22 MODIFICATION TO AGREEMENT**

Any modifications to this Agreement which may become necessary during the term of the Agreement are to be accomplished by formal written amendment executed by both parties. No prior, current or post-award verbal conversations with any officer, agent or employee of CTA shall

affect or modify any terms or obligations of this Agreement. The validity in whole or in part of any provisions of the Agreement shall not affect the validity of other provisions.

## **23 WAIVER**

The waiver by CTA or any of its officers, agents or employees or the failure of CTA or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

## **24 AUTHORIZED REPRESENTATIVE**

The person executing this Agreement on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Contractor and to bind Contractor to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of Contractor and Contractor understand that CTA is relying on this representation in entering into this Agreement.

## **25 PUBLIC RECORDS ACT**

Upon its execution, this Agreement (including all Exhibits) shall be subject to disclosure pursuant to the California Public Records Act.

## **26 GENERAL PROVISIONS**

### **26.01 Non-Exclusivity of Contract**

It shall in no way be construed that this Agreement is, or shall be, the sole or exclusive contract for Public Transit into which CTA or the Contractor may enter during the term of the Agreement.

### **26.02 Conflict of Interests**

- A. Contractor shall comply with the laws and regulations of the State of California and CTA regarding conflicts of interest, including, but not limited to, Section 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.
- B. No member, officer, or employee of the Contractor or subcontractor(s) or of the locality during the term of the Agreement or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- C. No member, officer or employee of CTA, during his/her tenure or one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- D. Contractor agrees that if any fact comes to its attention, which raises any question as to the applicability of any conflict of interest law or regulation, Contractor will immediately inform CTA and provide all information needed for resolution of the question.

The 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.



**26.03 Conflict of Transportation Interests**

Contractor shall not divert any revenues, passengers or other business from CTA's Transit System to any taxi or other transportation operation of Contractor.

**26.04 No Conflicting Uses**

The Contractor shall not operate, lease or charter CTA-provided or owned vehicles or equipment, or the maintenance or storage facilities, used for implementing this Agreement for any purpose other than performance under the Agreement unless specifically authorized by CTA.

**26.05 Interest of Members of or Delegates to Congress**

No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

**26.06 Proprietary Rights**

All inventions, improvements, discoveries, proprietary rights, patents and copyrights made by Contractor under this Agreement shall be made available to CTA with no royalties, charges or other costs, but shall be owned by the Contractor. All manuals prepared by Contractor under this Agreement shall be made available to CTA, at no charge, but shall be owned by Contractor and shall not be copied, disclosed or released by CTA or CTA's representative or participating organization without prior consent of Contractor, except as may be required in order to comply with the California Public Records Act, or subpoena issued in any proceeding. Reports are excluded from this provision, and shall be owned by CTA. Contractor, however, shall have the right to print and issue copies of these reports. Contractor may make presentations and releases relating to the project. CTA shall approve all papers and other formal publications before they are released.

**26.07 Severability**

If in any case, one or more provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions shall never be contained herein.

**26.08 Headings**

The headings or titles to sections of this Agreement are not part of the Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

**26.09 Succession**

This Agreement shall be binding on and inure to the benefit of heirs, executors, administrators and assigns of the parties hereto.

**27 ADDITIONAL PROVISIONS**

Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should CTA choose to excuse any given failure of Contractor to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document.

All conditions, covenants and obligations continue to apply no matter how often CTA may choose to excuse a failure to perform them.

- A. Except where specifically stated otherwise in this document, the promises in this document benefit CTA and Contractor only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other person (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any legitimate claim of entitlement with the meaning and rights that phrase has been given by case law.

## **28 FORCE MAJEURE**

The Contractor shall not be held responsible for losses, delays, failure to perform or excess costs caused by events beyond the control of the Contractor. Such events may include, but are not restricted to, the following: Acts of God: fire, epidemics, earthquake, flood or other natural disasters or, acts of government: riots, strikes, war or civil disorder; or unavailability of fuel. The Contractor shall not be entitled to compensation for any service, the performance of which is excused pursuant to this paragraph. In the event that the Contractor is unable to provide the services indicated due to any cause, it shall make reasonable attempt to notify the public, including notification to local radio stations, local newspapers and television stations. Whenever the Contractor has knowledge that any actual or potential *force majeure* may delay or prevent performance of the Agreement, the Contractor, on a timely basis, shall notify the CTA of the fact, and thereafter shall report to CTA all relevant information then known to the Contractor, and shall continue to so report.

## **29 ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between CTA and Contractor and supersedes all prior negotiations, representations, or Agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

### 30 ACCEPTANCE OF AGREEMENT

The undersigned, having read the foregoing, accept and agree to the terms set forth therein.

*IN WITNESS WHEREOF*, the parties have executed this Agreement as of the day and year above set forth.

#### CONTRACTOR NAME/COMPANY

#### CALAVERAS TRANSIT AGENCY

By \_\_\_\_\_  
Contractor Name

By \_\_\_\_\_  
Amber Collins  
Executive Director

#### ATTEST:

\_\_\_\_\_

By \_\_\_\_\_

#### Approved As To Form:

CTA Counsel

Date \_\_\_\_\_

By \_\_\_\_\_

**EXHIBIT A - 1 CTA-PROVIDED VEHICLES AND MAINTENANCE/REPAIR REQUIREMENTS**

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**Calaveras Transit Agency-Provided Vehicles**

Calaveras Transit Agency (CTA) has agreed to provide Contractor with the list of vehicles contained in this Exhibit. CTA will provide the following vehicles to the Contractor for the exclusive use of operating Calaveras Transit Agency services pursuant to this Agreement, and shall not be used for any other purpose.

CTA currently operates a fleet of ten vehicles, including seven (7) buses ranging from 20' to 35' in length, two (2) vans, and one (1) maintenance truck. Two new cutaways vehicles are expected to be added to the fleet prior to execution of the new contract. Buses are equipped with ADA lift mechanism and can allow up to two wheelchair passengers at any given time. All buses are currently equipped with bicycle racks, which are operated by the public with assistance from the Contractor

Vans are equipped with ramps.

CTA also provides a Ford E350 truck, which serves as the maintenance vehicle, primarily for bus stop maintenance.

Current fleet specifications are outlined below:

Fleet No.	Make	Model	Type	VIN #	Year	In-Service Date	License #	Miles as of 4/30/19
65	Freightliner	Glaval Legacy		4UZADRDUXECFN9408	2013	9/30/2014	1397946	168,686
66	Freightliner	Glaval Legacy		4UZADRDU0ECFR9870	2013	9/30/2014	1420044	171,453
68	El Dorado	Aerotech 240	III	1FDFE4FS4GDC16217	2015	12/3/2015	1473687	165,491
69	El Dorado	Aerotech 240	III	1FDFE4FS8GDC16219	2015	12/3/2015	1473688	134,784
70	El Dorado	Aerotech 240	III	1FDFE4FS3GDC49094	2016	7/18/2016	1474492	137,559
71	El Dorado	Aerotech 240	III	1FDFE4FS5GDC49095	2016	7/18/2016	1474493	139,729
72	El Dorado	Aerotech 240	III	1FDFE4FS2GDC50284	2016	7/18/2016	1474490	148,464
001	Dodge (Braun)	Entervan		2C7WDGBG1ER432257	2014	11/24/2015	1473504	63,206
002	Dodge (Braun)	Entervan		2C7WDGBG3ER432258	2014	11/24/2015	1473496	51,976
	*Ford	E350		1FDRF3G6XGEB97057			1492973	1,735

**TBD	Ford	Glaval E-450	C Gas		2019			-
**TBD	Ford	Glaval E-450	C Gas		2019			-

\*Ford E350 is non-revenue vehicle.

\*\*Vehicles to be added to the fleet prior to execution of the contract.

CTA and Contractor agree that vehicles will be delivered to Contractor in good condition and with each vehicle meeting or exceeding the following specifications, or as otherwise noted through an inspection report executed by the authorized representatives of the CTA and Contractor, following a pre-startup inspection of the vehicles. Contractor shall return vehicles to CTA at the end of this Agreement in the same condition, normal wear and tear excepted. It is the responsibility of the Contractor to duly note to the CTA any exceptions to the following specifications prior to startup of service:

1. Vehicle body and all attachments thereto will be free of dents and scratches in excess of 1" in length.
2. All body parts shall be properly attached to vehicle chassis and free of rust.
3. Exterior paint and decals shall be free from scrapes, scratches in excess of 1" in length, rust and tar. All decals shall be properly applied and free from peeling.
4. Vehicle tires shall be of proper load range for the vehicle and be of a type equivalent to that originally supplied by the manufacturer. All tires shall be free from side wall damage, shall have an average of 50% of tread life remaining and shall be free from damage due to improper alignment or balancing.
5. Vehicles shall contain a spare tire and wheel meeting the standards of paragraph "4" above if the vehicle was so equipped when purchased by CTA.
6. Vehicle destination signs, if vehicles are so equipped, shall have all current route indicators and shall be in proper working order.
7. All vehicle lights shall be in working order.
8. All decals or painting identifying the vehicle with a prior contractor or other operator shall be removed prior to delivery and all paint damage from said removal shall be properly repaired.
9. All vehicle doors and windows shall be in proper operating condition and properly sealed against the entry of fumes or water.
10. All components of the emission control and exhaust system shall be free from leaks, rust and be in proper operating condition. Vehicles shall have current State emission certification, if so required.

11. Vehicle engine shall be in proper operating condition. Proper condition may be established through oil analysis and compression testing.
12. Vehicle transmission shall be in proper operating condition, free from leaks, bad gears or slippage.
13. Vehicle electrical system shall be in proper operating condition. Alternator shall be supplying specified output and battery(ies) shall fall within manufacturer's specifications for output and specific gravity. All vehicle wiring shall be free from fraying and shall be properly loomed and attached to the vehicle in such a way as to prevent fraying. Any alterations to wiring not completed by vehicle manufacturer shall be performed so as to not overload any circuit and not to cause any short circuit.
14. All heaters and air conditioners shall be free from leaks and shall perform to the manufacturer's specifications.
15. All brake linings, drums and rotors shall meet manufacturer's specifications and shall have at least 50% life remaining. All wheel cylinders and brake lines shall be free from leaks. All brake parts shall be in proper repair.
16. Vehicle radios, antennas and all other communications devices shall be in proper working order and mounted so as to not constitute a safety hazard.
17. All vehicle fareboxes, if vehicles are so equipped, shall be in proper working order. There shall be one (1) farebox vault for each farebox. There shall be keys for all vaults and fareboxes.
18. The wheelchair lift shall meet all current State requirements and be in proper working condition. All wheelchair tiedowns and other securement equipment shall be in good condition and not be frayed or worn so as to constitute a safety hazard. Wheelchair lift interlocks, if so equipped, shall be in proper operating condition and meet Federal and State requirements.
19. Vehicles shall be equipped with a fire extinguisher with a current tag, a complete first aid kit, full and complete safety triangle kit and all other safety equipment required by law.
20. All passenger seats and all other interior surfaces shall be cleaned and free from stains, tears and graffiti. Seats shall be properly secured to the vehicle with the proper grade of securement device. Seat belts shall be in good condition and not be frayed or worn so as to constitute a safety hazard. Interior panel, stanchions, grabrails shall be properly secure and free of rattles.
21. Vehicles shall have a current preventive maintenance inspection, including oil and filter change, transmission service, etc., in accordance with the requirements of Contractor in this Agreement and State requirements.
22. Vehicles will have all current required State inspection and registration certificates, if required.
23. Vehicles will be cleaned to the standards of this Agreement and shall be completely fueled. All other fluid levels shall meet manufacturer's requirements.



24. All particulate matter filters on CTA-owned vehicles shall be clean and in proper working condition, as well as filter cleaning equipment.
25. All vehicle repair and inspection records shall be delivered with the vehicles.
26. All glass shall be free from chips, scratches, graffiti and cracks.
27. All other items not specifically listed herein shall be in serviceable condition meeting generally accepted standards and practices of the public transportation industry and meeting all requirements of the State and Federal government and all requirements contained in this Agreement.
28. Contractor shall be given copies of all vehicle and component warranties and Contractor shall have the sole right to claim moneys owed under the terms of the warranties, if any.

In order to ensure compliance with this Exhibit, the following procedures will be used by CTA and Contractor:

1. At a place and time mutually agreed to by CTA and Contractor, which shall occur approximately thirty (30) days prior to the start of service by Contractor under this Agreement, Contractor shall inspect, under the observation of the CTA, the vehicles to be provided by CTA to Contractor. During such inspection, defects to vehicles shall be jointly noted by the Contractor and CTA.
2. After the initial inspection, CTA shall ensure that all defects noted are repaired, or otherwise dealt with, prior to Contractor starting service under the terms of this Agreement. No documented deferred repairs shall become the responsibility of the Contractor.
3. Upon delivery of the vehicles to Contractor, CTA and Contractor will conduct a final inspection of the vehicles to ensure that items noted in the preliminary inspection and new defects found in the final inspection were repaired and that all vehicles are in compliance with this Exhibit.
4. In the event the final inspection reveals defects in the vehicles as specified in this Exhibit, then CTA will have these items repaired or authorize Contractor to repair the items at the rate of \$\_\_\_\_\_ per hour labor plus Contractor's cost plus a 10% fee for all materials, subcontracting costs and supplies required to repair defects, subject to Contractor's availability of parts, labor and facilities.

CTA reserves the right to delegate maintenance responsibilities to a firm other than the Contractor, subject to mutual agreement between Contractor and CTA as to changes in terms and considerations.

Contractor shall be responsible for the management of any and all vehicle warranty claims for vehicles which are so covered.

## **Maintenance and Repair of CTA-Provided Vehicles**

The Contractor agrees to maintain, repair and return such vehicles and equipment to the CTA in the same condition as when provided by the CTA, excepting only reasonable wear and tear not attributable to Contractor's failure to perform its maintenance and repair requirements pursuant to this Agreement. Contractor shall provide enough substitute vehicles to meet all peak and off-peak hour requirements of this Agreement pending repair or replacement of any CTA-provided vehicle or equipment damaged or destroyed while in Contractor's possession.

If vehicles or equipment are damaged or destroyed while in Contractor's possession, Contractor shall immediately obtain estimates and repair or replace vehicles. Repairs, including body, glass and all bus appurtenances, shall be made within thirty (30) days or less of the incident. All other repairs and replacement of vehicles shall occur within sixty (60) days of the incident. Failure to complete necessary repairs within sixty (60) days may result in CTA levying liquidated damages of up to \$50.00 per day until repairs are completed. To the best extent practicable, use of damaged vehicles or equipment in service until they have been repaired or replaced shall be avoided. In no case shall the Contractor operate vehicles damaged in such a way that they are unsafe.

Contractor shall perform the duties and accept the responsibilities set forth below in connection with the maintenance and repair of CTA vehicles, equipment, and facilities. The omission of a duty or responsibility herein below shall not relieve Contractor of its obligation to perform such duty or accept such responsibility, so long as it is usual, customary and generally accepted within the public transportation industry as being an integral element of operating a fixed-route and/or demand response public transportation system of a kind and character such as the CTA public transit system.

### **1. Daily Vehicle Servicing**

Contractor shall perform daily vehicle servicing on all CTA vehicles used in revenue service. For purposes of this Agreement, daily servicing will include, but not be limited to, fueling; engine oil, coolant, water and transmission fluid check/add; farebox vault pulling and replacement; wheelchair lift check; brake check; light and flasher check; interior sweeping and dusting; exterior and interior visual inspection; and check of all vehicle performance defects reported by drivers to identify potential safety and reliability items requiring immediate attention. Contractor shall develop, implement and maintain a written checklist of items included in the daily servicing of each vehicle. The checklist will be utilized and kept on file for CTA and California Highway Patrol review. This checklist requirement may incorporate, or supplement CHP required driver's pre-trip safety inspections.

### **2. Preventive Maintenance**

Contractor shall perform all preventative maintenance and inspections required on all vehicles used in the provision of the service associated with this Agreement. Contractor shall adhere strictly to the preventative maintenance schedules in accordance with industry standards. This schedule shall be considered by Contractor to be the minimum requirement only, and shall not be regarded as reasonable cause for deferred maintenance in specific instances where Contractor employees observe that maintenance is needed in advance of schedule.

Contractor shall not defer maintenance and repair for reasons of shortage of maintenance staff or operable buses, nor shall service be curtailed for the purpose of performing maintenance and repair without prior written consent of CTA. Contractor shall adjust the work schedules of employees as necessary to meet all scheduled services and complete preventive maintenance and repair activities according to the schedule approved by CTA.

#### *Preventative Maintenance Schedule*

All preventive maintenance and mechanical work necessary will be performed and paid for by the Contractor.

Type "A" Maintenance - 5,000 miles or 60 days, whichever comes first

Type "B" Maintenance - 10,000 miles

Type "C" Maintenance - 30,000 miles

#### **Type "A" Maintenance**

1. Change oil and filter
2. Check all lights
3. Check belts
4. Check tires
5. Check all fluids
6. Check wipers
7. Check all safety equipment
8. Check warning lights and dash instruments
9. Lubricate chassis
10. Check and adjust brakes
11. Check exhaust system
12. Check air filter
13. Check radiator and hoses
14. Check push out windows, emergency doors and emergency door marking lights

#### **Type "B" Maintenance**

1. All of "A" Maintenance
2. Check electrical system
3. Check suspension
4. Replace fuel filter
5. Wheel chair lift

#### **Type "C" Maintenance**

1. All of "A" and "B" Maintenance
2. Bit inspections
3. Smoke testing \*(once a year)\*
4. Replace belts

### 3. Vehicle Repair

All repairs to CTA vehicles shall be performed by Contractor or by other vendors and suppliers designated by the Contractor. Repairs shall include, but not be limited to, work to correct loss or damage; adjustments due to normal wear and tear; and overhaul, rebuilding or replacement of components. Repair work shall be conducted as soon as practicable upon learning that such work is required. Labor and material costs for repairs, including major repairs, necessitated by normal wear and tear will be the financial responsibility of Contractor

Contractor shall perform repair work expeditiously in response to identification of problems by drivers or other staff members. Contractor shall assure CTA that required repairs shall not be deferred beyond a reasonable time.

Preventive maintenance and repairs shall receive first priority in the use of Contractor's maintenance resources.

Contractor shall be familiar with vehicle and equipment warranties, shall comply with all warranty provisions in the conduct of its maintenance and repair functions, and shall monitor warranty repairs to take full advantage of warranty service and to evaluate defects as potential fleet wide defects needing manufacturer correction.

#### *Engine, Transmission and Differential Overhaul*

Contractor shall be responsible to monitor the condition and performance of vehicle engines, transmissions and differentials so as to maximize useful life and avoid costly catastrophic failures. As a minimum, the Contractor's monitoring program shall consider miles accumulated; fuel, oil transmission fluid and differential oil consumption trends; loss of power; and erratic performance.

If Contractor determines that an engine, transmission or differential unit needs to be overhauled or replaced, Contractor shall notify CTA in writing detailing the reasons for such a determination. The determination shall include detailed findings of tests that support the conclusion. After inspection, CTA may direct contractor in writing to proceed with the recommended work.

Engine, transmission and differential overhaul shall be performed by a factory authorized repair shop, approved by CTA in advance of work, using only OEM parts and OEM minimum overhaul standards. CTA will reimburse Contractor only for actual costs incurred for engine, transmission and differential work accomplished following the above guidelines. If CTA determines that such work was a result of poor maintenance and repair performance, failure to monitor overhaul criteria, neglect or abuse by Contractor, CTA will not be liable for any costs. Contractor must submit a detailed invoice to CTA for all such work.

Contractor shall be responsible for the cost of labor to remove and replace engines, transmissions and differentials. In addition, during an overhaul or when engine, transmission and/or differential is removed, Contractor, at their expense, shall cause ancillary parts to be replaced, including all cooling hoses, engine and transmission mounts, drive belts, and rebuild or replace the radiator. Also, Contractor shall be responsible to assess all other components, lines, hoses or systems. Those items

determined to have never been replaced or found not to meet the OEM minimum standards for serviceability shall be rebuilt or replaced to minimum OEM specifications at the time of the overhaul.

Contractor shall remain responsible for all costs related to repair or replacement of engine driven parts such as generators, hydraulic pumps, water pumps, engine driven fuel pumps, valve covers, oil pans, alternators, voltage regulators, air compressors, air conditioning compressors, vacuum pumps, starter motors and turbochargers.

Contractor shall also remain responsible for all costs related to repair or replacement of transmission related parts such as oil coolers, external oil lines, external filters, external linkage modulators, external speedometers, "driven" gears or sensors, neutral start switches and temperature sensors.

Contractor shall also remain responsible for all costs related to repair or replacement of differential related parts such as rear axle housing, bearings, shafts and seals.

#### **4. Parts Inventory**

Contractor shall establish and maintain an ongoing spare parts inventory sufficient to minimize vehicle down-time and ensure that peak vehicle requirements are met.

#### **5. Tools and Equipment**

All tools and equipment used for CALAVERAS CONNECT maintenance and repair, except for small hand tools provided by CONTRACTOR'S employees, and those items listed in Exhibit [ ] provided by CTA, shall be provided and maintained by Contractor.

#### **6. Vehicle Towing**

In the event that towing of any CTA vehicle is required due to mechanical failure or damage, Contractor shall be responsible to provide such towing at CONTRACTOR'S sole expense.

#### **7. Maintenance and Repair Records and Reports**

Contractor shall prepare, maintain, make available to CTA and reduce to written form, records and data relative to vehicle and vehicle accessory maintenance and repair, and radio system maintenance. Maintenance and repair records shall be maintained on all vehicles indicating all warranty work, preventive maintenance, and repairs performed on each vehicle. All such records and reports shall be prepared and maintained in such a manner so as to fulfill any applicable state or federal requirements, as well as any needs of CTA to enable it to accurately evaluate Contractor's maintenance and repair performance and the operating expense associated with various CTA vehicles and equipment.

Records of all maintenance, repair and inspections shall be made available to CTA, the California Highway Patrol and/or such other regulatory agencies with jurisdiction when requested. Original copies of all such records shall remain on file at all times at the Contractor's local facility in Calaveras County. Contractor shall retain said records for a period of three years after the conclusion of the contract term. Said records may be prepared and maintained in an electronic format approved by CTA. Any and all data

regarding vehicle repair or servicing is the property of CTA and shall be provided to CTA upon completion of the contract in a data format acceptable to CTA. CTA maintains the right to inspect, examine and test, at any reasonable time, any vehicles used in performance of this Agreement and any equipment used in the performance of maintenance and repair work in order to ensure compliance with this Agreement. Such inspection shall not relieve the Contractor of the obligation to continually monitor the condition of all vehicles and to identify and correct all substandard or unsafe conditions immediately upon discovery. Contractor shall transport any or all vehicles to any required inspection facilities when requested. In the event that the Contractor is instructed by CTA or any other regulatory agency to remove any equipment from service due to mechanical reasons, Contractor shall make any and all specified corrections and repairs to the equipment and resubmit the equipment for inspection and testing before it is again placed in service.

Contractor shall prepare maintenance and repair records and reports in a form and according to a schedule approved by CTA. Such records and reports shall include, but not be limited to, the following:

- Daily vehicle inspection and servicing checklists.
- Bus cleaning/washing log.
- Repair orders and work orders, including cost analysis, for all maintenance and repair inspections, warranty repairs and other vehicle repairs including materials, parts and labor consumed.
- Roadcall reports, or work orders, for each roadcall identifying date and time, vehicle number, problem and mileage of vehicle.
- Monthly summary to be attached to Contractor's invoice listing each vehicle, vehicle mileage, vehicle miles since last preventive maintenance and repair inspection, vehicle fuel consumption, and vehicle roadcalls.
- Semi-annual fleet summary listing each vehicle; vehicle mileage; vehicle year-to-date total miles; vehicle year-to-date fuel consumption and miles per gallon; vehicle year-to-date maintenance and repair cost and cost per mile; route service total roadcalls and miles per roadcall; demand response total roadcalls and miles per road call; major component overhauls, rebuilds and replacements by vehicle; and Contractor's summary of maintenance and repair problems, particularly components with high incidences of in-service failures, and steps taken or recommendations to reduce such problems and in-service failures.

#### **8. Emissions Control Programs**

All components of the emission control and exhaust system shall be free from leaks, rust and be in proper operating condition. Vehicles shall have current State emission certification, if so required. Contractor shall cooperate with CTA in the scheduling of emissions testing, and shall further be responsible to conduct repairs as required to meet emissions standards.

#### **9. Fuel**

CTA shall provide fuel required in the operation of CTA vehicles. Fuel shall be supplied in accordance with engine manufacturer recommendations and in full compliance with all



applicable state and federal requirements. Contractor shall ensure that fuel is of the appropriate type for each vehicle type provided by CTA.

Contractor shall cooperate with CTA for Calaveras Connect public transit operations, to obtain state and federal tax exemptions applicable to the purchase and consumption of fuel for use in public transit vehicles. In this regard, Contractor shall collaborate with CTA to obtain required permits and administer fuel transactions in a manner that fully complies with all applicable state and federal requirements.

Contractor shall maintain data detailing gallons dispensed and miles per gallon for each CTA vehicle for the previous month and for the year-to-date. This data shall be maintained in CTA-provided software (ZOOM!).

#### **10. Vehicle Cleaning**

Contractor shall maintain CTA vehicles in a clean and neat condition at all times. A record of interior and exterior vehicle washing shall be maintained in the Maintenance Manager's office, or other designated maintenance shop location.

The interior of all vehicles shall be kept free of litter and debris to the maximum practicable extent throughout the operating day. Vehicles shall be swept and dusted daily. Interior panels, windows, and upholstery shall be cleaned of marks as necessary. The interiors of all vehicles shall be thoroughly washed at least once per week (or more often to maintain a clean, sanitary interior), including all windows, seats, floor, stanchions and grab rails. All foreign matter such as gum, grease, dirt and graffiti shall be removed from interior surfaces during the interior cleaning process. Any damage to seat upholstery shall be repaired immediately upon discovery. Destination sign interior glass shall be cleaned as necessary to maintain a clean appearance and maximize visibility.

Exteriors of all CTA vehicles shall be washed as required to maintain a clean, inviting appearance and in no event less than once per week. Exterior washing shall include bus body, all windows and wheels. Rubber or vinyl exterior components such as tires, bumper fascia, fender skirts and door edge guards shall be cleaned and treated with a preservative at least once per month, or as necessary to maintain an attractive appearance.

Buses shall be kept free of vermin and insects at all times. Contractor shall exterminate all vermin and insects from all vehicles immediately upon their discovery, utilizing safe and non-hazardous materials.

#### **11. Bus Stop Cleaning and Maintenance**

Contractor, or subcontractor(s) designated by Contractor, shall maintain CTA bus stops that are equipped with shelters and/or benches in a clean and safe condition at all times. Vehicle operators shall be instructed to spot check and remove litter from shelters and benches as time allows, and to report cleaning, maintenance and repair needs immediately to the operations office.

Contractor shall establish and maintain a regular cleaning and inspection schedule and log for bus stops equipped with shelters and/or benches. Shelters and surrounding areas shall be thoroughly cleaned and inspected bi-weekly, or more often as needed to maintain a clean and inviting appearance. Benches and surrounding areas shall be thoroughly cleaned and inspected at least monthly. A thorough cleaning and inspection shall include removal of litter and emptying of trash receptacles (if so equipped); high pressure washing of shelters, benches, trash receptacles, and concrete pad or sidewalk area immediately in front of and within 10 feet of the shelter, bench, and trash receptacle; removal of graffiti; and a post-cleaning inspection of the shelter and/or bench to determine maintenance needs or make minor on-the-spot repairs such as tightening of bolts or screws.

Contractor shall be responsible to obtain any required authorizations or permits to work on private property or in the public right-of-way while cleaning and maintaining shelters, and for any liability or damage incurred in the course of cleaning and maintaining shelters and/or benches.

## **12. Bus Stop Shelter and Bench Repair**

All repairs to CTA benches and shelters shall be performed by Contractor or by other vendors and suppliers designated by the Contractor. Repairs shall include, but not be limited to, work to correct loss or damage, including vandalism; adjustments due to normal wear and tear; and rebuilding or replacement of components. All repair parts shall be as provided by original manufacturer or of equal or better quality.

Contractor shall be responsible to monitor the condition of CTA shelters and benches so as to remove hazards and perform repair work expeditiously in response to identification of problems by drivers, other staff members, CTA, or the public. Repair work shall be conducted as soon as practicable upon learning that such work is required. In the event that the condition of a shelter or bench presents a hazard and immediate repairs are not possible, Contractor shall take steps to remove or mitigate the hazard, including, if necessary, removal of the shelter or bench to a storage, repair or disposal location.

## **13. Facilitation of Advertising on Transit Vehicles**

The CTA contracts with an advertising broker to manage a bus advertising program. Contractor shall provide reasonable access to the vehicles for installation and removal of vinyl advertising materials by the advertising broker. Contractor will inspect the work of the advertising services contractor to determine whether or not vehicle surfaces are damaged, or advertisements are out of date. Contractor shall promptly notify CTA of damage, out of date advertisements, or other problems that may arise from time to time.

In accordance with Section 6.06 of this Agreement, Calaveras Transit Agency (CTA) has agreed to provide Contractor with the list of equipment contained in this Exhibit. CTA will provide the following equipment to the Contractor for the exclusive use of managing and operating Calaveras Transit services pursuant to this Agreement, and shall not be used for any other purpose. CTA shall not provide facilities or equipment for Contractor's use other than as stated in these Agreement documents.

For purposes of this Agreement, the turnover of all CTA-provided equipment from the present Contractor to the successor Contractor shall be coordinated by the CTA Contract Manager, who will make every effort to ensure that the successor Contractor has sufficient advance access to CTA-owned equipment for training and startup preparations.

## **1. Communications System**

### ***Radio Equipment***

CTA has installed a base radio and mobile radios in all vehicles and one hand-held radio. Contractor use of the CTA-provided equipment is optional at the determination of the Contractor. Should Contractor choose to utilize the radio system, it shall be done at Contractor's expense. Vehicle communication is otherwise available through agency-provided on-board tablets and software.

Should Contractor choose to utilize agency-provided radio equipment, Contractor shall be responsible for proper licensing of said equipment and shall comply with all applicable federal statutes and regulations in connection with such use. Contractor will be responsible for "air time" charges and maintenance of equipment for CTA-provided radios. Contractor is responsible for proper radio procedures and will be fully responsible for any action and/or fines imposed by the FCC for improper use of the system.

Contractor shall be responsible to provide any cellular phones used by Contractor staff, and shall be responsible for the appropriate use, airtime and other charges or expenses related to the use of cellular phones.

### ***Onboard Tablets (iPads) and Vehicle Tracking System***

Routine communication with in-service vehicles will be done via agency-provided tablets and vehicle monitoring software. CTA shall provide vehicle mounted cellular network data devices for use by the Contractor to monitor vehicle location and provide operating data using CTA-provided software (currently ZOOM! and Geotab). Airtime or other approved charges related to the use, maintenance, or repair of said data devices shall be paid for by CTA. Said devices will be used only for purposes intended and approved by CTA.

## **2. Onboard Vehicle Equipment**

CTA-provided onboard revenue vehicle equipment includes the following:

- Farebox Equipment
- Bicycle Racks
- Snow Chains

- Destination Signs
- iPads and iPad holder
- Geotab

### **3. Bus Stop Facilities**

CTA is responsible for placement and capital purchase of all bus stops, including bus stop signs and/or shelters, where they exist.

## CALAVERAS TRANSIT ASSET AND EQUIPMENT LIST

TYPE	Item	Date of Purchase	Qty
Tool-Service Truck	Hose Reel, 1/4", 50' Length	12/9/2015	2
Tool-Service Truck	Compressor/Generator 13HP 30GAL	12/9/2015	1
Tool-Service Truck	Honda Engine (came w/ compressor)	12/9/2015	1
Tool-Service Truck	8DR Chest CVR/FRT 26X17X19	12/7/2015	1
Tool-Service Truck	Pocket Maxx IC Diagnostic	12/13/2015	1
Tool-Service Truck	QC5600 Handheld	12/23/2015	1
Tool-Service Truck	1/2" Impact Wrench	12/7/2015	1
Tool-Service Truck	Pressure Washer, Hoses, Accessories	2/3/2016	1
Tool-Service Truck	Hose Reel	2/3/2016	1
Tool-Service Truck	Jumper Hose 8-10'	2/3/2016	1
Tool-Service Truck	Briggs & Stratton Engine (came W/ Pressure Washer)	2/3/2016	1
Tool-Service Truck	Vacuum Filtration System, HOSE, SCUPPER	2/3/2016	1
Tool-Service Truck	In-Line Strainer	5/5/2016	1
Tool-Service Truck	Water Supply Pump	5/5/2016	1
Tool-Service Truck	Water Tank (PRESSURE WASHER)	2/5/2016	1
Tool-Service Truck	Washdown Pump	7/1/2016	1
Tool-Service Truck	<b>Big Set Tools</b>		1
Tool-Service Truck	1/4" Dr Set		
Tool-Service Truck	6 Pc 3/8 Dr Adp/Ext Set		
Tool-Service Truck	3/8 Dr 11 Pc 6pt Shl Skt Set		
Tool-Service Truck	3/8 Dr 11 Pc 6pt Dp Skt Set		
Tool-Service Truck	3/8 Dr 12 Pc 12pt Shl Skt Set		
Tool-Service Truck	1/2 Dr Pc 6pt Gen Ser Set		
Tool-Service Truck	Pliers		
Tool-Service Truck	15pc L/Shp Hx Wrench Set		
Tool-Service Truck	11pc L/Shp Metric Hx Wrench Set		
Tool-Service Truck	Balpeen 16oz Hkry Hm		
Tool-Service Truck	Blk 7 5/8" Rig Car Scra		
Tool-Service Truck	3 Watt LED 2D cell Flashlight		
Tool-Service Truck	3/8 Dr 80T Std Hand Rat		
Tool-Service Truck	Mirror		
Tool-Service Truck	Dst/Imp Goggle		
Tool-Service Truck	16oz Plst Tp Hm		
Tool-Service Truck	Bi/Mld S/Gr Hdl Hksaw		
Tool-Service Truck	9pc 12Pt Com Wrench Set		
Tool-Service Truck	10pc 12Pt Met Com Wrench Set		
Tool-Service Truck	3pc Pliers Set		
Tool-Service Truck	11pc Pnch/Chsl Set		
Tool-Service Truck	8" Convert Snp Ring Pliers		
Tool-Service Truck	Tel 2lb Pick-Up Tool Chrome		
Tool-Service Truck	Wire Chimp		
Tool-Service Truck	8pc Combo Ins S/Gr Red Sd Set		
Tool-Service Truck	12' Standard Tape Measure		

## BUS SHELTERS

Type	Description	In-Service Date
Bus Shelter	9803- 49 MURPHYS GRADE	6/30/2017
Bus Shelter	9803- BALDWIN	6/30/2016
Bus Shelter	9803- BALDWIN	6/30/2017
Bus Shelter	MOKELUMNE HILL	3/23/2009
Bus Shelter	VALLEY SPRINGS	3/23/2009
Bus Shelter	GOVT CENTER	3/23/2009
Bus Shelter	ANGELS CAMP	3/23/2009
Bus Shelter	COPPEROPOLIS	6/30/2011
Bus Shelter	AVERY	6/30/2011
Bus Shelter	ARNOLD	6/30/2012
Bus Shelter	VALLEY SPRINGS	6/30/2015
Bus Shelter	SHELTER	6/30/2015
Bus Shelter	SAN ANDREAS	6/30/2015
Bus Shelter	SAN ANDREAS	6/30/2015
Bus Shelter	COPPER COVE	6/30/2015
Bus Shelter	9803-CKN BARN	6/30/2016
Bus Shelter	9803-COPELLO	6/30/2016
Bus Shelter	9803- COPELLO	6/30/2017
Bus Shelter	9803- COURTHOUSE	6/30/2016
Bus Shelter	9803- COURTHOUSE	6/30/2017
Bus Shelter	5317- CONTENTA	6/30/2016
Bus Shelter	9803- MOKE HILL	6/30/2016
Bus Shelter	9803- MOKE HILL	6/30/2017
Bus Shelter	9803- MURPHYS PLAY	6/30/2016
Bus Shelter	9803- MURPHYS PLAY	6/30/2017
Bus Shelter	9803- VSP/SR26	6/30/2017
Bus Stops	FEATHER DRIVE	6/30/2011
Bus Stops	BLUNDER INN	6/30/2011
Bus Stops	CONCRETE/ASPHALT	5/10/2007
Benches	MURPHYS	6/30/2015
Benches	MURPHYS	6/30/2015

## iPads and ACCESSORIES

iPad #	Purchase Date	Type	Serial No.
65	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FX50SCGHMN
66	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FWG2K1GHMN
68	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FWG2CFGHMN
69	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FX50GTGHMN
70	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FX50M2GHMN
71	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FX50C6GHMN
72	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FWG29VGHMN
V001	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FWG233GHMN
v002	10/13/2018	iPad min 4 WiFi Cellular 128 GB Space Gray	F9FX50JMGHMN

QTY	Purchase Date	Accessory Description
9	10/17/2018	ProCase iPad mini 4 Case - Leather Stand Folio Case Cover
9	10/17/2018	amFilm iPad mini 4 Screen Protector Glass
9	10/17/2018	Anker 24W Dual USB Car Charger
9	10/17/2018	Macally 2-in-1 Heavy Duty Cup Holder Mount
9	10/29/2018	Charging cables for vehicles

## EQUIPMENT

Type	Description	Qty
MISC	HYDRAULIC MOBILE LIFT(W/ CHARGER)	
MISC	HYDRAULIC MOBILE LIFT(W/ CHARGER)	
MISC	HYDRAULIC MOBILE LIFT(W/ CHARGER)	
MISC	HYDRAULIC MOBILE LIFT(W/ CHARGER)	
MISC	UPFITTING FOR FA000236	
Small Equipment	RCH-14 Schedule Holders	24
Small Equipment	RCH-24/36 Map Case	6
Small Equipment	Tools to open RCH holders	2
Small Equipment	Funnel Top	25
Small Equipment	Mounting Bracket	50
Small Equipment	Pole/Wall Mount Receptacle H9NBK	25
Small Equipment	Pole/Wall Mount Receptacle H9NEG	25
Radio	Motorola MotoTrbo XPR5550 W/ DESKTOP TRAY & MICRPHONE & POWER SUPPLY	1
Radio	Motorola MotoTrbo XPR5550 W/ DESKTOP TRAY & MICRPHONE & POWER SUPPLY	1
Radio	Motorola MotoTrbo XPR5550 W/ DESKTOP TRAY & MICRPHONE & POWER SUPPLY	1
Radio	Motorola MotoTrbo XPR5550 W/ COMPACT MICRPHONE, MOUNTING BRACKET & 10' POWER CABLE	1
Radio	Motorola MotoTrbo XPR5550 W/ COMPACT MICRPHONE, MOUNTING BRACKET & 10' POWER CABLE	1
Radio	Motorola MotoTrbo XPR5550 W/ COMPACT MICRPHONE, MOUNTING BRACKET & 10' POWER CABLE	1
Radio	Motorola MotoTrbo XPR5550 W/ COMPACT MICRPHONE, MOUNTING BRACKET & 10' POWER CABLE	1
Radio	Motorola MotoTrbo XPR5550 W/ COMPACT MICRPHONE, MOUNTING BRACKET & 10' POWER CABLE	1
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Radio	Motorola MotoTrbo XPR5550 W/ COMPACT MICRPHONE, MOUNTING BRACKET & 10' POWER CABLE	1
Radio	Motorola MotoTrbo XPR5550 W/ COMPACT MICRPHONE, MOUNTING BRACKET & 10' POWER CABLE	1
Radio	Motorola MotoTrbo XPR5550 W/ COMPACT MICRPHONE, MOUNTING BRACKET & 10' POWER CABLE	1
Radio	Motorola MotoTrbo XPR7550 W/BATTERY, CHARGER, ANTENNA, BELT CLIP	1
Radio	Motorola MotoTrbo XPR7550 W/BATTERY, CHARGER, ANTENNA, BELT CLIP	1
Radio	Motorola MotoTrbo XPR7550 W/BATTERY, CHARGER, ANTENNA, BELT CLIP	1



**PERFORMANCE STANDARDS**

CTA has established a minimum set of service standards to govern service delivery according to this Agreement. Those service standards are stated below. Should the Contractor's performance fall below established standards on any of these measures, the CTA may, at its sole discretion, implement or discontinue all or part of the program of incentives and/or liquidated damages described below.

The CTA Executive Director may issue a Notice of Deficiencies to the Contractor, specifying areas of unsatisfactory performance and specifying what improvements are necessary to correct the deficiency. Such notice shall specify the provision(s) of the Agreement documents that address the issue(s). Contractor shall correct the deficiency within reasonable time limits specified by the CTA. If the Contractor fails to correct deficiencies in a reasonable time, as determined by the CTA, the CTA may deduct from the hourly or mileage rates of compensation amounts consistent with the cost of providing such service as provided for in Section 7 of this Agreement.

**A. On-Time Performance****1 On-Time Departures**

*Standard:* It is the goal of the CTA that buses shall depart no more than five (5) minutes late from any scheduled stop and shall not leave any point prior to the scheduled departure time. The Contractor shall strive to see that a minimum of 95% of all departures from published or scheduled time points meet this criteria. Periods to be exempted from monitoring, such as during severe winter storms, will be negotiated between the CTA and the Contractor on an as-needed basis.

*Liquidated Damages/Incentives:* If the average percentage of on-time departures in an operating month falls at or below 90%, liquidated damages of three hundred (\$300) dollars per month may be assessed. If the average falls below 85%, liquidated damages of one thousand (\$1,000) dollars may be assessed. If on-time performance is above 99% or above, a bonus of one hundred (\$100) dollars may be granted.

*Monitoring:* The CTA will use the Contractor's monthly management reports, random field observations, and ZOOM! to monitor departures of scheduled trips.

**2 Operating Ahead of Schedule (HOT) - Fixed Route**

*Standard:* No bus shall leave any time point prior to its scheduled departure time.

*Liquidated Damages:* Liquidated damages of three hundred (\$300) dollars per incident may be assessed when a vehicle in revenue service is determined by the CTA to have left a scheduled time point prior to its scheduled departure time.

*Monitoring:* The CTA will use random field observations as well as valid customer input to monitor HOT trips.

### **3 Missed Trips**

*Standard:* The Contractor shall, at a minimum, complete 100% of all scheduled trips on a monthly basis. In the event of an in-service breakdown, driver's absence or other related problem, the Contractor shall provide adequate means to dispatch vehicles in such a fashion so as not to miss subsequently scheduled trips. Any fixed route trip operating 20 minutes or more behind the scheduled time shall be considered a "missed trip." Periods to be exempted from monitoring will be negotiated between the CTA and the Contractor.

*Liquidated Damages/Incentive:* Three hundred (\$300) dollars in liquidated damages plus non-payment for operation of the run, to a maximum of five hundred (\$500) dollars, may be assessed for each missed trip.

*Monitoring:* Contractor's monthly management reports, dispatch records and the CTA's random field observations will be used to monitor missed trips.

## **B. Reporting Requirements**

### **1 Monthly Management Reports.**

*Standard:* All monthly reports and operating statistics from the Contractor shall be submitted within ten (10) business days of the end of each month and checked for accuracy before they are presented to the CTA. Reports shall be prepared using CTA-provided software (ZOOM!) and any other data sources prescribed by CTA. The Contractor shall be responsible for fully utilizing all data tools provided by CTA and shall keep all data current and accurate on a daily basis. CTA may make additions and changes to the format of the monthly management reports as it deems appropriate.

*Liquidated Damages:* If reported operating statistics are found to be incorrect by the CTA, liquidated damages of fifty (\$50) dollars may be assessed for each error, up to a maximum of five hundred (\$500) dollars per month. If additional errors, missing information or backup documentation, other than those identified above, are found by the CTA in Contractor's Monthly Management Reports, liquidated damages of fifty (\$50) dollars may be assessed for each occurrence, up to a maximum of five hundred (\$500) dollars per month.

*Monitoring:* CTA staff will perform checks of monthly reports. Statistics on missed trips, "hot" routes, late trips and other route related problems will be checked by random field observations.

**Note:** In the event of omissions from, or falsification of operating statistics used to monitor standards used in the liquidated damages/incentives program, this Agreement is subject to immediate termination by CTA.

### **2 Accident and Incident Reporting.**

*Standard:* In addition to the above mentioned reports, the Contractor shall develop, implement and maintain formal procedures to respond to emergencies and routine problems which may occur in the course of providing transit service. The CTA will be immediately notified whenever an accident or incident occurs in which any bodily injury results. These and any accident or incident in which \$500 or more in damage to an

Agency vehicle or that of another party occurs are to be logged and reported to CTA as part of the monthly report. The Contractor shall interview the driver involved in any accident to ensure the clarity, accuracy and comprehensiveness of the report. The Contractor shall provide copies of all incident and accident reports to CTA within three (3) business days of the occurrence.

*Liquidated Damages:* Liquidated damages of three hundred (\$300) dollars may be assessed per occurrence of failure to notify the CTA of injury accidents within 24 hours or property damage and disturbances within 48 hours of occurrence.

*Monitoring:* CTA staff will perform checks of monthly reports and checked by random vehicle inspection.

### **3 California Highway Patrol (CHP) Compliance Reports**

*Standard:* Must achieve a satisfactory rating in all categories of the annual California Highway Patrol safety compliance report or any spot check.

*Liquidated Damages:* Liquidated damages may be assessed at the rate of one thousand (\$1,000) dollars per occurrence, per vehicle, if a satisfactory rating is not received.

*Monitoring:* Compliance reports provided by the California Highway Patrol.

## **C. Vehicles and Maintenance**

The standard for vehicles described below takes into consideration the overall mileage and age of the fleet. As the fleet ages and composition changes, standards may be revised accordingly.

### **1 Mileage between road calls**

*Standard:* Fifteen to Thirty Thousand (15,000-30,000) in-service miles between road calls per month which cause delays in excess of 5 minutes.

*Liquidated Damages/Incentive:* Liquidated damages of Three Hundred (\$300) dollars for any month in which average miles between road calls falls below 15,000 miles may be assessed. A bonus of fifty (\$50) dollars may be granted if average miles between road calls exceeds 35,000 miles per month. Repeated failure of Contractor to provide a sufficient number of safe, operable, road-worthy buses to operate full service on all routes may result in termination of the Agreement.

*Monitoring:* Monthly report, dispatch logs and/or evaluation of bus maintenance records.

*Note:* This standard is subject to review as newer vehicles go into revenue service.

### **2 Wheelchair Lift Failures.**

*Standard:* Wheelchair lifts shall be cycled once each day prior to in-service use. Lift failures shall be reported to dispatch and reported to the CTA in the following Monthly Management Report. Lift failures shall not delay a passenger's trip more than one hour. The Contractor shall examine service frequency to determine the most efficient

and timely alternative transportation available to the passenger(s). Manual operation of lift is considered a failure and should also be reported to the CTA.

*Liquidated Damages:* Five hundred (\$500) dollars in liquidated damages may be assessed if a lift failure occurs more than once on any one bus in service within a 30 day time period. Failure to provide a wheelchair passenger with an alternative means of transportation within one hour of failure may result in One Thousand (\$1,000) dollars in liquidated damages per incident.

*Monitoring:* The monthly management report shall list all in-service wheelchair lift failures that occur each month. All such failures shall be listed including date, time, route, vehicle and location. Detail shall be given on the alternative transportation provided to the passenger(s) and the length of time the passengers' transportation was delayed.

#### **D. Accidents**

##### **1 Preventable Accidents - System wide.**

*Standard:* The total vehicle miles between preventable accidents shall be greater than 50,000 miles. This standard shall be measured quarterly.

*Liquidated Damages/Incentive:* If total vehicle miles between preventable accidents falls below 50,000 in one quarter, or 100,000 miles in 2 consecutive quarters, liquidated damages of Fifteen Hundred (\$1,500) dollars per quarter may be assessed. If Contractor averages more than 150,000 miles between preventable accidents, in two or more consecutive quarters, a bonus of Two Hundred (\$200) dollars may be given per quarter.

*Monitoring:* Monthly Reports, accident reports and information from the Department of Motor Vehicles.

#### **E. Service Quality Standards**

1. **Destination Signs.** Fixed route vehicles are to display appropriate destination headings one hundred percent (100%) of the time while the buses are in operation.
2. **Personnel.** The Contractor is required to maintain the minimum staffing levels as set forth within Section 3 of the Scope of Work on a regular basis to ensure adequate service delivery.
3. **Vehicle Appearance.** The Contractor is required to maintain vehicle appearance in a clean, acceptable manner as set forth in Section 6.7 of the Scope of Work.

## **RECORDS AND REPORTS**

### **A. Records**

Financial and accounting records shall be prepared and maintained in a complete, detailed and accurate manner, in accordance with generally accepted accounting principles, pursuant to the requirements of any applicable State or Federal statute or regulation regarding accounting and financial reporting for publicly financed transit systems, including but not limited to Level R or the Uniform Financial and Reporting Elements as required under Section 15 of the Federal Transit Act of 1964, and Section 99243 of the California Public Utilities Code, as each of the foregoing are now in force or may hereafter be amended. Such records shall fairly and clearly disclose all of Contractor's costs incurred by virtue of its operation of Calaveras Transit, including but not limited to, pay and employee benefits, materials and supplies, utilities, maintenance, contractual services and all the related operating costs.

Contractor's records shall be kept with sufficient detail to constitute an audit trail to verify that all costs charged to CTA by virtue of this Agreement are due to the operation of Calaveras CTA's Public Transportation System only and are not due to the operation of any other service by Contractor.

Contractor's records shall be provided to CTA upon request for purposes of complying with Federal, State and local reporting requirements.

#### **1. General**

Contractor shall be responsible for collection and maintenance of data pertaining to all phases of the transit system operation, as specified hereunder, and/or as necessary for the preparation of required reports. Contractor shall be required to utilize CTA-provided software (ZOOM! and Geotab) to gather operating data, prepared required reports, and manage day-to-day operations. Contractor is further required to manage the data collected by the provided systems including validating data on a daily basis to ensure the records are complete and accurate. This is done at the end of each driver's shift or at other such times as necessary to ensure compliance. All such data is the property of CTA. It shall be available to CTA on an on-going basis and stored on CTA or Contractor systems to ensure data security.

Contractor shall gather, maintain, prepare and submit to CTA such operating information, records and reports as CTA may reasonably require to allow CTA to evaluate and analyze the type and quality of services provided pursuant to this Agreement. Such information shall include but not be limited to passenger boardings and alightings by service, route and fare category; revenue (first time point to last time point) and total (including deadhead) vehicle service hours by service and route; required ADA information; farebox revenues received; revenue and total (including deadhead) vehicle service miles; employee hours by service; fuel consumption; accident and road call information; service quality information, including late and missed trips, on-time performance, wait times, service complaints and unfulfilled service requests; and staffing and training information.

A monthly activity report including the above information and any other pertinent information shall be submitted to CTA by the tenth (10<sup>th</sup>) business day of the month following the reporting period. The report shall highlight any problems encountered along with suggested solutions. Report formats shall be determined by CTA. The format of any required reports may be modified from time to time by the CTA.

## **2. Record Access**

CTA, CTA representatives, other authorized governmental agency or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement, for the purpose of making audit, examination, excerpts and transcriptions of Contractor's files. Contractor shall maintain all these records for a period of at least three (3) years following Agreement termination.

## **3. Financial Records**

Contractor shall maintain accurate and complete books, records, data and documents in conformance with generally accepted accounting principles and in such detail and form so as to meet applicable local, State and Federal requirements.

A complete and separate set of books, accounts and/or records shall be maintained by Contractor, records shall show details of transactions pertaining to the management and operation of only this system under the terms of this Agreement. System transactions shall not be co-mingled with Contractor's other operations, if any. The Contractor's records shall be kept with sufficient detail to constitute an audit trail which verifies that any and all costs charged to the system are, in fact, due to operations pursuant to this Agreement, and not due to separate operations by Contractor.

## **B. Reports**

### **1. Reports due on a Monthly Basis**

Contractor shall collect all required data on a daily basis using software (ZOOM! and Geotab) provided by CTA and submit monthly summary reports to the CTA Contract Manager, along with invoices, by the tenth (10<sup>th</sup>) business day of the following month. The provided software is to be the source of data used to prepare the required reports. The software is also the tool used to collect, safeguard, and manage data for CTA. The period of the reports shall begin on the first day of the calendar month and end on the last day of the calendar month.

Each monthly report shall include a year-to-date summary in all categories. The required reports include, but may not be limited to:

- Manager's Summary - The report shall include a cover letter from the Operations Manager including general comments relating operational problems/concerns/issues, events, marketing activities, evaluations, solutions, etc.
- Monthly Summary Table - The table will include a compilation of data from ZOOM! including but not limited to: Ridership by route, service days, VRH, VRM, revenue, etc.

### **2. Data Available on a Daily Basis – Collected in Software**

The following data is to be collected by drivers and dispatchers and kept up-to-date on a daily basis through CTA-provided software (ZOOM!).

#### **A. Ridership**

Ridership for each route and type of service shall be shown on a monthly and year-to-date basis. Report shall show breakdown of ridership by service, route and fare category showing number and percentage of total ridership for regular, senior, disabled, college, youth, child, wheelchair, transfers, bike users, companions, and

free rides on a monthly and year-to-date basis. Additionally, the average number of riders per day shall be reported.

**B. Vehicle Revenue Hours**

The number of vehicle revenue hours and total service hours (including deadhead) operated for each route and service shall be shown on a monthly and year-to-date basis.

**C. Vehicle Revenue Miles**

The number of revenue vehicle miles and total service miles (including deadhead) operated for each route and service shall be shown on a monthly and year-to-date basis.

**D. Operating Days**

Total number of operating days for each transportation service shall be shown on a monthly and year-to-date basis.

**E. Farebox**

The report shall show the total farebox received for all services combined on a monthly and year-to-date basis.

Contractor may also be required to provide the farebox for each route and service shall be broken down to show the total cash, ticket and pass fares collected for each fare category. In addition, tickets and passes received on buses shall be shown separately from cash received and attributed to the route and service for which the ticket was used.

Daily farebox recovery information shall be provided to CTA upon request.

**F. Service Records**

Report shall show overall on-time performance including a description of breakdowns, road calls, missed trips or scheduled routes with any delays over fifteen (15) minutes.

**G. Complaints and Compliments**

A separate report shall provide all pertinent information regarding complaints including: time, date, name, address, phone and accurate account of complaint expressed by client. The Contractor shall also comment on action that was or needs to be taken.

**H. Vehicle Data**

- a. Odometer readings
- b. The fuel usage rate shown as number of gallons used and miles per gallon on a monthly and year-to-date basis.
- c. Any accidents or damage that occurred.
- d. Any breakdowns or malfunction of vehicle which occurred during previous month.
- e. The miles between breakdown or malfunction of vehicle and equipment.
- f. Interior cleaning schedule

**I. Employee Training**

The Employee Training Report shall summarize and document the number of hours devoted to employee operating and safety training programs, as well as training session agendas and attendance records. The Training Report will also specify the miles traveled in each transit vehicle for behind-the-wheel training.

**3. Accident/Incident Reports**

Written accident reports are to be submitted to CTA within one (1) business day for injury accidents or which result in more than \$500 in damage to an Agency or other vehicle, and within three (3) business days for non-injury accidents.

Telephone notification on all injury accidents or which result in more than \$500 in damage to an Agency or other vehicle shall be provided to CTA immediately. Incident reports are to be submitted within three (3) business days.

**4. California Highway Patrol (CHP) Compliance Reports**

CHP safety compliance reports are to be submitted to CTA within two (2) business days after CHP submits said report(s) to Contractor.

**5. Driver Pull Notice Participation**

The Contractor shall comply with Section 1808.1 Employer Notification of State of California Vehicle Code.

**6. Complaints/Requests**

Contractor shall receive complaints and requests from the public with courtesy, and shall keep written records of all complaints and requests received, and the number of unfulfilled service requests. Contractor shall respond to all complaints received, transmitting such records and responses to CTA on a monthly basis as indicated above.

**7. Drug and Alcohol Testing**

The Contractor shall certify annually its compliance with 49 CFR 655 before February 1st and to submit the Management Information System (MIS) reports before February 28th to the CTA. 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.





## THIRD PARTY CONTRACT CLAUSES

### Federal Transit Administration and California Department of Transportation Required Provisions

1. Source of Funding:

This contract entered on \_\_\_\_\_ between \_\_\_\_\_  
(DATE) (AWARDING AGENCY)  
and \_\_\_\_\_ for  
(CONTRACTOR)

(PROJECT)

is being funded with the following fund source(s) and amounts:

FUND SOURCE	AMOUNT

Parties referenced in the following clauses are defined as:

“Awarding Agency” is the subrecipient of the State of California Department of Transportation.

“PROJECT” is the Awarding Agency’s federally supported project.

“CONTRACTOR” is the third-party vendor who has entered into this third-party contract with the Awarding Agency to provide goods or services directly to the Awarding Agency for the accomplishment of the PROJECT.

“Subagreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

#### **For All Third-Party Contract Awards Excluding Micro-Purchases, Except Construction Contracts Exceeding \$2,000.00**

##### No Obligation to Third-Parties by use of a Disclaimer

- A. No Federal Government Obligation to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.
- B. Third-Party Contracts and Subagreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the subagreements of third-party contractors and the subagreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each subagreement financed in whole or in part with financial assistance provided by the FTA.
- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder.

## **THIRD PARTY CONTRACT CLAUSES**

### **Federal Transit Administration and California Department of Transportation Required Provisions**

The CONTRACTOR agrees to be fully responsible to the Awarding Agency for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the Awarding Agency's obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.

- D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.
- E. Awarding Agency Approval of Subagreements. The Awarding Agency shall approve in writing all proposed Subagreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Subagreements unless the same are approved in writing by the Awarding Agency. Any proposed amendments or modifications to such Subagreements must be approved by the Awarding Agency prior to implementation.

#### Program Fraud and False or Fraudulent Statements or Related Acts

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an 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, and pertaining to the underlying contract or the federally assisted PROJECT for which this contracted 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 in the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. 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 the FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. The CONTRACTOR agrees to include the above two clauses in each subagreement financed in whole or in part with Federal Assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### Access to Records

The Awarding Agency, the California Department of Transportation, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Contract of audits, examinations, excerpts,

## **THIRD PARTY CONTRACT CLAUSES**

### **Federal Transit Administration and California Department of Transportation Required Provisions**

and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every subagreement entered into relative to the PROJECT.

#### Record Keeping

The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Contract. All parties shall make such materials available at their respective offices at all reasonable times during the performance and for three (3) years from the date of final payment under this Contract and all subagreements.

#### Accounting Records

The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR'S accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

#### Federal Changes, Amendments to State, and Local Laws, Regulations, and Directives

The terms of the most recent amendments to any federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless the California Department of Transportation provides otherwise in writing.

#### Civil Rights (Title VI, EEO, & ADA)

During the performance of this Contract, the CONTRACTOR its assignees and successors in interest, agree to comply with all federal statutes and regulations applicable to grantee subrecipients under the Federal Transit Act, including, but not limited to the following:

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR 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. Section 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 from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation any issue.
- B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's Regulations, including employment practices when the Contract covers

### **THIRD PARTY CONTRACT CLAUSES**

#### **Federal Transit Administration and California Department of Transportation Required Provisions**

a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.

- C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Awarding Agency or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the Awarding Agency of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the Awarding Agency shall:
  - 1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
  - 2. Cancellation, termination, or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the Awarding Agency or the California Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the Awarding Agency to enter into such litigation to protect the interest of the Awarding Agency, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

#### Incorporation of FTA Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F 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

## THIRD PARTY CONTRACT CLAUSES

### Federal Transit Administration and California Department of Transportation Required Provisions

CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any California Department of Transportation requests which would cause the California Department of Transportation to be in violation of the FTA terms and conditions. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any Awarding Agency requests which would cause the Awarding Agency to be in violation of the FTA terms and conditions.

#### Energy Conservation

The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. Section 6321 et seq.

#### **Awards Exceeding \$10,000.00**

##### Additional Termination Provisions

- A. Termination for Convenience (General Provision). When it is in the Awarding Agency's best interest, the Awarding Agency reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the Awarding Agency. If the CONTRACTOR has any property in its possession belonging to the Awarding Agency, the CONTRACTOR will account for the same, and dispose of it in the manner the Awarding Agency directs.
- B. Termination for Default (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 Awarding Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

- C. Mutual Termination. The PROJECT may also be terminated if the Awarding Agency and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

#### **Awards Exceeding \$25,000.00**

##### Debarment and Suspension

## **THIRD PARTY CONTRACT CLAUSES**

### **Federal Transit Administration and California Department of Transportation Required Provisions**

- A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
- B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.
- C. Before entering into any subagreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that awarding agency and its "principals," as defined at 49 CFR Part 29.
- D. Before entering into any third-party contract exceeding \$25,000.00, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any subagreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

#### **Awards Exceeding \$100,000.00**

##### Buy America

The CONTRACTOR shall comply with the Buy-America requirements of 49 U.S.C. 5323(j) and 49 CFR Part 661 for all procurements of steel, iron, and manufactured products used in PROJECT. Buy-America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase equals or exceeds \$100,000.00. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

##### Provisions for Resolution of Disputes, Breaches, or Other Litigation

The Awarding Agency and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the Awarding Agency Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The Awarding Agency Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have the opportunity to challenge in writing within ten (10) working days to the Awarding Agency's Executive Director or his/her designee. If the CONTRACTOR'S challenge is not made within the ten (10) day period, the Awarding Agency Representative's decision shall become the final decision of the Awarding Agency. The Awarding Agency and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the Awarding Agency shall be final, conclusive, and

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#### **Federal Transit Administration and California Department of Transportation Required Provisions**

binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

##### Lobbying

- A. The CONTRACTOR agrees that it will not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, "New Restrictions on Lobbying." 49 CFR Part 20, if the bid is for an award for \$100,000.00 or more the Awarding Agency will not make any federal assistance available to the CONTRACTOR until the Awarding Agency has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal 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 grant, cooperative agreement, or any other federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;
- B. If applicable, 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 office or employee of any federal 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 the form instructions.
- C. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly.

This Contract is a material representation of facts upon which reliance was placed when the Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U.S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.

##### Clean Air

- A. 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. Section 7401 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

##### Clean Water

- A. 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. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees



## THIRD PARTY CONTRACT CLAUSES

### Federal Transit Administration and California Department of Transportation Required Provisions

that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### Awards with Transport of Property or Persons

##### U.S. Flag Requirements (Cargo Preferences)(Fly America)

- A. Shipments by Ocean Vessel. For third-party contracts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subagreements must comply with 46 U.S.C. Section 55303 and 46 CFR Part 381, "Cargo Preferences-U.S. Flag Vessels."
- B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subagreements must comply with the "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States of America Flag Carriers," and 41 CFR Section 301-10.131 through 301-10.143.
- C. Project Travel. In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, ("Fly America" Act), 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.

#### Awards with Transit Operations

##### Transit Employee Protective Arrangements (Transit Operation Only)

The CONTRACTOR agrees to comply with applicable transit employee protective requirements, as follows:

- A. The 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. 5333(b), and U.S.DOL guidelines at 29 CFR Part 215, and any amendments there to.
- B. The CONTRACTOR also agrees to include the applicable requirements in each subagreement involving transit operations financed in whole or in part with federal assistance provided by the FTA.

##### Charter Service Operations

(Transit Operation and Rolling Stock Only) The CONTRACTOR agrees to comply with 49 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and awarding agencies of the 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 listed at 49 CFR-Subpart B. 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. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on federally assisted equipment) of providing the service. The CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this contract, and any violation of this contract may

## **THIRD PARTY CONTRACT CLAUSES**

### **Federal Transit Administration and California Department of Transportation Required Provisions**

require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

#### School Bus Operations

(Transit Operation and Rolling Stock Only) Pursuant to 49 U.S.C. 5323(F) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(F) and implementing regulations, and (2) comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment of facilities acquired with federal assistance awarded by the FTA and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR Part 605 apply to any school transportation agreement, and a violation of the contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

#### Vehicle Operator Licensing

The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration regulations and the California Vehicle Code including, but not limited to, the requirement that all vehicle operators have a valid State of California driver's license, including any special operator license that may be necessary for the type of vehicle operated.

#### Drug-Free Workplace (FTA Section 5311 Awards)

The CONTRACTOR certifies by signing a Contract with the Awarding Agency that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with Government Code Section 8355, et seq. The CONTRACTOR is required to include the language of this paragraph in award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all awarding agencies shall disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any awarding agency at any tier, or their employees, perform a safety sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor at any tier, each affected awarding agency at any tier, and their employees with 49 U.S.C. Section 5331, and the FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.

The follow drug and alcohol testing options are compliant with drug and alcohol rules. One of these options must be selected. Options 2 and Options 3 require additional information to be completed:

#### *Drug and Alcohol Testing Option 2*

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the California Department of Transportation, or the Awarding Agency to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before March 1 to the designated Calaveras Transit Agency Project Manager. To certify compliance the CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and

## **THIRD PARTY CONTRACT CLAUSES**

### **Federal Transit Administration and California Department of Transportation Required Provisions**

Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

#### **Awards with Rolling Stock**

##### Bus Testing

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5318(e), 5323(c), and the FTA regulations, "Bus Testing," 49 CFR Part 665, and any revision thereto, including the certification that before expending any federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or before authorizing final acceptance of that bus, that model of bus will have been tested at the ALTOONA Bus Research and Testing Center. The CONTRACTOR must obtain the final testing report and provide a copy of the report to the Awarding Agency.

##### Pre-Award and Post Delivery Audit

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5323(l), 5323(m), and the FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

#### **Awards with Planning, Research, Development, and Documentation Projects**

##### Patent Rights & Rights in Data and Copyrights (Research or Data Development Only)

In accordance with 37 CFR Part 401, 49 CFR Parts 18 and 19, the CONTRACTOR must comply with patent and rights in data requirements for federally assisted contracts involving experimental, developmental, or research work. The Awarding Agency reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and reserves the right to grant authority to others.

#### **Miscellaneous Special Requirements**

##### Intelligent Transportation Systems (ITS) National Architecture

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

##### Section 504 and Americans with Disabilities Act Program Requirements

The CONTRACTOR will comply with 49 CFR Parts 27, 37, and 38, implementing and Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.

##### DBE Contract Assurance

The CONTRACTOR, or SUBCONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR or SUBCONTRACTOR shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of [Federal] DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of the Standard Agreement between the STATE and the Awarding Agency, the termination of this contract by the Awarding Agency, or such other remedy the STATE or Awarding Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;

## **THIRD PARTY CONTRACT CLAUSES**

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- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future bidding as non-responsive.

Awarding Agency shall notify the CALTRANS DBELO in the event the Awarding Agency finds the CONTRACTOR or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business days the finding is made.

#### DBE Participation Goal

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The contract goal for participation of Disadvantaged Business Enterprises (DBE) for this contract is 2%.

Offerors are required to document sufficient DBE participation to meet the contract goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53 (3)(i)(A). Award of this contract is conditioned on submission of the following:

1. If the offer meets the DBE contract goal the offeror must include with the offer a completed ADM-0227F form.
2. If the offer cannot meet the DBE contract goal the offeror must include with the offer a completed ADM-0312F form that documents the offeror's good faith efforts (GFE) and ADM-0227F form. The Awarding Agency must document concurrence with the offeror's GFE and provide a copy of the GFE to Caltrans DRMT Compliance Liaison for additional concurrence prior to contract award.

The CONTRACTOR shall not terminate the DBE subcontractors listed on ADM-0227F without the Awarding Agency's prior written consent and concurrence from the CALTRANS DBELO. The Awarding Agency may provide such written consent only if the CONTRACTOR has good cause to terminate the DBE firm. Before transmitting a request to terminate, the CONTRACTOR shall give notice in writing to the DBE SUBCONTRACTOR of its intent to terminate and the reason for the request. The CONTRACTOR shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the CONTRACTOR shall make good faith efforts (GFE) to find another DBE subcontractor to substitute for the original DBE and immediately notify the Awarding Agency in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.

#### Continued Compliance

The Awarding Agency shall monitor the CONTRACTOR'S DBE compliance during the life of this contract and submit to the STATE a completed ADM-0369 form in each their request for reimbursement (RFR) packet.

#### Prompt Payment and Return of Retainage

- A. The Awarding Agency shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.

### **THIRD PARTY CONTRACT CLAUSES**

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- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

#### Recycled Products

The CONTRACTOR agrees to comply with all 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.

#### Contract Work Hours and Safety Standards Act (Applicable to: Construction contracts and, in very limited circumstances, non-construction projects that employ laborers or mechanics on a public work.)

- A. The CONTRACTOR agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 33 and also ensure compliance of its subcontractors; if applicable, CONTRACTOR shall comply with DOL regulations "Safety and Health Regulation for Construction" 29 CFR Part 1926.
- B. No CONTRACTOR or subcontractor contracting for any part of the 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 the rate of 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

49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

*(To be submitted with each bid or offer exceeding \$100,000)*

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.* )]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all 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 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