



**RIVERSIDE TRANSIT AGENCY, 1825 Third Street, Riverside, CA 92507
(951) 565-5000**

The Contract to be awarded may be paid for in part with Federal Transit Administration (FTA) funds and/or State Transit Assistance (STA) funds. Therefore, Offerors shall comply with all applicable terms and conditions prescribed by the FTA for third party contracts.

REQUEST FOR PROPOSALS (RFP) S23103F

PURCHASE OF NATURAL GAS AND/OR MANAGEMENT OF CREDIT PROGRAMS

TABLE OF CONTENTS

NOTICE OF REQUEST FOR PROPOSALS

SECTION I
INSTRUCTIONS TO OFFERORS

SECTION II
PROPOSAL CONTENT

SECTION III
EVALUATION AND AWARD
A. EVALUATION CRITERIA
B. EVALUATION PROCEDURE
C. AWARD
D. NOTIFICATION OF AWARD

SECTION IV
DISADVANTAGED BUSINESS ENTERPRISE

EXHIBIT A SCOPE OF SERVICES

EXHIBIT B PRICE/REVENUE FORM

EXHIBIT C REQUIRED FORMS
CERTIFICATION OF PRIMARY PARTICIPANT
CERTIFICATION OF LOWER-TIER PARTICIPANTS
CERTIFICATION OF RESTRICTIONS ON LOBBYING
CERTIFICATION OF DRUG FREE WORKPLACE
PARTY DISCLOSURE FORM
PARTICIPANT DISCLOSURE FORM
AFFIDAVIT OF NON-COLLUSION
FINANCIAL STATUS REQUIREMENT CERTIFICATION BY
CONTRACTOR
INSURANCE ACKNOWLEDGEMENT FORM
DBE PARTICIPATION
W-9 FORM

EXHIBIT D TERMS AND CONDITIONS
PROPOSED AGREEMENT
ATTACHMENT A – FEDERAL TRANSIT ADMINSTRATON
REQUIRED CLAUSES

July 18, 2023

**SUBJECT: NOTICE OF REQUEST FOR PROPOSALS (RFP)
S23103F PURCHASE OF NATURAL GAS AND/OR MANAGEMENT OF
CREDIT PROGRAMS**

Prospective Offerors:

The Riverside Transit Agency (RTA) invites proposals from qualified firms to provide solutions on how best to (1) meet its daily natural gas requirements at a minimum cost and (2) maximize the value of alternative fuel credits available to the RTA. Potential vendors shall propose a solution that both meets the Agency’s natural gas requirements and allows the Agency to remain eligible for credits through the California Low Carbon Fuel Standard (LCFS) and federal Renewable Identification Numbers (RIN) programs. These services shall be provided as described in Exhibit A, Scope of Services. The contract term will be for a three-year base period effective January 1, 2024 through December 31, 2026, with two subsequent one-year option periods. Services are on an as needed basis with no guaranteed minimum level of service. RTA anticipates award of a firm-fixed priced contract for this project.

Key RFP Dates and Times		
Activity	Date	Time
RFP Issued:	July 18, 2023	
Pre-Proposal Conference via Teams:	Not Applicable	Not Applicable
Questions/Clarifications/Approved Equals Due:	August 3, 2023	before 5:00 pm Pacific Time
RTA Responses Due:	August 10, 2023	before 5:00 pm Pacific Time
Proposals Due:	August 22, 2023	before 2:00 pm Pacific Time

Agency may need to hold interviews/oral briefings on **September 12-13, 2023**. Please have some availability and flexibility around these dates.

REGISTRATION/ACCESSING PROCUREMENTS VIA RTA VENDOR PORTAL:

Parties interested in obtaining a copy of this RFP, may do so by completing a new vendor registration on RTAs Vendor Portal website hosted by PlanetBids at <https://www.riversidetransit.com/index.php/about-rta/doing-business-with-rta> select HOW TO DO BUSINESS WITH RTA and click the REGISTER / VIEW OPEN OPPORTUNITES link. You must be registered in the vendor portal to access the RFP. Once you access the above link, you will be redirected to the vendor portal where you click on ‘New Vendor Registration’ to register. You will receive an e-mail via PlanetBids to verify your e-mail address; click ‘Verify’ and you will be redirected to complete your vendor profile.

When registering your firm, please ensure that you select the North American Industry Classification System (NAICS) category codes that applies to your firm. If you are unsure of your category code, visit <https://www.census.gov/naics/> and do a keyword search “2022

NAICS Search” pertaining to your business (such as janitorial, construction, engineering services, etc.) to receive all codes containing that keyword in the title/description. Click on the specific category code to further see all corresponding entries applicable to this code. Once your registration is complete, you can then search for the RFP in ‘Bid Opportunities’.

To receive all further information regarding this RFP, you must have completed a vendor registration and become a PlanetBids ‘prospective bidder’ for this procurement. Prospective Offerors who receive incomplete information regarding the procurement run the risk of submitting a proposal that is non-compliant and, as a result, being deemed non-responsive.

QUICK TIPS:

Please note the following tabs that will be available once you have successfully registered and accessed the subject procurement in PlanetBids:

Bid Opportunities

- **Bid Information Tab** – Provides bid detail information, due dates, agency contact information, etc. Please be sure to review the ‘Response Types’ for items that are required to be submitted.
- **Line Items Tab (if applicable)** – Provides the line items bidder/offeror must completed in PlanetBids.
- **Documents Tab** – Allows bidder/offeror to download and view documents. There are documents that must be reviewed, filled out and submitted. See below instructions under ‘Place eBid’ on how to submit and attach documents. See below list of documents that will you find in PlanetBids:

Document	Task
No Response/Decline Form	Offerors choosing not to submit a bid are requested to complete the ‘No Bid/Offer’ form and email to lrose@riversidetransit.com
RFP S23103F Solicitation Document - All Sections, Exhibit A – Scope of Services - Proposed Agreement	Review Only
Exhibit B: Cost File / Price-Revenue Form	Review, fill out, and submit
Exhibit C: Required Forms (Includes following forms): - Certification of Primary Participant - Certification of Lower-Tier Participants - Certification of Restrictions on Lobbying - Certification of Drug Free Workplace - Party Disclosure - Participant Disclosure - Affidavit of Non-Collusion - Financial Status Requirement Certification - Insurance Acknowledgement - Disadvantaged Business Enterprise DBE forms - W-9	Review, fill out, and submit

- **Addenda/Emails** – Look out for all addenda that are issued by the agency. All addenda must be acknowledged in PlanetBids.
- **Q&A** – Allows bidder/offeror to submit questions along with ability to attach files for corresponding questions. For example, requests for ‘Approved Equals’ may be provided as attachments for Agency review and consideration. Responses to questions, clarifications, approved equal requests, exceptions/deviations will be released via addenda.

Place eBid

Once you click on ‘Place eBid’ you will have access to the following tabs:

- **Detail** – Enter your contact information
- **eBid Instructions** – Reminders and other pertinent information
- **Attachment** – This section is for the required attachments that must be included in your submittal. The list of required attachments can be found on the ‘Bid Information Tab’, under ‘Bid Details’ and ‘Response Types’. Agency provided required attachments can be found under the ‘Documents Tab’. Other required attachments will need to be provided by bidder/offeror.
- **Line Items (if applicable)** – Enter pricing and corresponding information and click ‘Submit’ if you are ready to formally submit. If not ready to submit, you can always click ‘Save’ and return to edit at any time prior to procurement closing date and time.

If you require assistance with the registration or the submittal process, you may contact PlanetBids at <https://pbsystem.planetbids.com/portal/55483/help> or the undersigned below.

SPECIAL NOTICES:

Please review and follow all special notices associated with this procurement. Special notices can be found under the ‘Bid Information’ tab in PlanetBids.

Should further information be needed regarding this procurement, please contact the undersigned at (951) 565-5076 or via email rose@riversidetransit.com. If emailing, please include the following information:

- Name of firm
- Address
- Contact person
- Telephone number
- Email address
- RFP S23103F

Regards,



Luciano Rose Jr.
Sr. Contracts Administrator

SECTION I
INSTRUCTIONS TO OFFERORS

SECTION I. INSTRUCTIONS TO OFFERORS

A. PRE-PROPOSAL CONFERENCE/SITE VISIT

There will be no pre-proposal conference or site visit scheduled for this procurement.

B. EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, OFFEROR represents that it has thoroughly examined and become familiar with the services required under this Request for Proposal (RFP) and that it is capable of performing quality services to achieve RTA's objectives.

Failure to comply with all requirements of this RFP and any subsequent amendments issued may result in OFFERORS proposal being excluded from further evaluation.

C. ADDENDA

Any RTA changes to the requirements shall be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Contract. RTA shall not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions.

D. RTA CONTACT

All questions and/or contacts with RTA staff regarding this RFP are to be directed to the following procurement staff member:

Luciano Rose Jr - Sr. Contracts Administrator
Riverside Transit Agency (RTA)
1825 Third Street
P.O. Box 59968
Riverside, CA 92517-1968
Phone: (951) 565-5076
Email: lrose@riversidetransit.com

E. CLARIFICATIONS

1. Examination of Documents

Should an OFFEROR require clarifications of this RFP, OFFEROR shall notify RTA in writing in accordance with Section E.2 below. Should it be found that the point in question is not clearly and fully set forth, RTA shall issue a written addendum clarifying the matter that shall be sent to all persons who have requested the RFP.

2. Submitting Requests

- a) All questions and requests for clarifications, questions, and comments must be received before **See 'Questions/Clarifications' under Key RFP**

SECTION I. INSTRUCTIONS TO OFFERORS

Dates and Times in RFP cover letter. Inquiries received after this date and time may not be accepted.

- b) All questions shall be submitted via the PlanetBids Online Q&A for this RFP.

3. RTA Responses

Responses from RTA shall be communicated via the PlanetBids Online Q&A for this RFP before **See 'RTA Responses Due' under Key RFP Dates and Times in RFP cover letter.**

F. SUBMISSION OF PROPOSALS

Offeror shall not modify any portion of the RFP document in any way other than to enter pricing in the Price Form. Offerors shall not submit to RTA a re-typed, word-processed, or otherwise recreation version of the RFP as doing so may deem your proposal non-responsive. Any additional information or clarification shall be submitted separately on a company letterhead.

1. Date and Time

Proposals must be submitted at or before **See 'Proposals Due' under Key RFP Dates and Times in RFP cover letter.**

Proposals received after the above-specified date and time shall be returned to OFFERORS unopened.

2. Identification/Submittal of Proposals

Proposal shall be submitted electronically via PlanetBids **only** and shall contain the following Response Types (See RFP Section II. Proposal Format and Content):

- **Response File (Paragraphs B and C)**
 - Letter of Transmittal
 - Technical Proposal
- **Cost File (Paragraph D)**
 - Price Form
- **General Attachments (Paragraph E, Required Forms)**
 - Required Forms
 - Other Required Attachments
 - Financial Supporting Documentation

3. Acceptance of Proposals

- a) RTA reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.

SECTION I. INSTRUCTIONS TO OFFERORS

- b) RTA reserves the right to withdraw this RFP at any time without prior notice and RTA makes no representations that any contract shall be awarded to any OFFEROR responding to this RFP.
- c) RTA reserves the right to postpone proposal openings for its own convenience.
- d) RTA reserves the right to award portions of the Scope of Work as it deems necessary.
- e) Submitted proposals are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by OFFEROR in:

- a) Preparing its proposal in response to this RFP;
- b) Submitting that proposal to RTA;
- c) Negotiating with RTA any matter related to this proposal; or
- d) Any other expenses incurred by OFFEROR prior to date of award if any

RTA shall not, in any event, be liable for any pre-contractual expenses incurred by OFFEROR in the preparation of its proposal. OFFEROR shall not include any such expenses as part of its proposal.

H. JOINT OFFERS

Where two or more OFFERORS desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. RTA intends to contract with a single firm and not with multiple firms doing business as a joint venture.

I. TAXES

OFFERORS' proposals are subject to State and Local sales taxes; however, RTA is exempt from the payment of Federal Excise and Transportation Taxes.

J. PROTEST PROCEDURES

RTA has on file a set of written protest procedures applicable to this RFP. These procedures may be obtained by contacting the Administrator responsible for this

SECTION I. INSTRUCTIONS TO OFFERORS

procurement. Any protest filed by an OFFEROR in connection with this RFP must be submitted in accordance with RTA's written procedures.

K. PROPOSED AGREEMENT

Successful OFFEROR shall be subject to the provisions contained in the Proposed Agreement No. S23021F included in this RFP. The final Agreement shall incorporate the "Scope of Services" (see Exhibit A to RFP), the successful OFFERORS proposal, and successful OFFERORS "Price Form". The final Agreement may also incorporate other pertinent terms and conditions set forth in this RFP. OFFERORS inability or unwillingness to meet any requirements set forth in Exhibit D, Proposed Agreement, as a condition of contract award, must be stated as an exception in the proposal.

The Offeror's attention is directed particularly to Article 15 "Insurance", which specifies the minimum insurance requirements that must be met by the successful Offeror. The final Agreement may also incorporate other pertinent terms and conditions set forth in this RFP. Finally, the negotiated Agreement with the successful vendor must contain provisions that protect the Agency's interests in the event of delayed or non-delivery of natural gas; please include proposed language in your proposal.

L. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, shall be a Firm Fixed Price contract for all services set forth in the Scope of Work included this RFP as Exhibit A. While a Firm Fixed Price is the preferred method of pricing, RTA shall also consider offers quoted on a cost-plus-fixed-fee or time-and-expense basis, although the latter, in particular, may be subject to a significant deduction of points in RTA's evaluation of the proposals received.

M. CONFIDENTIALITY OF PROPOSALS

Access to government records is governed by the State of California. Except as otherwise required by the State of California, RTA shall exempt from disclosure proprietary information, trade secrets, confidential and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential and financial information, which an OFFEROR believes should be exempted from disclosure, shall be specifically and clearly identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential and financial information shall not assure confidentiality.

RTA shall employ sound business practices no less diligent than those used for the RTA's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by OFFERORS.

SECTION II
PROPOSAL FORMAT AND CONTENT

SECTION II. PROPOSAL FORMAT AND CONTENT

A. PRESENTATION

Proposals shall be typed, double-spaced, submitted on 8 1/2" x 11" size paper, with Arial or Times New Roman font in size 12. **Proposal shall be in PDF format.** Although there is no maximum page restriction, Offers should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged, and presentations should be brief and concise; proposal submittals shall be organized as set forth below.

B. LETTER OF TRANSMITTAL

The Letter of Transmittal shall be included in the technical proposal submittal and addressed to Luciano Rose Jr., and must, at a minimum, contain the following:

1. Identification of OFFEROR, including name, address, email address, facsimile and telephone numbers.
2. Proposed working relationship between OFFEROR and subcontractors who supply or provide services that are 10% or greater of the total component costs. Provide subcontractors name, address, and telephone numbers.
3. Acknowledgment of receipt of all RFP addenda (by Addendum No.), if any. Name, title, address, telephone number, and e-mail address of contact person during period of proposal evaluation.
4. A statement indicating the proposal shall remain valid for a period of not less than 120 days from the date of submittal.
5. Name and signature of a person authorized to bind OFFEROR to the terms of the proposal and to negotiate contract price/terms on OFFERORS behalf.
6. Statement attesting that all information submitted with the proposal is true and correct.

C. TECHNICAL PROPOSAL

1. Qualifications and Related Experience

This section of the proposal should establish the ability of OFFEROR and OFFERORS subcontractors to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects.

OFFEROR shall:

- a) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size, and location of offices; and number of employees.
- b) Provide a general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger, potential labor disputes) that may impede OFFERORS ability to complete the project.

SECTION II. PROPOSAL FORMAT AND CONTENT

Provide one of the following: an audited financial statement, a Dun & Bradstreet report, a filed federal tax return for the immediately preceding tax year, or a one-page summary from a CPA. The CPA summary should clearly identify the financial status and condition of OFFERORS immediate business entity, as well as that of the overall Company structure, if applicable; the date of this statement should cover a period of at least one (1) year and should be dated no more than twelve (12) months prior to the date of the proposal submission.

- c) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP and highlight the participation in such work by the key personnel proposed for assignment to this project. Include the name and location of each project, the year it was initiated, completed or the anticipated completion, and the contract value.
- d) Identify subcontractors providing services that are 10% or greater of the total services costs by company name, address, contact person, telephone number and project function. Describe OFFERORS experience working with each subcontractor and information specific to the subcontractor's qualifications to perform the identified services. If you are proposing to utilize a subcontractor or if you are a DBE firm, **the Subcontractor Information must be completed and submitted.**

2. References

This section of the proposal should establish the ability of OFFEROR and OFFERORS subcontractors to satisfactorily perform the required work by reasons of supportive client references.

OFFEROR shall:

- a) Provide a minimum of three (3) references for the projects cited as related experience, and furnish the name, title, complete address, telephone number and email address of the person(s) at the client organization who is most knowledgeable about the work performed. OFFEROR may also supply references from other work not cited in this section as related experience. OFFEROR should ensure contact's information are accurate; inaccurate references may be a factor in the overall evaluation of the proposal. Each reference must specifically address start/end dates and contract value of the project and services provided which should correlate with the requirements of this RFP.

3. Project Staffing and Project Organization

This section of the proposal should establish the method that shall be used by OFFEROR to manage the project and subcontractors as well as identify key personnel assigned.

OFFEROR shall:

- a) Submit a project organization chart clearly indicating all communication/reporting relationships among the project functions and staff, including subcontractors.

SECTION II. PROPOSAL FORMAT AND CONTENT

- b) Provide education, experience, and applicable professional credentials of project staff.
- c) Provide resume of proposed Project Manager and all proposed key personnel assigned to the project. Include the person's name, education, experience, current location, proposed position for this project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with your firm.
- d) Include the statement that key personnel shall be available to the extent proposed for the duration of the project and acknowledge that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of RTA.

4. Technical Approach/Work Plan

OFFEROR shall provide a detailed narrative addressing the Exhibit A, Scope of Work/Services requirements and demonstrating OFFERORS understanding of and ability to meet RTA's needs and requirements.

OFFEROR shall:

- a) Describe the approach and work plan for completing the tasks specified in the Scope of Work/Services. The work plan shall be of sufficient detail to clearly demonstrate OFFERORS ability to accomplish the project objectives and overall schedule.
- b) Outline sequentially the activities that would be undertaken in completing the tasks and specify who in the firm would perform them if applicable.
- c) Furnish a schedule/timeline for this project that is effective January 1, 2024; including but not limited to ensuring your firm is registered with the SoCal Gas Company if providing natural gas and any other registrations relevant to the state LCFS program and the federal RFS/RINs program.
- d) Identify the methods OFFEROR shall use to ensure quality control as well as budget and schedule control for the project.
- e) Offerors should discuss their process/procedures for collecting operational and financial data and demonstrate their understanding of various data collection activities and reporting requirements as required under Title 17 of the California Code of Regulations.
- f) Identify and provide all sample agreements that Agency will be required to execute should your firm be successful.

SECTION II. PROPOSAL FORMAT AND CONTENT

OFFEROR may also propose procedural or technical enhancements/innovations to the Scope of Work/Services that does not materially deviate from the objectives or required content of the project if applicable.

5. Exceptions/Deviations

OFFEROR shall:

Identify exceptions to or deviations from the requirements of this RFP, shall be grouped by "technical" or "contractual" exceptions/deviations. Each exception/deviation shall reference the particular section in the Scope of Work/Services or Proposed Agreement Article that refers to RTA's requirements. If your firm has no clarification, exception or deviation, a statement to that effect shall be included in the proposal. **Note: Proposals with exceptions/deviations not clarified during the clarification phase described in Section I, Paragraph E Clarifications, may be eliminated from further consideration.**

D. PRICE/REVENUE PROPOSAL

OFFEROR shall:

Provide their price/revenue proposal in the format as requested by the Price Form. Complete all forms in Exhibit B, Price Form, and furnish any narrative required to explain the prices proposed in the schedules. The Price Form shall be provided for the prime Contractor and all Subcontractors; if needed, supplemental pages shall be provided to show all cost details. Offerors fee schedules shall **NOT** be submitted as a substitute for the Price Form. Fee schedules and any other supplemental pricing information shall be provided to support proposed pricing on the Price Form.

E. REQUIRED FORMS

OFFEROR shall:

Complete all forms in Exhibit C, Required Forms.

1. Certification of Primary and Lower-Tier Participants (Debarment)

Policy

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded, as defined in FTA Circular 2015.1, dated April 28, 1989, may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, RTA may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

SECTION II. PROPOSAL FORMAT AND CONTENT

A certification process has been established by 49 C.F.R. Part 29, as a means to ensure that debarred, suspended, or voluntarily excluded persons or firms do not participate in a federally assisted project (See Exhibit C for form). The inability to provide the required certification shall not necessarily result in denial or participation in a covered transaction. A person or firm that is unable to provide a positive certification, as required by this solicitation, must submit a complete explanation attached to the certification. FTA shall consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

Each potential contractor for a major third-party contract must provide to RTA a certification for a primary participant. Each potential subcontractor must provide to RTA a certification for a lower-tier participant. In general, subcontracts of less than \$25,000 shall not be covered by the certification procedures.

2. Restrictions on Lobbying

As a recipient of federal funds, RTA is required to certify compliance with the influencing restrictions and efforts of OFFEROR to influence federal officials regarding specific procurements in excess of \$100,000 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

Exhibit C to this solicitation contains the following: a certification form entitled "Certification of Restrictions on Lobbying," the Office of Management and Budget (OMB) Standard Form LLL entitled "Disclosure of Lobbying Activities," and a document entitled "Limitation on Payments to Influence Certain Federal Transactions." Successful OFFEROR to this solicitation shall be required to complete and submit to RTA the certification form entitled "Certification of Restrictions on Lobbying" whether or not any lobbying efforts took place. If successful OFFEROR did engage in lobbying activities, then OMB Standard Form LLL "Disclosure of Lobbying Activities" must also be completed and submitted to RTA.

All forms must be completed and submitted with the Offer. Failure to complete this certification shall render an Offer nonresponsive to this solicitation and shall result in the rejection of the Offer.

3. Certification of Drug Free Workplace

Third-party contractors providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

4. Party and Participant Disclosure Forms

SECTION II. PROPOSAL FORMAT AND CONTENT

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Boards of Directors, OFFEROR is required to complete the Party and Participant Disclosure Forms provided in Exhibit C of this RFP and submit as part of the proposal, if applicable. OFFEROR is required to submit only ONE copy of the completed form(s) as part of its proposal and it should be included only in the original proposal. Both OFFEROR and its subcontractors must complete the form entitled "Party Disclosure Form". Lobbyists or agents representing OFFEROR in this procurement must complete the form entitled "Participant Disclosure Form".

5. Affidavit of Non-Collusion Form

Certification that OFFEROR/BIDDER has not conspired with a competitor or any other company to create an unfair advantage over other offerors/bidders.

6. Certification of Financial Requirement

Acknowledgement by Contractor of the requirement to submit financial documentation with proposal and that financial documentation meets the indicated criteria.

7. Insurance Acknowledgement Form

Acknowledgement by Contractor of the requirement to submit insurance documentation that meets the coverages and limits as specified.

8. DBE Participation

List of all subcontractors proposed to participate on the contract. This will also include the prime contractor's information.

9. W9 Form

Request for Taxpayer Identification Number and Certification

F. PUBLIC RECORDS POLICY

Responses (proposals) to this Request for Proposal (RFP) and the documents constituting any Contract entered into thereafter become the exclusive property of RTA and shall be subject to the California Public Records Act (Government Code Section 6250 et seq.). RTA's use and disclosure of its records are governed by this Act.

Those elements in each proposal which OFFEROR considers to be trade secrets, as that term is defined in Civil Code Section 3426.1(d), or otherwise exempt by law from disclosure, should be prominently marked as "TRADE SECRET", "CONFIDENTIAL", or

SECTION II. PROPOSAL FORMAT AND CONTENT

“PROPRIETARY” by OFFEROR. RTA shall use its best efforts to inform OFFEROR of any request for disclosure of any such document. RTA, shall not in any way, be liable or responsible for the disclosure of any such records including, without limitation; those so marked if disclosure is deemed to be required by law or by an order of the Court.

In the event of litigation concerning disclosure of information OFFEROR considers exempt from disclosure, RTA shall act as a stakeholder only, holding the information until otherwise ordered by a court or other legal process. If RTA is required to defend an action arising out of a Public Records Act request for any of the contents of a OFFERORS proposal marked “Confidential”, “Proprietary”, or “Trade Secret”, OFFEROR shall defend and indemnify RTA from all liability, damages, costs, and expense, including attorneys’ fees, in any action or proceeding arising under the Public Records Act.

To ensure confidentiality, OFFERORS are instructed to enclose all “Confidential”, “Proprietary”, or “Trade Secret” data in separate sealed envelopes, which are then included with the proposal documents. Because the proposal documents are available for review by any person after award of a contract resulting from an RFP, RTA shall not in any way be held responsible for disclosure of any “Confidential,” Proprietary,” or “Trade Secret” documents that are not contained in envelopes and prominently marked.

G. APPENDICES

Information considered by OFFEROR to be pertinent to this project and which has not specifically been solicited in any of the aforementioned sections may be placed into a separate appendix section. However, OFFERORS are cautioned that this does not constitute an invitation to submit large amounts of extraneous materials; appendices should be relevant and brief.

SECTION III
EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

The following are the complete criteria, by which proposals from responsible Offerors shall be evaluated and ranked for the purposes of determining any competitive range and to make any selection of a proposal for a potential award.

1. Qualifications, Related Experience, and References (20%)

Technical experience in performing work of a closely similar nature; experience working with public agencies; strength and stability of the firm; strength, stability, experience, and technical competence of subcontractors; assessment by client references; references with demonstrated success in providing similar services.

2. Project Staffing and Project Organization (20%)

Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in the above "Qualifications, Related Experience, and References" section; logic of project organization; adequacy of labor commitment; training programs for staff; FTA Compliant drug/alcohol testing program; concurrence in the restrictions on changes in key personnel.

3. Technical Approach/Work Plan (20%)

Depth of OFFERORS understanding of and ability to meet RTA's requirements as set forth in Exhibit A, Scope of Services, and within this RFP, overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of labor distribution among the activities; ability to meet all service start dates; reasonableness of service operations as proposed; utility of suggested technical or procedural innovations.

4. Cost and Price (40%)

Reasonableness of the total price/anticipated revenues and competitiveness of this amount with other offers received; adequacy of data in support of figures quoted; reasonableness of unit price; basis on which prices/revenue are proposed (FFP, CPFF, T & E).

B. EVALUATION PROCEDURE

All aspects of the evaluations of the proposals and any discussions/negotiations, including documentation, correspondence, and meetings, shall be kept confidential during the evaluation and negotiation process.

An Evaluation Committee comprised of RTA staff, in accordance with the above criteria, shall evaluate all proposals received as specified. The evaluators in applying the major criteria to the proposals may consider additional sub-criteria beyond those listed. Furthermore, as a result of RFP changes and/or necessary proposal clarifications, a Best and Final Offer Request may be issued after the proposals are submitted but before contract award. During the evaluation period, RTA reserves the right to interview some or all the proposing firms and the right to conduct site inspections of some or all of OFFERORS facilities.

C. AWARD

RTA shall evaluate the proposals received and shall submit the proposal considered to be the most competitive to RTA's Board of Directors, for consideration and selection. RTA may also negotiate contract terms with the selected OFFEROR prior to award, and expressly reserves the right to negotiate with several OFFERORS simultaneously and, thereafter, to award a contract to OFFEROR offering the most favorable terms to RTA.

RTA reserves the right to award its total requirements to one OFFEROR or to apportion those requirements among several OFFERORS as RTA may deem to be in its best interest. In addition, negotiations may or may not be conducted with OFFERORS; therefore, the proposal submitted should contain OFFERORS most favorable terms and conditions, since the selection and award may be made without discussion with any OFFEROR.

D. NOTIFICATION OF AWARD AND DEBRIEFING

OFFERORS who submit a proposal in response to this RFP shall be notified in writing regarding the firm who was awarded the contract. Such notification shall be made within three (3) days of the date the contract is awarded.

OFFERORS who were not awarded the contract may obtain a prompt explanation concerning the strengths and weaknesses of their proposal. Unsuccessful OFFERORS, who wish to be debriefed, must request the debriefing in writing and RTA must receive it within three (3) days of notification of the contract award.

SECTION IV
DISADVANTAGED BUSINESS ENTERPRISE

DISADVANTAGED BUSINESS ENTERPRISE

Federal Fiscal Year 2022 - 2024

DISADVANTAGED BUSINESS ENTERPRISE

Riverside Transit Agency Assurance. Riverside Transit Agency (“Agency”) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT) assisted contract, or in the administration of its Disadvantaged Business Enterprise (DBE) Program, or the requirements of 49 CFR Part 26.

The Agency will take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of DOT-assisted contracts.

It is the policy of the Agency to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the Agency’s construction, procurement and professional services activities.

Contractor Assurance. Pursuant to 49 CFR Part 26, the Contractor is required to make the following assurance in its agreement with the Agency and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

“The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure of the Contractor or Subcontractor to carry out these requirements is a material breach of contract, which may result in the termination of contract by the Agency, or any other such remedy the Agency may deem appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payment;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Contractor or Subcontractor from future bidding as non-responsible”.

The Agency’s DBE Program, as required by 49 CFR Part 26, as approved by DOT, is incorporated by reference in this section.

Implementation of this DBE Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this contract. Upon notification of failure to carry out its approved program, the DOT and/or the Federal Transit Administration (FTA) may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq).

In accordance with Part 26, Title 49 of Code of Federal Regulations, “Participation by

Disadvantaged Business Enterprise in Department of Transportation Programs,” the Agency sets a specific percentage for participation by DBE certified firms. This percentage goal is based upon the total amount of Federal dollars the Agency anticipates spending over the fiscal year as compared to the amount of ready, willing and able DBEs to perform Federally funded projects. For the current fiscal year, the Agency has established a DBE participation goal of 2.1%.

The Agency intends to meet this goal to the maximum extent feasible through race-neutral measures, including the encouragement of DBE participation on contracts which have no specific DBE goal.

DBE Participation Goal For This Contract.

X No DBE participation goal has been established for this contract.

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)

CUCP participants include municipalities, counties, transit agencies, airports, special districts, and the State Department of Transportation that administer and award contracts funded by the U.S. Department of Transportation (USDOT). CUCP participants are classified as certifying and non-certifying members.

A **certifying agency** performs Disadvantaged Business Enterprise (DBE) certification on behalf of the State of California and this certification applies to all USDOT funded contracts. Certification activities performed by a certifying agency include, among others, processing DBE applications, performing DBE site interviews, making DBE certification decisions, investigating certification complaints and appeals, and maintaining a single Statewide directory of certified DBEs. Contact a certifying agency if you have a question about DBE certification.

A **non-certifying agency** adheres to all aspects of the USDOT DBE program, except it does not perform DBE certification activities. A non-certifying agency accepts all firms certified as a DBE by a certifying member. Accordingly, the DBEs listed on the [CUCP DBE directory](#) is eligible to participate on all USDOT funded contracts administered by a CUCP participant. Contact a CUCP participant, both certifying and non-certifying, about contract opportunities.

CERTIFYING CUCP AGENCIES

For certification inquiries for Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura counties:

CITY OF LOS ANGELES

Bureau of Contract Administration
1149 S. Broadway Street, Room 300
Los Angeles, CA 90015
Phone: (213) 847-1922
Fax: (213) 847-2777
<http://bca.lacity.org>

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO)

Diversity and Economic Opportunity Department
One Gateway Plaza
Los Angeles, CA 90012
Phone: (213) 922-2600
Fax: (213) 922-7660
www.metro.net

For Alameda, Amador, Calaveras, Contra Costa, Fresno, Kings, Madera, Marin, Mariposa, Merced, Monterey, Napa, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tulare, and Tuolumne counties:

S.F. BAY AREA RAPID TRANSIT DISTRICT (BART)

Office of Civil Rights
300 Lakeside Drive
18th Floor
Oakland, CA 94612
Phone: (510) 464-7580
Fax: (510) 464-7587
www.bart.gov

CITY OF FRESNO

DBE Program
2101 G Street, Building A
Fresno, CA 93706
Phone: (559) 621-1182
Fax: (559) 488-1069
www.ci.fresno.ca.us

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA)

Office of Small & Disadvantaged Businesses
3331 North First Street, Building A
San Jose, CA 95134-1906
Phone: (408) 321-5962
Fax: (408) 955-9729
www.vta.org

CENTRAL CONTRA COSTA TRANSIT AUTHORITY (CCCTA)

Office of Civil Rights
2477 Arnold Industrial Way
Concord, CA 94520-5327
Phone: (925) 676-1976
Fax: (925) 686-2630
www.cccta.org

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)

Contract Compliance Office
San Francisco Municipal Railway
1 South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103
Phone: (415) 701-4443
Fax: (415) 701-4347
www.sfmuni.com

**SAN MATEO COUNTY TRANSIT DISTRICT (SAMTRANS)/
PENINSULA CORRIDOR JOINT POWERS BOARD (JPB)**

DBE Office
1250 San Carlos Avenue
San Carlos, CA 94070
Phone: (650) 508-7939
Fax: (650) 508-7738
www.samtrans.com

For Alpine, Butte, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Inyo, Lake, Lassen, Mendocino, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba counties:

CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS)

Civil Rights MS 79
1823 14th Street
Sacramento, CA 95814
Phone: (916) 324-1700 or (866) 810-6346
Fax: (916) 324-1862
www.dot.ca.gov

YOLO COUNTY TRANSPORTATION DISTRICT (YOLOBUS)

DBE Programs
350 Industrial Way
Woodland, CA 95776
Phone: (530) 661-0816
Fax: (530) 661-1732
www.yctd.org

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A
SCOPE OF SERVICES

Introduction

The Riverside Transit Agency (RTA) is seeking proposals from qualified firms to provide solutions on how best to (1) meet its daily natural gas requirements at a minimum cost and (2) maximize the value of alternative fuel credits available to the RTA. Potential vendors shall propose a solution that both meets the Agency’s natural gas requirements and allows the Agency to remain eligible for credits through the California Low Carbon Fuel Standard (LCFS) and federal Renewable Identification Numbers (RIN) programs.

Background

The RTA was established as a Joint Powers Agency in 1975, and began operating bus service in 1977. The transit service area is approximately 2,500 square miles and is serviced with both fixed and demand response routes. The area is bounded to the north by San Bernardino County, to the east by the San Jacinto Mountains and Coachella Valley sub-region of Riverside County, to the west by Orange County and to the south by San Diego County. The RTA provides bus service to both urban and rural areas, which includes 18 incorporated cities and numerous unincorporated communities.

The RTA currently operates a fleet of 145 Compressed Natural Gas (CNG) buses out of two facilities. One facility is located at 1825 Third Street, Riverside, CA (Riverside) and the other facility is located at 700 Scaramella Circle, Hemet, CA (Hemet). Both facilities contain on-site CNG fueling dispensers. The Hemet facility also includes a public access CNG fueling station which is accessible 24 hours per-day, seven days per-week. RTA fuels its buses with CNG every day of the year. The public utility supplying natural gas to the geographical area covered by RTA is the Southern California Gas Company (SoCalGas).

Since 2013, RTA has contracted with a third-party natural gas marketer for the provision of its natural gas requirements as well as the management of its RINs and LCFS programs. RTA’s goal is to reduce its energy costs while maintaining the highest possible degree of reliability in its natural gas supply to ensure that buses can be fueled and operated every day of the year.

Natural Gas Services

RTA's CNG usage is approximately 2,500,000 therms annually. Monthly usage runs in the range of 175,000 to 250,000 therms and is expected to remain in that range in the near term. However, it should be noted that therm requirements could move up or down during the contract period. RTA's goal is to have safe and reliable delivery of all its natural gas requirements while achieving maximum cost savings and earning the maximum amount from alternative fuel credits, which at a minimum include RINs and LCFS credits. Pricing proposals can come in any format whereas the cost of the natural gas is adjusted up or down as the RINs and LCFS sharing is adjusted accordingly, providing the best overall option to the RTA. RTA's one requirement for natural gas pricing is that RTA pays a price for natural gas that is indexed to the SoCalGas monthly procurement rate. To accomplish this, potential vendors shall submit natural gas pricing based on one of two formats. 1) Natural gas is provided directly by the vendor and the price RTA pays the vendor is indexed to the floating monthly SoCalGas procurement rate. 2) RTA receives its natural gas directly from SoCalGas, and subsequently pays SoCalGas directly for the commodity. Either of the two options may or may not include a discount off the SoCalGas rate based on how the successful vendor structures their pricing in conjunction with the RINs and LCFS programs. Regardless of the source of the natural gas, RTA expects to accrue the full value of RINs and LCFS credits as if the natural gas it consumes is from renewable sources.

If a prospective vendor proposes to provide natural gas directly, then they must comply with all requirements of SoCalGas and the California Public Utilities Commission (CPUC) deemed necessary to deliver natural gas to RTA. The vendor must always assume full responsibility for guaranteed delivery of required volumes, including any periods during which supply is curtailed or restricted in any way by the local utility company or any other entity.

Federal RINs and California LCFS Programs

The RINs and LCFS programs were created to increase the use of renewable energy sources in transportation fuels and reduce Greenhouse Gas (GHG) emissions. Under its current arrangement, RTA generates RINs and LCFS credits that may be sold to third parties. The successful vendor shall provide all compliance and regulatory requirements of the RINs and LCFS programs, including but not limited to:

- Register (Opt In) as the regulated party on behalf of RTA
- Adherence to market rules
- Verification of actual emissions to regulatory agencies
- All compliance obligations promulgated by law
- Keep RTA informed of market conditions as necessary

Depending on the proposed method for gas delivery, the below are services that may or may not apply:

- Daily monitoring of natural gas usage
- Daily balancing as required by natural gas utility
- Billing services
- Natural gas information and consulting services
- Handle all gas supply and delivery arrangements (both gas suppliers and utility companies)
- Monitor gas infrastructure issues (gas supply, reliability) and strategies for curtailment protection
- Maintain an auditable “paper trail”
- Act as an advocate on relevant issues before the Public Utilities Commission
- Invoice RTA monthly for natural gas costs with a detailed breakdown of usage and cost per therm by meter

Overall Pricing Requirements

Prospective vendors should be as transparent as possible in explaining how they arrive at their prices and calculations and should add descriptive narratives when necessary. Offerors are to complete the price form referenced in Exhibit B.

Contact Period

The contract period for these services would consist of a base term effective from January 1, 2024 through December 31, 2026. There are two subsequent option year terms that may be exercised by RTA.

Please refer to the Documents Tab in PlanetBids for Exhibit B – Price Form

Please refer to the Documents Tab in PlanetBids for Exhibit C – Required Forms

EXHIBIT D

TERMS AND CONDITIONS/PROPOSED AGREEMENT

1 **PROPOSED AGREEMENT NO. S23103F**

2 **BETWEEN**

3 **RIVERSIDE TRANSIT AGENCY**

4 **AND**

5 **CONSULTANT**

6 **THIS AGREEMENT** is made and entered into this _____ day of _____, **(Year)**,
7 by and between the RIVERSIDE TRANSIT AGENCY, located at 1825 Third Street, Riverside, California
8 92507 (hereinafter referred to as "AGENCY"), and **(Name/Address)** (hereinafter referred to as
9 "CONSULTANT").

10 **WITNESSETH:**

11 **WHEREAS**, AGENCY desires the services of CONSULTANT to provide natural gas and/or
12 management services of credit programs as stated in Exhibit A, "Scope of Services", in accordance with
13 Title 17 of the California Code of Regulations; and

14 **WHEREAS**, said work cannot be performed by the regular employees of AGENCY; and

15 **WHEREAS**, CONSULTANT has represented that it has the requisite personnel and experience,
16 and is capable of performing such services; and

17 **WHEREAS**, CONSULTANT wishes to perform these services;

18 **NOW, THEREFORE**, it is mutually understood and agreed by AGENCY and CONSULTANT as
19 follows:

20 **ARTICLE 1. COMPLETE AGREEMENT**

21 A. This Agreement, and the exhibits and documents incorporated herein and made applicable by
22 reference, including "Federal Transit Administration Required Clauses", incorporated herein as
23 Attachment A, including Exhibit A, "Scope of Services", and Exhibit B, entitled "Price/Revenue Form" of
24 RFP No. S23103F, constitutes the complete and exclusive statement of the terms and conditions of the
25 Agreement between AGENCY and CONSULTANT and supersedes all prior representations,
26 agreements, understandings and communications with respect thereto.

27 B. Changes to any portion of this Agreement shall not be binding upon AGENCY except when
28 specifically confirmed in writing by an authorized representative of AGENCY by way of a written
29 amendment to this Agreement and issued in accordance with the provisions contained in this Agreement.

1 **ARTICLE 2. ORDER OF PRECEDENCE**

2 Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:
3 (1) the provisions of this Agreement and all subsequent Amendments to this Agreement, including all
4 exhibits and documents attached hereto; (2) the provisions of RFP No. S23103F as addended; (3)
5 CONSULTANT’S proposal dated (***date***), as supplemented by its Best and Final Offer (BAFO) dated
6 (***date***) and; (4) all other documents, if any, cited herein or incorporated by reference.

7 **ARTICLE 3. TERM OF AGREEMENT**

8 A. This Agreement shall commence upon execution by both AGENCY and CONSULTANT, and
9 shall continue in full force and effect from January 1, 2024 through December 31, 2026 (“Initial Term”),
10 unless earlier terminated or extended as provided in this Agreement.

11 B. AGENCY, at its sole discretion, may elect to extend the term of the Agreement up to an
12 additional twelve (12) months, commencing January 1, 2027 and continuing through December 31, 2027
13 (“First Option Term”), and thereupon require CONSULTANT to continue to provide services, and
14 otherwise perform, in accordance with Exhibit A, “Scope of Services”, and Exhibit B “CONSULTANT’s
15 proposal”.

16 C. AGENCY, at its sole discretion, may elect to extend the term of the Agreement up to an
17 additional twelve (12) months, commencing January 1, 2028 and continuing through December 31, 2028
18 (“Second Option Term”), and thereupon require CONSULTANT to continue to provide services, and
19 otherwise perform, in accordance with Exhibit A, “Scope of Services”, and Exhibit B “CONSULTANT’s
20 proposal”.

21 D. AGENCY’s election to extend the Agreement beyond the “Initial Term” shall not diminish its
22 right to terminate the Agreement for AGENCY’S convenience or CONSULTANT’S default, as provided
23 elsewhere in this Agreement. The “Maximum Term” of this Agreement shall be the period extending from
24 January 1, 2024 through December 31, 2028 which period encompasses the Initial Term, First Option
25 Term and Second Option Term.

26 **ARTICLE 4. AGENCY DESIGNEE**

27 The Chief Executive Officer of AGENCY, or their designee, shall have the authority to act for and
28 exercise any rights of AGENCY as set forth in this Agreement, subsequent to and in accordance with,
29 the authorization granted by AGENCY’s Board of Directors.

30 **ARTICLE 5. NOTICES**

31 All notices hereunder and communications regarding the interpretation of the terms of this

1 Agreement, or changes thereto, shall be effected by delivery of said notice(s) in person or by depositing
2 said notice(s) in the U.S. Mail, registered or certified mail, return receipt requested, postage prepaid and
3 addressed as follows:

4 **TO AGENCY:**
5 Riverside Transit Agency
6 1825 Third Street
7 P.O. Box 59968
8 Riverside, CA 92517-1968

TO CONSULTANT:

9 **ATTENTION: Melissa Blankenship**
10 Title: Director of Contracts
11 Phone: (951) 565-5192
12 Email: mblankenship@riversidetransit.com

ATTENTION: _____
Title: _____
Phone: _____
Email: _____

13 **ARTICLE 6. STATEMENT OF SERVICES**

14 A. CONSULTANT shall perform the work necessary to complete, in a manner satisfactory
15 to AGENCY, the services set forth in Exhibit A, "Scope of Services", inclusive of all attachments set forth
16 herein. CONSULTANT shall also perform in accordance with its proposal to AGENCY dated (**date**). All
17 services shall be provided at the times and places designated by AGENCY.

18 B. CONTRACTOR shall provide the personnel as proposed to perform the services, which
19 persons are hereby designated as key personnel under this Agreement. No person identified as key
20 personnel, or his/her successor approved by AGENCY, shall be removed or replaced by
21 CONTRACTOR, nor shall his/her agreed upon function or level of commitment hereunder be changed,
22 without prior written consent of AGENCY. Should the services of any key personnel become no longer
23 available to CONTRACTOR, the resume and qualifications of the proposed replacement shall be
24 submitted to AGENCY for approval as soon as possible, but, in no event, later than seven (7) calendar
25 days prior to the departure of the incumbent key personnel, unless CONTRACTOR is not provided with
26 such notice by the departing key personnel. AGENCY shall respond to CONTRACTOR within seven
27 (7) calendar days following receipt of these qualifications concerning acceptance of the proposed
28 replacement.

FUNCTION	NAME
Position	_____
Position	_____
Position	_____
Position	_____
Position	_____

1 Position _____
 2 Position _____
 3 Position _____
 4 Position _____
 5 Position _____

7 C. No person named in paragraph B of this Article, or his/her successor approved by AGENCY,
 8 shall be removed or replaced by CONTRACTOR, nor shall his/her agreed-upon function or level of
 9 commitment hereunder be changed, without the prior written consent of AGENCY. Should the services of
 10 any key person become no longer available to CONTRACTOR, the resume and qualifications of the
 11 proposed replacement shall be submitted to AGENCY for approval as soon as possible, but in no event later
 12 than seven (7) calendar days prior to the departure of the incumbent key person, unless CONTRACTOR is
 13 not provided with such notice by the departing employee. AGENCY shall respond to CONTRACTOR within
 14 seven (7) calendar days following receipt of these qualifications concerning acceptance of the candidate for
 15 replacement.

16 D. AGENCY shall have the right to request removal of any project personnel by providing timely
 17 and written notice to CONTRACTOR.

19 **ARTICLE 7. DELIVERY SCHEDULE – RESERVED**

21 **ARTICLE 8. ACCEPTANCE/REJECTION – RESERVED**

23 **ARTICLE 9. MAXIMUM OBLIGATION - RESERVED**

25 **ARTICLE 10. AGENCY REIMBURSEMENT/PAYMENT**

26 RTA shall be reimbursed in accordance with CONSULTANT’s proposal dated (*date*); supporting
 27 documentation will be sent to AGENCY along with the monthly invoice showing the detailed breakdown
 28 of fuel usage and cost by meter, and the calculations of credits generated and their value. At its sole
 29 discretion, RTA may decline to make full payment for any item until such time as CONSULTANT has
 30 documented and/or corrected, to RTA’s satisfaction, any errors or omissions. RTA shall remit payment
 31 within thirty (30) calendar days of the receipt and approval of each invoice.

32 **ARTICLE 11. PROMPT PAYMENT – RESERVED**

33 **ARTICLE 12. INDEPENDENT CONTRACTOR**

1 CONSULTANT'S relationship to AGENCY in the performance of this Agreement is that of an
2 Independent Contractor. CONSULTANT's personnel performing services under this Agreement shall at
3 all times be under CONSULTANT's exclusive direction and control and shall be employees of
4 CONSULTANT and not employees of AGENCY. CONSULTANT shall pay all wages, salaries and other
5 amounts due its employees in connection with this Agreement and shall be responsible for all reports
6 and obligations respecting them, such as social security, income tax withholding, unemployment
7 compensation, worker's compensation and similar matters.

8 **ARTICLE 13. ASSIGNMENTS**

9 Neither this Agreement, nor any interest herein or claim hereunder, may be assigned by
10 CONSULTANT either voluntarily or by operation of law, nor may all, or any part, of this Agreement be
11 sub-contracted by CONSULTANT, without the prior written consent of AGENCY. Consent by AGENCY
12 shall not be deemed to relieve CONSULTANT of its obligation to comply fully with all terms and conditions
13 of this Agreement.

14 **ARTICLE 14. BONDING – RESERVED**

15 **ARTICLE 15. INSURANCE**

16 CONSULTANT shall procure and maintain for the duration of the contract insurance against
17 claims for injuries to persons or damages to property which may arise from or in connection with the
18 performance of the work hereunder by the CONSULTANT, its agents, representatives, employees or
19 subcontractors.

20 **Minimum Scope and Limit of Insurance**

21 Coverage shall be at least as broad as:

22 **1. Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering
23 CGL on an "occurrence" basis, including products and completed operations, property damage, bodily
24 injury and personal & advertising injury, with limits no less than \$2,000,000 per occurrence. If a general
25 aggregate limit applies, either the general aggregate limit shall apply separately to this project/location
26 or the general aggregate limit shall be twice the required occurrence limit.

27 **2. Automobile Liability:** ISO Form Number CA 0001 covering any auto (Code 1), or if
28 CONSULTANT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less
29 than \$1,000,000 per accident for bodily injury and property damage.

30 **3. Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits,
31 and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury
32 or disease. If the CONSULTANT maintains higher limits than the minimums shown above, the
33 Agency requires and shall be entitled to coverage for the higher limits maintained by the

1 CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of
2 insurance and coverage shall be available to Agency.

3 **4. Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant's
4 profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

5 **Other Insurance Provisions**

6 The insurance policies are to contain, or be endorsed to contain, the following provisions:

7 **Additional Insured Status**

8 The AGENCY and their officers, officials, employees, and volunteers are to be covered as additional
9 insureds on the CGL policy with respect to liability arising out of work or operations performed by or
10 on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with
11 such work or operations. General liability coverage can be provided in the form of an endorsement to
12 the CONSULTANT'S insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10
13 and CG 20 37 forms if later revisions used).

14 **Primary Coverage**

15 For any claims related to this contract, the CONSULTANT'S insurance coverage shall be primary
16 insurance as respects the AGENCY and their officers, officials, employees, and volunteers. Any
17 insurance or self-insurance maintained by the AGENCY or their officers, officials, employees, or
18 volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

19 **Notice of Cancellation**

20 Each insurance policy required above shall state that coverage shall not be canceled, except with
21 notice to the AGENCY.

22 **Waiver of Subrogation**

23 CONSULTANT hereby grants to AGENCY a waiver of any right to subrogation which any insurer of
24 said CONSULTANT may acquire against the AGENCY by virtue of the payment of any loss under
25 such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect
26 this waiver of subrogation, but this provision applies regardless of whether or not the AGENCY has
27 received a waiver of subrogation endorsement from the insurer.

28 **Claims Made Policies**

- 29 1. The Retroactive Date must be shown and must be before the date of the contract or the beginning
30 of contract work.
- 31 2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5)
32 years after completion of the contract of work.
- 33 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form
34 with a Retroactive Date prior to the contract effective date, the Contractor must purchase
35 "extended reporting" coverage for a minimum of five (5) years after completion of the work.

36 **Deductibles and Self-Insured Retentions**

1 Any deductibles or self-insured retentions must be declared to and approved by the AGENCY. The
2 AGENCY may require the CONSULTANT to provide proof of ability to pay losses and related
3 investigations, claim administration, and defense expenses within the retention.

4 **Acceptability of Insurers**

5 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless
6 otherwise acceptable to the AGENCY.

7 **Verification of Coverage**

8 CONSULTANT shall furnish the AGENCY'S Director of Contracts, or his designee, with original
9 certificates and amendatory endorsements or copies of the applicable policy language effecting
10 coverage required by this clause. All certificates and endorsements are to be received and approved
11 by the AGENCY before work commences. However, failure to obtain the required documents prior to
12 the work beginning shall not waive the CONSULTANT'S obligation to provide them. The AGENCY
13 reserves the right to require complete, certified copies of all required insurance policies, including
14 endorsements required by these specifications, at any time.

15 **Sub-contractor**

16 CONSULTANT shall require and verify that all sub-contractors maintain insurance meeting all the
17 requirements stated herein, and CONSULTANT shall ensure that AGENCY is additional insured on
18 insurance required for sub-contractors.

19 **Special Risks or Circumstances**

20 AGENCY reserves the right to modify these requirements, including limits, based on the nature of the
21 risk, prior experience, insurer, coverage, or other special circumstances.

22 **ARTICLE 16. INDEMNIFICATION**

23 CONSULTANT shall hold harmless, defend, and indemnify AGENCY and its officers, officials,
24 employees, and volunteers from and against any and all liability, loss, damage, expense, and costs
25 (including without limitation costs and fees of litigation) of every nature arising out of or in connection
26 with CONSULTANT's performance of work hereunder or its failure to comply with any of its obligations
27 contained in the agreement, except such loss or damage which was caused by the sole negligence
28 or willful misconduct of AGENCY.

29 1. AGENCY shall promptly give written notice to CONSULTANT after obtaining
30 knowledge of any Third Party Claim against AGENCY as to which recovery may be sought against
31 CONSULTANT because of the indemnity set forth in clause 1. above.

32 2. CONSULTANT will have the right to defend AGENCY against any such Third Party
33 Claim with counsel mutually agreed upon by CONSULTANT and AGENCY. In addition:

34 a. AGENCY may retain separate co-counsel at its sole cost and expense to

1 monitor the defense of such Third Party Claim provided, however, that CONSULTANT
2 shall have the right to control the defense of such Third Party Claim in CONSULTANT'S
3 sole discretion;

4 b. AGENCY will not consent to the entry of any judgment or enter into any
5 settlement with respect to such Third Party Claim without the prior written consent of
6 CONSULTANT; and

7 c. AGENCY shall cooperate with all reasonable requests of CONSULTANT in
8 connection with the defense of such Third Party Claim.

9 3. To the extent reasonably possible, AGENCY shall use its good faith efforts to mitigate
10 any losses that CONSULTANT is obligated to indemnify against, pursuant to this indemnification
11 provision.
12

13 **ARTICLE 17. CHANGES**

14 By written notice or order, AGENCY may, from time to time, order work suspension or make
15 changes to the general scope of this Agreement, including, but not limited to, the services furnished to
16 AGENCY by CONSULTANT as described in Exhibit A – Scope of Services. If any such work suspension
17 or change causes an increase or decrease in the price of this Agreement or in the time required for its
18 performance, CONSULTANT shall promptly notify AGENCY thereof and assert its claim for adjustment
19 within ten (10) days after the change or work suspension is ordered, and an equitable adjustment shall
20 be negotiated. Nothing in this provision shall excuse CONSULTANT from otherwise proceeding
21 immediately with Agreement as changed.

22 **ARTICLE 18. MODIFICATIONS – RESERVED**

23 **ARTICLE 19. SEVERABILITY**

24 If any provision, term or condition of this Agreement is held to be invalid, illegal or unenforceable,
25 in whole or in part, then such provision, term or condition shall not affect the validity of any remaining
26 provision, term or condition of this Agreement. All remaining provisions, terms and conditions of this
27 Agreement shall continue in full force and effect.
28
29

30 **ARTICLE 20. NON-WAIVER**

31 AGENCY'S failure to insist in any one or more instances to require performance by
32 CONSULTANT of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or
33 relinquishment of AGENCY'S right to such performance and shall not affect AGENCY'S right to such

1 performance or to future performance of any such term(s) or condition(s) and CONSULTANT'S obligation
2 with respect thereto shall continue in full force and effect.

3 **ARTICLE 21. TERMINATION**

4 A. AGENCY may terminate this Agreement for its convenience any time, in whole or in part, by
5 giving CONSULTANT written notice thereof. Upon termination, AGENCY shall pay CONSULTANT its
6 allowable costs incurred to date of that portion terminated. Said termination shall be construed in
7 accordance with the provisions of the Federal Acquisition Regulation (FAR), Part 31.205 and Part 49, the
8 specific sub-parts and other provisions thereof, applicable to termination for convenience. If AGENCY
9 sees fit to terminate this Agreement for convenience, said notice shall be given to CONSULTANT in
10 accordance with the provisions of the FAR referenced above and Article 5 "Notices", herein. Upon receipt
11 of said notification, CONSULTANT agrees to comply with all applicable provisions of the FAR pertaining
12 to termination for convenience.

13 B. CONSULTANT shall have no rights to terminate this Agreement or any sub-contracts under
14 this Agreement for CONSULTANT's convenience.

15 C. CONSULTANT shall have no rights to terminate any sub-contracts for cause and then perform
16 the work with its own forces without AGENCY's prior written consent. AGENCY reserves the right to
17 require CONSULTANT to replace its terminated sub-contractors with another sub-contractor agreeable
18 to AGENCY, and to do so without any increase or delay in the performance of this Agreement.

19 D. AGENCY may terminate this Agreement for CONSULTANT's default if a federal or state
20 proceeding for the relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT
21 makes an assignment for the benefit of creditors, or if CONSULTANT breaches any term(s) or violates
22 any provision(s) of this Agreement and does not cure such breach or violation within thirty (30) calendar
23 days after written notice thereof by AGENCY. CONSULTANT shall be liable for any and all reasonable
24 cost incurred by AGENCY as a result of such default including, but not limited to, re-procurement costs
25 of the same or similar services defaulted on by CONSULTANT under this Agreement. Such termination
26 shall comply with the Federal Acquisition Regulation (FAR), Part 31.205 and Part 49.

27 **ARTICLE 22. FORCE MAJEURE**

28 Either party shall be excused from performing its obligations under this Agreement during the time
29 and to the extent that it is prevented from performing by an unforeseeable cause beyond its control
30 including, but not limited to: any incidence of fire or flood; acts of God; commandeering of material,
31 products, plants or facilities by the federal, state or local government; national fuel shortage; a material
32 act of omission by the other party; or strike, when satisfactory evidence of such cause is presented to the

1 other party, and further provided that such nonperformance is unforeseeable, beyond the control and is
2 not due to the fault or negligence of the party not performing.

3 **ARTICLE 23. FEDERAL, STATE AND LOCAL LAWS**

4 CONSULTANT warrants that in the performance of this Agreement, it shall comply with all
5 applicable federal, state, and local laws, statutes, ordinances, lawful orders, rules and regulations
6 promulgated thereunder.

7 **ARTICLE 24. GOVERNING LAW**

8 This Agreement shall be interpreted and construed according to, and governed by, the laws of
9 the State of California. The federal or state courts located in the County of Riverside, State of California,
10 shall have jurisdiction to hear any dispute under this Agreement.

11 **ARTICLE 25. STANDARD OF CARE**

12 A. CONTRACTOR represents that it is fully experienced and properly qualified to perform the
13 class of services required for this Agreement and that it is properly licensed, equipped, organized and
14 financed to perform the Services.

15 B. CONTRACTOR shall perform the Services under this Agreement in a skillful and competent
16 manner, consistent with the standard generally recognized being employed by professionals in the same
17 discipline in the State of California. Contractor represents and maintains that it is skilled in the
18 professional calling necessary to perform the Services. Contractor warrants that all employees and
19 subcontractors shall have sufficient skill and experience to perform the Services assigned to them.
20 Finally, CONTRACTOR represents that it, its employees and subcontractors have all licenses, permits,
21 qualifications and approvals of whatever nature that are legally required to perform the Services and that
22 such licenses and approvals shall be maintained throughout the term of this Agreement. CONTRACTOR
23 shall perform, at its own cost and expense and without reimbursement from AGENCY, any Services
24 necessary to correct errors or omissions which are caused by CONTRACTORS'S failure to comply with
25 the standard of care provided for herein, and shall be fully responsible to AGENCY for all damages and
26 other liabilities provided for in the indemnification provisions of this Agreement arising from
27 CONTRACTOR'S errors and omissions.

28

29 **ARTICLE 26. PROHIBITED INTERESTS**

30 A. CONTRACTOR covenants that, for the term of this Agreement, no director, member, officer
31 or employee of AGENCY during his/her tenure in office or for one (1) year thereafter shall have any
32 interest, direct or indirect, in this Agreement or the proceeds thereof.

33 B. No member of or delegate to the Congress of the United States shall be admitted to any

1 share or part of this Agreement or to the benefits thereof.
2

3 **ARTICLE 27. PRIVACY ACT REQUIREMENTS**

4 CONTRACTOR shall comply with, and assures the compliance of its employees with, the
5 information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a.
6 Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government
7 before CONTRACTOR or its employees operate a system of records on behalf of the Federal
8 Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil
9 and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to
10 comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
11

12 **ARTICLE 28. OWNERSHIP OF REPORTS AND DOCUMENTS**

13 The originals of all custom letters, documents and reports produced under this Agreement shall
14 be delivered to and become the property of AGENCY. Copies may be made for CONSULTANT'S
15 records, and in performance of the underlying Agreement, but shall not be furnished to others without the
16 express written authorization from AGENCY. Such deliverables shall be deemed works made for hire
17 and all rights in copyright therein shall be retained by AGENCY.

18 **ARTICLE 29. FINISHED AND PRELIMINARY DATA – RESERVED**

19
20 **ARTICLE 30. AUDIT AND INSPECTION OF RECORDS**

21 CONTRACTOR shall provide AGENCY, the U.S. Department of Transportation (DOT), the
22 Comptroller General of the United States, or other agents of AGENCY, such access to CONTRACTOR'S
23 accounting books, records, payroll documents and facilities of CONTRACTOR which are directly
24 pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books,
25 records, work data, documents and activities related hereto. CONTRACTOR shall maintain such books,
26 records; data and documents in accordance with generally accepted accounting principles and shall
27 clearly identify and make such items readily accessible to such parties during CONTRACTOR'S
28 performance hereunder and for a period of four (4) years from the date of final payment by AGENCY.
29 AGENCY'S right to audit books and records directly related to this Agreement shall also extend to all
30 first-tier subcontractors identified in Article 13 "Assignments" of this Agreement. CONTRACTOR shall
31 permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and
32 transcriptions as reasonably necessary.
33
34

1 **ARTICLE 31. PATENT AND COPYRIGHT INFRINGEMENT**

2 In lieu of any other warranty by AGENCY or CONSULTANT against patent or copyright
3 infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend, at its expense, any
4 claim or suit against AGENCY on account of any allegation that any item furnished under this Agreement
5 or the normal use or sale thereof, arising out of the performance of this Agreement, infringes upon any
6 presently existing U.S. letters patent or copyright and CONSULTANT shall pay all costs and damages
7 finally awarded in any such suit or claim, provided CONSULTANT is promptly notified in writing of the
8 suit or claim and given AGENCY, information and assistance at CONSULTANT's expense for the
9 defense of same. However, CONSULTANT will not indemnify AGENCY if the suit or claim results from:
10 (1) AGENCY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any
11 presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other
12 material not provided by CONSULTANT when such use in combination infringes upon an existing U.S.
13 letters patent or copyright.

14 CONSULTANT shall have sole control of the defense of any such claim or suit and all allegations
15 for settlement thereof. CONSULTANT shall not be obligated to indemnify AGENCY under any settlement
16 made without CONSULTANT's consent or in the event AGENCY fails to cooperate fully in the defense
17 of any suit or claim, provided, however, that said defense shall be at CONSULTANT's expense. If the
18 use or sale of said item is enjoined as a result of such suit or claim, CONSULTANT, at no expense to
19 AGENCY, shall obtain for AGENCY, the right to use and sell said item, or shall substitute an equivalent
20 item acceptable to AGENCY and extend this patent and copyright indemnity thereto.

21 **ARTICLE 32. WARRANTY- RESERVED**

22 **ARTICLE 33. DISPUTES**

23 A. Except as otherwise provided for in this Agreement, any dispute concerning a question of fact
24 arising under this Agreement, which is not disposed of by supplement agreement, shall be decided by
25 AGENCY'S Director of Contracts, who shall reduce the decision to writing and shall mail, or otherwise
26 furnish a copy thereof to CONSULTANT. The decision of the Director of Contracts shall be final and
27 conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, CONSULTANT
28 mails or otherwise furnishes to the Director of Contracts a written appeal addressed to AGENCY'S Chief
29 Executive Officer. The decision of the AGENCY's Chief Executive Officer, or duly authorized
30 representative for the determination of such appeals, shall be final and conclusive.

31 B. Any such decision made pursuant to this Article shall be final and conclusive, unless the same
32 is fraudulent, capricious, arbitrary or so grossly erroneous as to necessarily imply bad faith or is not
33 supported by substantial evidence. In cases where fraud by such official or his representative or Board

1 is alleged, the provisions of this Article shall not be pleaded in any suit as limiting judicial review of any
2 such decision.

3 C. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with the
4 performance of this Agreement in accordance with the decision of AGENCY's Director of Contracts. This
5 "Disputes" clause does not preclude consideration of questions in law in connection with decisions
6 provided for above. Nothing in this Agreement, however, shall be construed as making the final decision
7 of any AGENCY official or representative on a question of law, which questions shall be settled in
8 accordance with the laws of the State of California.

9 **ARTICLE 34. RECORDS RETENTION**

10 CONTRACTOR agrees to maintain all books, records, accounts and reports required under this
11 Agreement for a period of not less than three years after the date of termination or expiration of this
12 Agreement, except in the event of litigation or settlement of claims arising from the performance of this
13 Agreement, in which case CONTRACTOR agrees to maintain same for a period of not less than three
14 years after the date AGENCY has disposed of all such litigation, appeals, claims or exceptions related
15 thereto.

16

17 **ARTICLE 35. LIQUIDATED DAMAGES - RESERVED**

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1 This Agreement shall be made effective upon execution by both parties.

2 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. S23103F to be
3 executed on the date first written above.

4 **CONSULTANT**

RIVERSIDE TRANSIT AGENCY

5 By: _____

By: _____

6
7 Consultant Name
8 Title

Kristin Warsinski
Chief Executive Officer

9
10

APPROVED AS TO FORM:

11
12
13
14

By: _____

Barbara Raileanu
General Counsel

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES OVER \$100,000**1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. FALSE STATEMENTS OR CLAIMS CIVIL AND CRIMINAL FRAUD OR RELATED ACTS

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

3. ACCESS TO THIRD PARTY CONTRACT RECORDS

(1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 2 C.F.R. Part 200.326, the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(2) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

(3) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(4) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(5) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than four years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 2 CFR Part 200.333.

4. CHANGES TO FEDERAL REQUIREMENTS

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

5. TERMINATION

RTA may terminate the P.O./Contract in whole or in part for RTA's convenience or for Furnisher's default. RTA will notify the Furnisher regarding the nature, extent, and effective date of the termination. Upon receipt of the notice, Furnisher shall: (a) immediately discontinue all services affected and (b) deliver to RTA all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing P.O./Contract, whether completed or in process. If the termination is for RTA's convenience, RTA shall make an equitable price adjustment, but shall not allow anticipated profit on unperformed services. If the termination is for Furnisher's default, Furnisher must reimburse RTA for all costs of re-procurement.

6. CIVIL RIGHTS

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

NONDISCRIMINATION

(1) In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

EQUAL OPPORTUNITY

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES OVER \$100,000

contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

EQUAL OPPORTUNITY FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES OVER \$100,000

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

7. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

(1) This contract is subject to the requirements of 49 CFR Part 26, "Participation by DBEs in DOT Financial Assistance Programs". The national goal for participation of DBEs is 10%. RTA's overall goal for DBE participation is 2.1%. A separate contract goal has not been established for this procurement.

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

(3) **Prompt Payment** – Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from RTA. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by RTA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

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

8. 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 Contractor shall not perform any act, fail to perform any act, or refuse to comply with any RTA requests which would cause RTA to be in violation of the FTA terms and conditions.

9. DEBARMENT AND SUSPENSION

(1) This contract is a covered transaction as defined in U.S. DOT regulations, 2 CFR 180 that implements Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235); "Debarment and Suspension." and, as such, Contractor must confirm it is not excluded or disqualified from participating in covered transactions funded in whole or in part with Federal funds.

(2) By signing and submitting its bid or proposal, Contractor certifies it is not excluded or disqualified from participating in a covered transaction funded in whole or in part with Federal funds. Contractor further certifies that this certification is a material representation of fact relied upon by RTA. If it is later determined the Contractor knowingly rendered an erroneous certification, in addition to remedies available to RTA, the Federal Government may pursue available remedies including, but not limited to suspension and/or debarment.

(3) Contractor further agrees to include, and require its Third Party Participants to include a similar condition in each lower tier covered transaction, assuring that all lower tier Third Party Participants:

- (a) Will comply with Federal debarment and suspension requirements, and
- (b) Review the "Excluded Parties Listing System" at <https://www.sam.gov>, as needed to comply with U.S. DOT regulations, 2 CFR part 1200.

10. BUY AMERICA

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, manufactured products and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

11. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

(1) Except as otherwise provided for in this Agreement, any dispute concerning a question of fact arising under this Agreement, which is not disposed of by supplement agreement shall be decided by AGENCY'S Director of Contracts, who shall reduce the decision to writing and shall mail, or otherwise furnish a copy thereof to Contractor. The decision of the Director of Contracts shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, Contractor mails or otherwise furnishes to the Director of Contracts a written appeal addressed to AGENCY'S Chief Executive Officer. The decision of the AGENCY'S Chief Executive Officer, or duly authorized representative for the determination of such appeals, shall be final and conclusive.

(2) Any such decision made pursuant to this Article shall be final and conclusive, unless the same is fraudulent, capricious, arbitrary or so grossly erroneous as to necessarily imply bad faith or is not supported by substantial evidence. In cases where fraud by such official or his representative or Board is alleged, the provisions of this Article shall not be pleaded in any suit as limiting judicial review of any such decision.

(3) Pending final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of this Agreement in accordance with the decision of AGENCY'S Director of Contracts. This clause does not preclude consideration of questions in law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making the final decision of any AGENCY official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES OVER \$100,000**12. LOBBYING**

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13. CLEAN AIR

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14. CLEAN WATER

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. CARGO PREFERENCE

The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. FLY AMERICA

Contractor agrees:

(1) To comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

(2) To include the requirements of this section in all subcontracts that may involve international air transportation.

17. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

RESERVED

18. CONTRACT WORK HOURS AND SAFETY STANDARDS

Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

19. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the federal award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement" the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES OVER \$100,000**20. PROMPT PAYMENT**

(1) The prime Contractor or Subcontractor shall return all monies withheld in retention from a subcontractor within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by AGENCY. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with AGENCY'S prior written approval. Any violation of this provision shall subject the violating Prime Contractor or Subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Prime Contractor or Subcontractor, in the event of a dispute involving late payment or non-payment by the Prime Contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-Disadvantaged Business Enterprise (non-DBE) Prime Contractors and Subcontractors.

(2) Failure to comply with this provision or delay in payment, without prior written approval from AGENCY, will constitute noncompliance, which may result in the termination of the Agreement or other such remedy as AGENCY deems appropriate. AGENCY reserves the right to request the appropriate documentation from Contractor showing payment has been made to the Subcontractor(s).

(3) These Prompt Payment provisions must be incorporated in all subcontract agreements issued by Contractor under this Agreement.

21. BONDING

RESERVED

22. SEISMIC SAFETY

The following requirement applies to contracts involving architectural/engineering for and/or construction of new buildings or additions.

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

23. TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS

RESERVED

24. DRUG USE, ALCOHOL MISUSE AND TESTING

RESERVED

25. RIGHTS IN DATA AND PATENT RIGHTS

The following requirement applies to contracts involving experimental, developmental, or research work.

A. **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 2 C.F.R. Part 200.315, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES OVER \$100,000

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

26. ENERGY CONSERVATION

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

27. RECOVERED MATERIALS

Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. This includes procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; Designated items include vehicular, construction, transportation and landscaping products, non-paper office products, and miscellaneous products.

28. ADA ACCESS

Contractor agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:

(1) **Federal laws**, including

(a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, prohibiting discrimination on the basis of disability in the administration of federally funded programs or activities;

(b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities;

(c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities;

(d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and

(e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities.

(2) **Federal regulations**, including

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. part 37;

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. part 27;

(c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels", 49 C.F.R. part 39;

(d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "ADA Accessibility Specifications for Transportation Vehicles", 36 C.F.R. part 1192 and 49 C.F.R. part 38;

(e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Service", 28 C.F.R. part 36;

(f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. part 36;

(g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. part 1630;

(h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities", 47 C.F.R. part 64, Subpart F;

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES OVER \$100,000

- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards", 36 C.F.R. part 1194, and
 - (j) FTA regulations, "Transportation for Elderly and Handicapped Persons", 40 C.F.R. part 609.
- (3) Other applicable Federal civil rights and nondiscrimination guidance.

29. PRIVACY ACT

CONTRACTOR shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

30. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor agrees to comply with the following:

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- (c) See Public Law 115-232, section 889 for additional information.
- (d) See also § 200.471.

31. SPECIAL PROVISION FOR PROMOTING COVID-19 SAFETY**Section 49. Centers for Disease Control and Prevention Order on Requirements for Persons to Wear Masks While on Conveyances and at Transportation Hubs.**

(a) *Compliance with CDC Mask Order.* The Centers for Disease Control and Prevention ("CDC") Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs ("CDC Mask Order"), is within the meaning of "Federal Requirement" as that term is defined in this Master Agreement. One of the objectives of the CDC Mask Order is "maintaining a safe and operating transportation system." The Recipient agrees that it will comply, and will require all Third-Party Participants to comply, with the CDC Mask Order.

- (b) *Enforcement for non-compliance.* The Recipient agrees that FTA may take enforcement action for non-compliance with the CDC Mask Order, including:
 - (1) Enforcement actions authorized by 49 U.S.C. § 5329(g);
 - (2) Referring the Recipient to the CDC or other Federal authority for enforcement action;
 - (3) Enforcement actions authorized by 2 CFR §§ 200.339 – .340; and
 - (4) Any other enforcement action authorized by Federal law or regulation.

32. VETERANS EMPLOYMENT

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

33. NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Agency is located. The Contractor must include this provision in its subagreements at every tier, for any agreement that is a covered agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- 1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- 2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- 3) **Additional Notice to U.S. DOT Inspector General.** The Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Agency is located if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31

FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES OVER \$100,000

U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Contractor and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

34. SAFE OPERATION OF MOTOR VEHICLES

(a) The Contractor agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

- 1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and
- 2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

(b) *Distracted Driving, Including Text Messaging While Driving.* The Contractor agrees to comply with:

- 1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);
- 2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and
- 3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

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

Contractor Size. The Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

Extension of Provision. The Contractor agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.