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*Flex your power!
Be energy efficient!*

Date: November 12, 2009

To: Federal Grant Partner

RE: Third Party Contracting Provision / ITS Requirements

As a successful applicant for federal funding (Sections 5310, 5311, 5316, 5317 and ARRA) many of you will be contracting with third parties in order to accomplish the funded project or program.

As you begin the local process for selecting a contractor, you should be aware that use of federal funds requires that federal rules and procedures associated with contracting be observed. Furthermore in order to fully inform potential contractors of requirements they must also meet, these requirements must be incorporated in any RFPs, IFBs or other locally developed contract solicitations. As the recipient of the federal funds awarded to you, Caltrans must ensure that all subrecipients are aware of the requirements and that the requirements are included in otherwise locally developed solicitations. Keep in mind that the Standard Agreement requires that no contract award shall be made without the "...prior written approval from the STATE."

To that end, we are providing background information from federal statute that may be helpful in understanding these requirements. Further guidance can be obtained at:

- 49 U.S.C. Section 5325(a): Procurements of property, supplies, equipment or services
- 49 U.S.C. Chapter 53: Third-party procurement requirements
- FTA C 4420.1F; CFR 49 § 18.36; CFR § 19.40 through § 19.48: Third-Party Contracting Guidance dated November 1, 2008

Many of the provisions governing third party contracting are outlined in our Standard Agreement. For example, the "awarding agency shall prepare a bid package, including equipment and material specifications and a scope of work." Also, the standard agreements require "full and open competition" between potential contractors. Therefore, for any procurement of less than \$100,000 the awarding agency shall solicit and receive three like-kind competitive bids or proposals, shall evaluate the bids or proposals received, and shall select the lowest price bid or proposal meeting the project

specifications and evaluation criteria for award. For contracts over \$100,000, similar competition is obtained through RFPs or other solicitation documents.

When you establish this competitive process, it may be convenient for you to use the attached “Third Party Contract” provisions outlining the federal requirements. Use of this document in your Bid/RFP package will expedite State approval.

A special note applies to subrecipients of funding for Intelligent Transportation Systems (ITS). According to the annual “Certifications and Assurances,” and consistent with the National ITS Architecture, all requests for ITS projects by an awarding agency must have an ITS Plan.

We hope that you find these suggested Bid/RFP language provisions useful. If you have any questions regarding this information, please contact the Caltrans Branch Chief associated with the applicable funding program.

Section 5310 - Cindy Chiaverini, (916) 654-6990

Section 5311, 5311(f) and ARRA - James Ogbonna, (916) 651-6116

Section 5316 and 5317 - Tracey Frost, (916) 654-8222

Procurement and Grants Management – Chuck Gunter, (916) 657-3875

Attachment

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1. Source of Funding. This contract entered on _____ (date) between _____ and _____ for _____ (type of purchase) is being funded with the following fund source(s) and amount:

Fund Source	Amount

2. Antitrust Claims. The CONTRACTOR by signing this contract hereby certifies that if these services or goods are obtained by means of a competitive bid, the CONTRACTOR shall comply with the requirements of the Government Codes Sections set out below.

A. The Government Code Chapter on Antitrust claims contains the following definitions:

1. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the Awarding Agency or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professional Code.
2. "Public purchasing body" means the Awarding Agency or the subdivision of agency making a public purchase. Government Code Section 4550.

B. The CONTRACTOR agrees to assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the CONTRACTOR for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the CONTRACTOR. Government Code Section 4552.

3. Child Support Compliance Act. "For any Contract in excess of \$100,000, the CONTRACTOR acknowledges in accordance with Public Contract Code 7110, that:

A. The CONTRACTOR recognizes the importance of child and family support obligations and shall fully comply with all applicable California Department of Transportation and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

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B. The CONTRACTOR, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.”

4. Procurements. All procurements, including local procurement of supplies, equipment, construction, and services shall be conducted in accordance with the Procurement Standards set forth in the Federal Transit Authority’s (FTA) implementing regulations of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and 2 CFR Part 225 or 49 CFR Part 19, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Educations, Hospitals, and Other Non-profit Organizations” and 2 CFR Part 230 and the FTA Circular 4220.1F, "Third-Party Contracting Guidance.”
5. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the CONTRACTOR agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h)(2) by refraining from using any Federal assistance funds awarded to Awarding Agency on behalf of the California Department of Transportation to support procurements using exclusionary or discriminatory specifications.
6. Buy America. The CONTRACTOR shall comply with the Buy America requirements of 49 USC 5323(j) and 49 CFR Part 661 for all procurements of steel, iron and manufactured products used in PROJECT. Buy America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000). Separate requirements for rolling stock are set out at 49 USC 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
7. U.S. Flag Requirements
 - A. Shipments by Ocean Vessel. For third-party contracts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subcontractors must comply with 46 U.S.C. Section 55303 and 46 CFR Part 381, “Cargo Preference-U.S. Flag Vessels.”
 - B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subcontractors must comply with the “Fly America” Act and 49 U.S.C. Section 40118, “Use of United States of America Flag Air Carriers,” and 41 CFR Sections 301-10.131 through 301-10.143.
 - C. Project Travel. In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, (“Fly America” Act), 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.

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8. Vehicle Operator Licensing (Transit Operation & Rolling Stock Only). The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration regulations and the California Vehicle Code including, but not limited to, the requirement that all vehicle operators have a valid State of California driver's license, including any special operator license that may be necessary for the type of vehicle operated.
9. Record Keeping. The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Contract. All parties shall make such materials available at their respective offices at all reasonable times during the performance period and for three (3) years from the date of final payment under this Contract and all subcontracts.
10. Accounting Records. The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR'S accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices and vouchers.
11. Examination of Records. The Awarding Agency, the California Department of Transportation's Audits Office, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Contract for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every subcontract entered into relative to the PROJECT.
12. Debarment and Suspension. The CONTRACTOR agrees as follows:
 - A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
 - B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement or Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.

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- C. Before entering into any subcontracts with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that awarding agency and its “principals,” as defined at 49 CFR Part 29.
 - D. Before entering into any third-party contract exceeding \$25,000, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its “principals,” as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any third-party subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any third-party subcontractor (at any tier) seeking a contract exceeding \$25,000.
13. Compliance with Federal Statutes. During the performance of this Contract, the CONTRACTOR, its assignees and successors in interest, agree to comply with all Federal statutes and regulations applicable to grantee recipients under the Federal Transit Act, including, but not limited to the following:
- A. Race, Color, Creed, National Origin, Sex - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.
 - B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's Regulations, including employment practices

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when the contract covers a program whose goal is employment. Further, In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.

- C. Solicitations for Subcontracts Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Awarding Agency or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the Awarding Agency or the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. In accordance with 49 CFR Part 26 and as described in the FTA Circular 4702.1, and the California Department of Transportation Title VI Program Plan, and upon request from the Awarding Agency, the CONTRACTOR shall comply with the following reporting requirements. The CONTRACTOR is also responsible for ensuring compliance of each third-party contractor at any tier of the PROJECT.
 - 1. Provide an Annual Title VI Certification and Assurance.
 - 2. Establish and maintain Title VI complaint procedures.
 - 3. Record Title VI investigations, complaints, and lawsuits.
 - 4. Provide meaningful access to Limited English Proficient Persons.
 - 5. Notify beneficiaries of protection under Title VI.
 - 6. Provide additional information upon request.
 - 7. Prepare and submit a Title VI Report.
 - 8. Guidance on conducting an Analysis of Construction Projects.
 - 9. Guidance on promoting Inclusive Public Participation.
- F. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of this Contract, the Awarding Agency shall

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1. Withholding of payments to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
2. Cancellation, termination or suspension of the Contract, in whole or in part.

G. **Incorporation of Provisions.** The CONTRACTOR shall include the provisions of these paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the Awarding Agency or the California Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the Awarding Agency to enter into such litigation to protect the interest of the Awarding Agency, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

14. Disadvantaged Business Enterprise. The CONTRACTOR agrees to comply with U.S. Department of Transportation regulations, "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs", 49 CFR Part 26 and will cooperate with the California Department of Transportation with regard to maximum utilization of disadvantaged business enterprises, and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum opportunity to compete for sub contractual work under this Agreement.
15. Section 504 and Americans with Disabilities Act Program Requirements. The CONTRACTOR will comply with 49 CFR. Parts 27, 37 and 38, implementing the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.
16. Public Lands. The CONTRACTOR agrees to refrain from using in its PROJECT any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of National, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and also refrain from using in its PROJECT any land from a historic site of National, State, or local significance unless the Federal Government makes the specific findings as required by 49 U.S.C. § 303.
17. Energy Conservation. The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. § 6321 *et seq.*

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18. Conflict of Interest

- A. In accordance with 41 U.S.C. § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising there from.
- B. The CONTRACTOR certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Contract shall have any personal financial interest or benefit which either directly or indirectly arises from this Contract.
- C. The CONTRACTOR shall establish safeguards to prohibit its employees or its officers from using their positions for a purpose which could result in private gain or which gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- D. The CONTRACTOR will not be awarded a contract if the financial interests are held by a current officer or employee of the Awarding Agency. Additionally, a contract will not be awarded to an officer or employee of the Awarding Agency to provide goods and service. Likewise, the CONTRACTOR officials and employees shall also avoid actions resulting in or creating an appearance of:
 - 1. Using an official position for private gain;
 - 2. Giving preferential treatment to any particular person;
 - 3. Losing independence or impartiality;
 - 4. Affecting adversely the confidence of the public or local officials in the integrity of the program.
- E. Former California Department of Transportation employees will not be awarded a contract for 2 years from the date of separation if that employee had any part of the decision making process relevant to this contract, or for 1 year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the 12-month period to his or her separation from state service.
- F. Neither the CONTRACTOR nor any of its employees, suppliers or subcontractors shall enter into any contract, subcontract, or arrangement in connection with the PROJECT or any property included or planned to be included in the PROJECT, in which any member, officer, or employee of the CONTRACTOR or its subcontractor, during the PROJECT term and for one year thereafter, has any direct or indirect conflict of interest. If any such present or former member, officer, or employee involuntarily acquires or had

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acquired prior to the beginning of the PROJECT term any such interest, and if such interest is immediately disclosed to the CONTRACTOR and such disclosure is entered upon the Minutes of the CONTRACTOR'S written report to the Awarding Agency of such interest, the Awarding Agency, may waive the conflict of interest; provided that the affected officer or employee shall not participate in any action by the CONTRACTOR or the locality relating to such contract, subcontract, or arrangement.

- G. The provisions of this subsection shall not be applicable to any contract between the CONTRACTOR and its fiscal depositories or to any contract for utility services, the rates for which are fixed or controlled by a governmental agency.

19. Lobbying

- A. The CONTRACTOR agrees that it will not use Federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, "New Restrictions on Lobbying," 49 CFR Part 20, if the bid is for an award of \$100,000 or more, the Awarding Agency will not make any Federal assistance available to the CONTRACTOR until the Awarding Agency has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use Federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of congress, or an employee of a member of Congress in connection with the awarding of any Federal grant, cooperative agreement or any other Federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;
- B. If applicable, if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the form instructions.
- C. The CONTRACTOR shall require that the language of above two clauses be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000 and that all awarding agencies shall certify and disclose accordingly.

This Contract is a material representation of facts upon which reliance was placed when this Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U. S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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20. Program Fraud and False or Fraudulent Statements or Related Acts.

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et. seq. and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to that underlying contract or the federally assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. § 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.
- C. The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

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

- A. The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the 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. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.
- B. The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole

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or in part with Federal assistance provided by the California Department of Transportation.

22. Drug-Free Workplace. The CONTRACTOR certifies by signing a Contract with the Awarding Agency that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with Government code Section 8355, et seq. The CONTRACTOR is required to include the language of this Paragraph in award documents for all sub-awards at all tiers (including subcontracts, contracts under grants, and cooperative agreements) and that all awarding agencies shall disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any awarding agency at any tier, or their employees, perform a safety sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor any tier, each affected awarding agency at any tier, and their employees with 49 U.S.C. Section 5331, and the FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.
23. Charter Service Operations (Transit Operation & Rolling Stock Only). The CONTRACTOR agrees to comply with 49 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and awarding agencies of the FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR-Subpart B. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on federally assisted equipment) of providing the service. The CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this contract, and any violation of this contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.
24. School Bus Operations (Transit Operation & Rolling Stock Only). Pursuant to 49 U.S.C. 5323(F) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323 (f) and implementing regulations, and (2) comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by the FTA and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR part 605 apply to any school transportation agreement, and a violation of this contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

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25. Use of \$1 Coins. As applicable, and to comply with Section 104 of the Presidential \$1 Coin Act of 2006, 31 U.S.C. Section 5312(p), the CONTRACTOR must ensure that the FTA assisted properties that require the use of coins or currency in public transportation service or supporting service be fully capable of accepting and dispensing \$1 coins.
26. Protection of Animals. The CONTRACTOR must ensure that all third-party contractors providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 et seq. and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.
27. Additional Termination Clauses
- A. Termination for Convenience. When it is in the Awarding Agency's best interest, the Awarding Agency reserves the right to terminate this Contract, in whole or in part, at any time by providing a ten (10) day written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the Awarding Agency. If the CONTRACTOR has any property in its possession belonging to the Awarding Agency, the CONTRACTOR will account for the same, and dispose of it in the manner the Awarding Agency directs.
- B. Lack of Beneficial Results. This Contract may also be terminated if the Awarding Agency and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.
- C. Termination for Default. The Awarding Agency may terminate this Contract upon a finding that the CONTRACTOR has not made satisfactory progress toward procuring the PROJECT equipment, services, salary and wages, as appropriate, within twelve (12) months of execution of this Contract, has not billed for operating assistance funds within twelve (12) months of execution of this Contract, or that the CONTRACTOR is otherwise not complying with the terms of this Contract. Termination shall be by written notice specifying the reason for termination and giving the CONTRACTOR thirty (30) days to correct the default. The Awarding Agency shall be the sole judge as to whether the CONTRACTOR'S corrective measures are adequate. If the CONTRACTOR fails to remedy to the Awarding Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract the Awarding Agency shall have the right to terminate the Contract without any further obligation to the CONTRACTOR. Any such termination for default shall not in any way operate to preclude the Awarding Agency from also pursuing all available remedies against the CONTRACTOR.
- D. Period of Performance Extension. If it is later determined by the Awarding Agency that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR,

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

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

28. Disputes. The Awarding Agency and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the authorized Awarding Agency Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The Awarding Agency Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have an opportunity to challenge the Awarding Agency Representative's determination but must make that challenge in writing within ten (10) working days to the Awarding Agency's Executive Director or his/her designee. If the CONTRACTOR'S challenge is not made within the ten (10) day period, the Awarding Agency Representative's decision shall become the final decision of the Awarding Agency. The Awarding Agency and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the Awarding Agency shall be final, conclusive and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

29. Third Party Procurement. In accordance with applicable U.S. Department of Transportation third-party procurement regulations in the FTA Circular 4220.1F, "Third-Party Contracting Guidance," November 1, 2008, and any later revision thereto, the CONTRACTOR agrees that it may not use FTA assistance to support its procurements unless there is satisfactory compliance with Federal laws and regulations including but not limited to the following:

- A. To state clearly that the final contract award to any bidder requires prior written approval by the Awarding Agency and that bids are consistent with the PROJECT equipment description identified in the Standard Agreement, Exhibit A, Scope of Work between California Department of Transportation and the Awarding Agency.
- B. To comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements. Also, to include all required Federal procurement provisions in each subcontract financed in whole or in part with Federal assistance provided by the FTA.
- C. For all contracts and subcontracts financed with Federal assistance, to comply with cargo preference requirements of 46 U.S.C. § 1241 and 46 CFR Part 381 when contracts

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involve equipment, materials, or commodities which may be transported by ocean vessels.

- D. To comply with the requirements of 49 U.S.C. § 5323 (c) and the FTA regulations, “Bus Testing”, 49 CFR Part 665, and any revision thereto.
- E. To comply with the requirements of 49 U.S.C. § 5323(l) and the FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 CFR Part 663, and any revision thereto.
- F. To comply with the requirements of 49 U.S.C. § 5325(b) to award a third-party contract using a competitive procurement process.
- G. In accordance with 49 U.S.C. § 5325(e)(1), in the procurement of rolling stock, may not enter into a multi-year contract to purchase additional rolling stock and replacement parts with options exceeding five (5) years after the date of the original contract.
- H. To comply with 49 U.S.C. § 5325(f), agrees that any third-party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
- I. To comply with the requirements of 49 U.S.C. Section 5323(m) and the FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases, “49 CFR Part 663, and any revision thereto.
- J. To award a third-party contract using a competitive procurement process in compliance with the requirements of 49 U.S.C. Section 5325.
- K. To comply with the requirements of 49 U.S.C. Section 5318(e) and the FTA regulations, “Bus Testing”, 49 CFR Part 665, including the certification that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or before authorizing final acceptance of that bus, that model of bus will have been tested at the ALTOONA Bus Research and Testing Center. The CONTRACTOR must obtain the final testing report and provide a copy of the report to the Awarding Agency.
- L. To require each bidder to certify that it has complied with 49 CFR 26, which requires each transit vehicle manufacturer to establish annual goals for the participation of Disadvantaged Business Enterprises and to submit those goals to FTA for approval.
- M. To comply with 49 U.S.C. Section 5323(j), FTA’s Buy America regulations at 49 CFR Part 661 and any amendments thereto, and any implementing guidance issued by the FTA, with respect to each third-party contract.

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- N. To meet applicable regulations of 49 CFR Part 663 in the purchase of revenue rolling stock.
 - O. In subcontracts exceeding \$100,000, to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et. seq. and Clean Water Act, as amended, 33 U.S.C. Section 1251 et. seq. Agrees to report and require each third-party subcontractor at any tier to report any violation of these requirements resulting from any PROJECT implementation activity of a third-party subcontractor, or itself to the FTA and the appropriate U.S. Environmental Protection Agency (EPA) Regional Office.
 - P. To comply with U.S. EPA, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.
 - Q. 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.
 - R. To the extent applicable, agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit PROJECT'S," 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.
 - S. In accordance with 40 CFR Part 85, "Control of Air Pollution from Mobile Sources," 40 CFR Part 86, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," and 40 CFR Part 600, "Fuel Economy of Motor Vehicles, the CONTRACTOR must include provisions in all third-party contracts for procurement of rolling stock to ensure compliance with applicable Federal air pollution control and fuel economy regulations.
 - T. CONTRACTOR shall refer to the FTA "Best Practices Procurement Manual" for additional procurement guidance on procurement processes and any omissions applicable to the PROJECT. The CONTRACTOR'S failure to comply with all mandates shall constitute a material breach of this Contract.
30. Amendments to Federal, State, and Local Laws, Regulations and Directives. The terms of the most recent amendment to any Federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are

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applicable to the PROJECT to the maximum extent feasible, unless the California Department of Transportation provides otherwise in writing.

31. Disposition of Equipment. The disposition of all PROJECT equipment shall be made in accordance with the requirements set forth in the FTA's implementing regulations of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments" and the FTA Circular 9040.1F or 49 CFR Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Educations, Hospitals, and Other Non-profit Organizations" and the FTA Circular 9070.1F. Whenever any PROJECT equipment is withdrawn from the PROJECT for any reason, the CONTRACTOR shall immediately notify the Awarding Agency. Should the PROJECT be terminated, all property procured under this contract becomes property of the Awarding Agency and may be transferred to other eligible contractors at the sole discretion of the Awarding Agency. At the option of the Awarding Agency, the CONTRACTOR shall do one of the following:
- A. Written Notice of Termination. The Awarding Agency may terminate this contract upon finding that the CONTRACTOR is not operating the PROJECT equipment in accordance with the project description in the Scope of Work, or that the CONTRACTOR is otherwise not complying with the terms of this contract. Termination shall be by written notice specifying the reason for termination and giving the CONTRACTOR thirty (30) days to correct the default. The Awarding Agency shall be the sole judge as to whether the CONTRACTOR'S corrective measures are adequate. If CONTRACTOR fails to remedy to Awarding Agency's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract the Awarding Agency shall have the right to terminate the contract without any further obligation to the CONTRACTOR. Any such termination for default shall not in any way operate to preclude the Awarding Agency from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default. Once a contract has been terminated within the provisions of this section, the Awarding Agency reserves the right to seize vehicles or equipment procured under this contract.
 - B. Remit to the Awarding Agency the proportional amount of current market value that exceeds \$5,000 per unit at the time of disposition, if any, of PROJECT equipment which shall be based on the percentage of the FTA grant funds paid by CONTRACTOR under this contract. Fair market value shall be deemed to be the value of the PROJECT equipment as determined by a competent appraisal at the time the equipment is withdrawn from use; and
 - C. Return the equipment to the Awarding Agency in the same condition as when received by the CONTRACTOR, except for reasonable wear and tear resulting from its use. The parties shall thereupon determine the amount of compensation, if any, to be paid by the CONTRACTOR to the Awarding Agency in order to avoid any Awarding Agency liability to the California Department of Transportation or to others.

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32. Insurance. While the PROJECT equipment is in the possession or control of the CONTRACTOR, the CONTRACTOR shall maintain adequate insurance protection against liability for damages for personal bodily injuries (including death), property damage, and vehicle damage as conditioned in this section.
- A. The minimum limits of liability, shown below in parts H and I, may be increased by the Awarding Agency at any time upon thirty (30) days notice to the CONTRACTOR.
 - B. The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the Awarding Agency. This insurance shall include a provision designating the California Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).
 - C. The California Department of Transportation, its officers, employees, and agents shall be named as additional insured.
 - D. The California Department of Transportation will not be responsible for any premiums or assessments on the policy.
 - E. The CONTRACTOR, and/or third-party subcontractor, shall furnish to the Awarding Agency, before delivery of the PROJECT vehicle(s) to the CONTRACTOR, a certificate of insurance issued by a company licensed to write such insurance in California.
 - F. Prior to the annual insurance policy expiration date; the CONTRACTOR shall furnish to the Awarding Agency a new certificate of insurance or other written evidence of insurance satisfactory to the Awarding Agency. At any time that such evidence of insurance has not been provided, the Awarding Agency shall have the right immediately to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.
 - G. The CONTRACTOR shall provide the Awarding Agency at least thirty (30) days notice of cancellation or material change of the vehicle insurance policy.
 - H. Public Agency or For-Profit CONTRACTORS. The following terms apply to all CONTRACTORS who are defined as a Public Agency or For-Profit entity, regardless if they are providing the service as the prime contractor or subcontractor:
 - 1. Property Damage: The CONTRACTOR shall place property damage, whether the property of one or more claimants, in an amount not less than one million five hundred thousand dollars (\$1,500,000) per occurrence (combined single limit) for property damage liability combined in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) per

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occurrence for property damage liability combined in respect to vehicles with seating capacity of sixteen (16) or more.

2. Bodily Injury: The CONTRACTOR shall place bodily injury in an amount not less than one million five hundred thousand dollars (\$1,500,000) per occurrence (combined single limit) in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) per occurrence for bodily injury in respect to vehicles with seating capacity of sixteen (16) or more.
 3. Vehicle Physical Damage: The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the Awarding Agency. This insurance shall include a provision designating the California Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).
- I. Non-Profit Agencies. The following terms apply to all CONTRACTORS who are defined as a non-profit agency, regardless if they are providing the service as the prime contractor or subcontractor:
1. Property Damage: The CONTRACTOR shall place property damage, whether the property of one or more claimants, in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit) for property damage liability combined in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) per occurrence for property damage liability combined in respect to vehicles with seating capacity of sixteen (16) or more.
 2. Bodily Injury: The CONTRACTOR shall place bodily injury in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit) in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) per occurrence for bodily injury in respect to vehicles with seating capacity of sixteen (16) or more.
 3. Vehicle Physical Damage: The CONTRACTOR shall place Vehicle Physical Damage, including collision and comprehensive (fire, theft, etc.) insurance for amounts equal to the actual cash value of each vehicle and any other equipment that is part of the PROJECT equipment, with deductibles acceptable to the Awarding Agency. This insurance shall include a provision designating the California Department of Transportation as the Loss Payee for all purposes of adjusting, settling, or paying claims for damage to the insured vehicle(s).

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33. Potential Subcontractors

- A. No Relationship between the California Department of Transportation and Third-Party Contractor. Nothing contained in this Contract or otherwise, shall create any contractual relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be as fully responsible to the Awarding Agency for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the Awarding Agency's obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.
- B. Third-Party Contracts and Subagreements Affected. To the extent applicable, Federal requirements extend to third-party contractors and their contracts at every tier, and to the subcontractors of third-party contractors and their subcontracts at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each subcontract financed in whole or in part with financial assistance provided by the FTA.
- C. No Federal Government Obligations to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.
- D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.
- E. Awarding Agency Approval of All Third-Party Contracts. The Awarding Agency shall approve in writing all proposed third-party contract contracts, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any third-party contracts unless the same are approved in writing by the Awarding Agency. Any proposed amendments to such third-party contracts must be approved by the Awarding Agency prior to implementation.

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34. Environmental Impact and Related Procedures (Construction Only). The CONTRACTOR assures and certifies that contracts involving the construction of public transportation projects must comply with regulations of 23 CFR Part 771.
35. Research, Development, Demonstration, Deployment, and Special Studies (Research or Data Development Only). In accordance with 37 CFR Part 401, 49 CFR Parts 18 and 19, the CONTRACTOR must comply with patent and rights in data requirements for federally assisted contracts involving experimental, developmental or research work. The Awarding Agency reserves a royalty-free, nonexclusive and irrevocable right to the data, patents, and/or inventions produced under this contract and have the irrevocable right to reproduce, publish or otherwise use the work for Federal purposes and reserve the right to grant authority to others.
36. Third Party construction or facility improvement contracts
- A. Davis-Bacon. In accordance with the requirements of 49 U.S.C. § 5333(a) and the implementing regulations of 29 CFR Part 5, the CONTRACTOR shall comply with the employee protection requirements of the Davis-Bacon Act for construction activities exceeding \$2,000 performed in connection with the PROJECT. The Davis-Bacon Act applies to contracts in excess of \$2,000 for construction, alteration, or repair of public buildings or public works and requires the inclusion of a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.
 - B. Bonding. For contracts or subcontracts exceeding \$100,000, the following bonding requirements must be included: Bid guarantee from each CONTRACTOR equivalent to five (5%) percent of the bid price; performance bond on the part of the CONTRACTOR for 100 percent of the contract price; and payment bond in the amount of either (1) 50% of the contract price if the contract price is not more than \$1 million or, (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million, or (3) \$2.5 million if the contract price is more than \$5 million.
 - C. Copeland Anti-Kickback. For contracts or subcontracts exceeding \$100,000 and in accordance with 18 U.S.C. Section 874, Copeland “Anti-Kickback” Act, 29 CFR Part 3, the CONTRACTOR and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” the CONTRACTOR and subcontractors are prohibited from inducing, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled.
 - D. Construction Safety. As prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3704 and 29 CFR Part 1926, “Safety and Health Regulations for Construction,” the CONTRACTOR and subcontractors must ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous.

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37. Registration Requirements (Recovery Act Contracts Only). The CONTRACTOR and all subcontractors must obtain a Dun and Bradstreet Data Universal Number (DUNS), (<http://www.dnb.com>), or update the existing DUNS record, and register with the Central Contractor Registration (CCR) (<http://www.ccr.gov>). The CONTRACTOR shall ensure that all third party contractors and subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR).
38. Certifications and Assurances (Recovery Act Contracts Only)
- A. The CONTRACTOR agrees to separately identify to subcontractor and document at the time of contract award and at the time of disbursement of funds, the Federal award number, Standard Agreement number, project title, and amount of the Recovery Act funds.
- B. The CONTRACTOR must ensure each invoice submitted by subcontractors shall certify that the PROJECT items delivered and/or PROJECT work performed is authorized under the Recovery Act.
39. Additional Contract Clauses (Recovery Act Contracts Only). The following contract provisions must be included in all third party contracts involving Recovery Act funds. Model contract clauses are available in the Federal Acquisition Regulation (FAR) website at, <http://www.arnet.gov/far/>.

FAR Reference	Title
FAR 52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)
FAR 52.204-11	American Recovery and Reinvestment Act – Reporting Requirements (Mar 2009)
FAR 52.215-2	Audit and Records – Negotiation (Jun 1999), Alt. I (Mar 2009)
FAR 52.216-24	Limitation of Government Liability
FAR 52.225-23	Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act – Construction Materials under Trade Agreements (Mar 2009)
FAR 52.225-24	Notice of Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials under Trade Agreements (Mar 2009)

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40. Utilization of Small Business. CONTRACTOR shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.
41. Contract Term Limitation (Rolling Stock Only). In accordance with 49 U.S.C. Section 5325(e)(1), CONTRACTOR understands that contracts for the procurement of rolling stock and replacement parts is limited to no more than five years under a single contract, even though delivery may take place beyond five years from the date of the initial contract.
42. Transit Employee Protective Agreements (Transit Operation Only). The CONTRACTOR agrees to comply with applicable transit employee protective requirements, as follows:
- A. The CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto.
 - B. The CONTRACTOR also agrees to include the applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by the FTA.
43. Useful Life Standard. In accordance with THE FTA Circular 5010.1D, the following Useful Life standards shall determine when the PROJECT will no longer be subject to monitoring and reporting once the CONTRACTOR notifies the California Department of Transportation in writing these requirements have been met. These criteria are subject to review by the FTA Sections 5310, 5311, ARRA, 5316 or 5317 Branch Chief if either factor is less than the value shown herein.

Large Size, Heavy-Duty Transit Buses	12 years or 500,000 miles
Small Size, Heavy-Duty Transit Buses	10 years or 350,000 miles
Medium Size, Medium-Duty Transit Buses	7 years or 200,000 miles
Medium Size, Light-Duty Transit Buses	5 years or 150,000 miles
Other Light-Duty Vehicles (Small Buses & Specialized Vans)	4 years or 100,000 miles
Facilities (Concrete, Steel, Frame and Construction)	40 years
Computers, GPS, AVL, Phone System	3 years
Fareboxes	10 years
Bus Shelters/Benches	5 years

In reference to rolling stock, while age and mileage are the primary criteria used to determine the useful life of vehicles, this determination is based on the date the vehicle was put into active service, not the actual model year of the vehicle.