

APPENDIX P

ADDITIONAL FEDERALLY REQUIRED PROVISIONS

1. NO OBLIGATION BY THE FEDERAL GOVERNMENT

- 1.1 County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 County, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.
- 1.2 Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by Federal Transit Administration (hereafter "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. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- 2.1 Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and U.S. Department of Transportation (hereafter "DOT") regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this Program. Upon execution of this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- 2.2 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 program that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- 2.3 Contractor agrees to include the above two (2) 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 RECORDS: *The following requirements apply to this Contract:*

- 3.1 Where County is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), Contractor agrees to provide County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Contractor which are directly pertinent to this

Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any Project Management Oversight (hereafter "PMO") Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.

- 3.2 Where the entity is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 633.17, Contractor agrees to provide County, 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 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- 3.3 Where County enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA contractor or a subcontractor of the FTA contractor in accordance with 49 CFR 19.48, Contractor agrees to provide County, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 3.4 Where any entity which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive solicitation, Contractor shall make available records related to the Contract to County, 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.
- 3.5 Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3.6 Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than five (5) 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 County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- 3.7 FTA does not require the inclusion of these requirements in subcontracts.

4. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, 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. CIVIL RIGHTS: *The following requirements apply to this Contract:*

- 5.1 Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 USC 12132, and Federal transit law at 49 USC 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 5.2 Equal Employment Opportunity – *The following apply to this Contract:*
- 5.2.1 Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and Federal transit laws at 49 USC 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (hereafter "U.S. DOL") regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 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 USC 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 Program. 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, Contractor agrees to comply with any implementing requirements FTA may issue.
- 5.2.2 Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC 623 and Federal transit law at 49 USC 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- 5.2.3 Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC 12112, 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 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

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

6. DISADVANTAGED BUSINESS ENTERPRISES

6.1 This Contract is subject to the requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (hereafter "DBE") is 10%. The agency's overall goal for DBE participation is 0%. A separate Contract goal has not been established for this procurement.

6.2 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 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as County deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this Paragraph (see 49 CFR 26.13(b)).

6.2.1 The successful proposer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

6.3 Contractor is required to pay its subcontractors performing Work related to this Contract for satisfactory performance of that Work no later than thirty (30) days after Contractor's receipt of payment for that Work from County. In addition, Contractor may not hold retainage from its subcontractors and is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's Work related to this Contract is satisfactorily completed. Contractor is also required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's Work by County and Contractor's receipt of the partial retainage payment related to the subcontractor's Work.

6.4 Contractor must promptly notify County, 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 County.

7. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION 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 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause County to be in violation of the FTA terms and conditions.

8. TERMINATION

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

8.2 **Termination for Default (Breach or Cause):** If Contractor does not deliver Services in accordance with the Contract delivery schedule, or, if the Contract is for Services, Contractor fails to perform in the manner called for in the Contract, or if Contractor fails to comply with any other provisions of the Contract, County may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor will only be paid the Contract price for Services performed in accordance with the manner of performance set forth in the Contract.

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

8.3 **Opportunity to Cure:** County in its sole discretion may, in the case of a termination for breach or default, allow Contractor five (5) working days (or such longer period as County may authorize in writing) in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

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

8.4 **Waiver of Remedies for any Breach:** In the event that County elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by County shall not limit County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

9. SUSPENSION AND DEBARMENT

9.1 This Contract is a covered transaction for purposes of 49 CFR 29. As such, Contractor is required to verify that none of Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

- 9.2 Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- 9.3 By signing and submitting its proposal, the Contractor certifies as follows:
- 9.3.1 The certification in this clause is a material representation of fact relied upon by County. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. DISPUTES

- 10.1 Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by County's Department Head or designee. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to County's Department Head or designee. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of County's Department Head or designee shall be binding upon Contractor and Contractor shall abide by the decision.
- 10.2 Performance During Dispute: Unless otherwise directed by County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- 10.3 Claims for Damages: Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his/her employees, agents or others for whose acts he/she is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- 10.4 Remedies: Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between County and Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which County is located.
- 10.5 Rights and Remedies: The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by County or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

11. LOBBYING

11.1 Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (to be codified at 2 USC 1601, et seq.): Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR 20 (Exhibit Z-1), "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 USC 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 USC 1352. Such disclosures are forwarded from tier to tier up to Contractor.

12. CLEAN AIR

12.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq. Contractor agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

12.2 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.

13. CLEAN WATER

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

13.2 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. CONTRACT WORK HOURS AND SAFETY STANDARDS

14.1 **Overtime Requirements:** No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

14.2 **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the clause set forth in Paragraph 14.1 of this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In

addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Paragraph 14.1 of this section, in the sum of ten dollars (\$10) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in Paragraph 14.1 of this section.

14.3 **Withholding for unpaid wages and liquidated damages:** County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Paragraph 14.2 of this section.

14.4 **Subcontracts:** Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Paragraphs 14.1 through 14.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Paragraphs 14.1 through 14.4 of this section.

15. CHARTER SERVICE OPERATIONS

Contractor agrees to comply with 49 USC 5323(d) and 49 CFR 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental" (i.e., it must not interfere with or detract from the provision of mass transportation).

16. SCHOOL BUS OPERATIONS

Pursuant to 69 USC 5323(f) and 49 CFR 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

17. ENERGY CONSERVATION

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.

18. ROLLING STOCK PURCHASES

18.1 Buy America Requirements

18.1.1 Title 49 USC 5323(j) provides that, with exceptions, Contract Funds may not be obligated for public transportation projects (which includes Services provided under this Contract) unless steel, iron and manufactured products used in providing Services are produced in the United States. To this end, Contractor and its subcontractor(s) shall adhere to the Buy America Requirements (49 CFR 661) and any amendments thereto. These requirements shall apply to all purchases made with Contract Funds, including materials or supplies funded as operating costs, when the purchase price exceeds \$100,000.

18.1.2 A manufacturer or supplier of steel, iron, or manufactured goods may be permitted to correct, after bid opening, an incomplete certification or a certification of non-compliance under certain circumstances if submission of the incorrect certification was the result of an inadvertent or clerical error. Title 49 USC 5323(j)(9) allows a party adversely affected by the Federal Transit Administration action the right to seek review.

18.2 Pre-Award and Post-Delivery Reviews

18.2.1 In accordance with the Pre-Award and Post-Delivery Audits of Rolling Stock Purchases (49 CFR 663) requirements, procurements for vehicles, other than sedans or unmodified vans, must be audited. When Contractor and its subcontractor(s) purchase Rolling Stock to provide Services with Contract Funds, Contractor and its subcontractor(s) shall conduct a pre-award and post-delivery review to ensure their compliance with their bid specifications, Buy America Requirements and Federal motor vehicle safety requirements, and to complete specific certifications.

18.2.2 Contractor's (and subcontractor's) purchase of more than ten (10) vehicles other than unmodified vans or sedans for use in providing Services requires an in-plant inspection. In the case of consolidated procurements made by County on behalf of multiple contractors, the in-plant inspection requirement will apply only when a single contractor will receive more than ten (10) vehicles.