

TO: James L. App, City Manager

FROM: Jim Throop, Administrative Services Director

SUBJECT: North County Transportation Center Traffic Circle Improvements

DATE: March 19, 2013

NEEDS: For the City Council to consider improvements to the traffic circle (Velta Circle) at the North County Transportation Center.

- FACTS:
1. The North County Transportation Center at 800 Pine Street serves as the hub for the City's transit operations, and also as a stop for several other transportation providers, including RTA, Greyhound and Amtrak.
 2. Over one hundred buses enter the traffic circle during the course of a typical day. Frequently, buses are blocked by other buses. They are either delayed in leaving, or roll over the curb on the inside of the traffic circle while maneuvering around other stopped vehicles, damaging the curb and landscaping. A portion of the curb was previously replaced due to such damage.
 3. In November 2012, the City engaged the services of North Coast Engineering (NCE) to design and prepare plans for improving the traffic circle and expanding its capacity. NCE has also provided a quote for construction oversight.
 4. Competitive bids were received February 6, 2013:

Viborg Sand and Gravel	\$42,830.00
Souza Construction, Inc.	\$51,340.00
Michael Frederick Paving Corp	\$54,490.00
Rockwood General Contractors	\$63,930.00
 5. A mature Valley Oak tree is located in the center of the traffic circle. An arborist inspection to assess the impact of the construction work on the tree's root system and the necessary branch trimming found that the tree is in decline. The planned work would have an additional impact on the oak tree. The arborist recommended certain mitigations to help protect the tree if the project were to proceed (see attached report).

ANALYSIS &
CONCLUSION: Staff reviewed the bids and found the lowest responsive and responsible bid to be from Viborg Sand and Gravel. NCE will provide construction oversight to ensure the project adheres to the plan.

The arborist found that the oak tree currently located in Velta Circle is in decline. It further states that proceeding with the traffic circle improvements

may have an additional impact on the tree, but that certain mitigations may be taken during the construction to lessen the damaging effects.

The report recommends that an arborist be on hand to observe the trenching process to ensure minimal root damage, but also to assist in protection and repair of potentially damaged roots. The report also recommends that deep root feeding take place. Lastly, it was recommended that a replacement Valley Oak be planted in the circle such that when the current tree dies and is removed, another oak will already be established.

The arborist could not give a length of time for the current tree to survive even without the construction project, but did say it was distressed and dying.

FISCAL
IMPACT:

The Traffic Circle improvements would be paid for with the City's Transportation Development Act (TDA) funds. TDA funds are specifically allocated to the City for transit and transportation purposes. Sufficient TDA funds are available in the current fiscal year to pay for the traffic circle improvements and also fund transit operations. In addition, Federal Section 5339 funds, for transit capital improvements, are being sought to reimburse expenses from this project. These 5339 funds are contingent on Federal allocations. The General Fund would not be impacted by this project.

Costs for the project are the following:

Construction -	\$43,830
Engineering Oversight -	\$2,980
Arborist Oversight* -	\$1,125
Arborist services** -	\$1,200
Oak Tree Replacement (sapling) -	<u>\$350</u>
Total Potential Cost -	<u>\$49,485</u>

- OPTIONS:
- a. Adopt Resolution No. 13-xxx awarding a contract to Viborg Sand and Gravel in the amount not to exceed \$43,830 and authorize the City Manager to execute the contract and also authorize engineering oversight with NCE, arborist services to protect and trim the existing oak tree and to plant a sapling oak tree for a total of \$49,485, or
 - b. Amend, modify, or reject the above option.

ATTACHMENTS:

- 1: Photos of traffic circle and damaged curb
- 2: Arborist Report
- 3: Contract documents
- 4: Resolution

Attachment 1

Transit Center Traffic Circle – typical daily traffic



Curb and landscape damage



City of Paso Robles
North County Transit Center Building
800 Pine Street
Paso Robles, CA 93446

Oak Tree Impact Analysis

With my observation of the *Quercus lobata* (Valley Oak) located at 800 Pine Street, I find that the native tree has major health issues. It is already in a state of severe decline, which is evident by the die back covering the entire tree. Old wounds such as chainsaw cuts and construction damage have not healed properly. Also, this Valley Oak shows all of the normal signs of major root loss from previous construction. This Oak has suffered a loss of approximately 40 percent of its critical root zone due to the driveway that was built in such close proximity. When native Oak trees have this amount of impact, the results are most often negative.

In my opinion, the proposed new project being planned will undoubtedly result in this Valley Oaks death. This tree has most likely grown feeder roots in the dirt area that was left over from previous construction. This often occurs as a survival effort by the tree to sustain its life for many years. The proposal shows a 20 inch deep footing to be dug around the tree which would cut out approximately an additional 15 percent of the trees critical root zone. Seeing that this tree is already failing, this project will likely contribute to a quicker death.

Henry Curtis WE-6345-A

Whit's Turn Tree Care

805-462-9958

City of Paso Robles

Attachment #2

North County Transit Center Building
800 Pine Street

Tree Protection Table

Paso Robles, CA 93446

Tree #	Tree Species		Trunk D.B.H.	Tree Condition	Construction Status	C.R.Z. Impact	Trenching and Grading	Mitigation Proposal	Monitoring Required
1	VO	Quercus lobata	44"	4	Impacted	15%		Please see below	Please see below

Recommended Mitigation: When digging around the CRZ, if roots are encountered they should be flush cut and recovered with dirt and wet burlap. I also recommend a treatment of deep root feeding.

Monitoring Required: If proceeding with this project, an arborist needs to be on site to monitor digging near this Oak.

Please see attached description of tree table.

Please contact me with any questions.

Henry Curtis Certified Arborist WE 6345-A (805) 674-8147

X.....

AGREEMENT

North County Transportation Center Traffic Circle Improvements

This Agreement is made this ____ day of _____, 20__, between the City of El Paso de Robles ("City") and _____ ("Contractor") for performance of the following public work of improvement _____ (the "Project" or the "Work"), which shall be performed in accordance with the all plans, specifications and other contract documents attached to or incorporated into this Agreement.

By Resolution dated June 4, 2002 (Resolution No. 02-107), the City adopted the Uniform Public Construction Cost Accounting Act (UPCAA), commencing with Section 22000 of the Public Contract Code. In accordance with the UPCA, the City may award contracts for public works in the amount of Forty-Five Thousand Dollars (\$45,000) or less by negotiated contract or by purchase order, or perform such projects by force account; the City may award contracts for public works in the amount of One Hundred and Seventy-Five Thousand Dollars (\$175,000) or less through informal bidding.

SECTION 1 - SCOPE

Contractor shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the Project in accordance with the Contract Documents, which is generally described as follows: Remove existing curbs in the center of Velta Circle at 800 Pine, Paso Roble. Remove asphalt as needed, compact ground, construct new curbs, lay permeable pavers, and relocate landscaping and irrigation systems as needed/ in accordance with the plans and specifications provided.

The following documents are incorporated into and made part of this Contract by this reference:

- Notice Inviting Informal Bids
- Information for Bidders
- Bid Forms
- Special Provisions (Attachment A)
- Insurance Requirements (Attachment B)
- Plan Sheets and Technical Specifications prepared by North Coast Engineering and dated October, 2012
- FTA Requirements, Section 21
- Non-Collusion Declaration
- Payment and Performance Bonds (if required)

These documents shall be referred to collectively as the "Contract Documents." The Contract Documents are intended to be complementary, and a requirement in one document is as effective as if it appeared in all of the Contract Documents. In the event of a conflict between any of the Contract Documents, the documents shall be given effect in the following order: FTA Requirements, Special Provisions, Contract, Insurance Requirements, Technical Specifications, Plans, Information for Bidders, Request for Informal Bids.

Contractor shall comply with all requirements of the Contract Documents. Where there is a conflict between the requirements of the several Contract Documents, the more stringent requirements shall govern.

SECTION 2 - PRICE

City agrees to pay, and Contractor agrees to accept, the sum of _____ (the "Contract Price") subject to adjustments for changes in the work as may be directed in writing by City, as payment in full for the Work.

Contractor shall submit a payment application for the total work completed once each month and upon completion of the Project and satisfaction of all conditions of the Contract Documents. City shall make payment within thirty (30) days of receipt of application, less five percent retention. City shall release the retained funds (less any amounts in dispute or deducted for liquidated damages or other offsets) no less than thirty-five (35) days after the date the City accepts the Work.

Pursuant to Public Contract Code Section 22300, for monies earned by the Contractor and withheld by the City to ensure the performance of the Contract, the Contractor may, at its option, choose to substitute securities meeting the requirements of Public Contract Code Section 22300.

Contractor agrees to furnish, as a condition of payment, payroll affidavits, receipts, vouchers, certified payroll reports, and other documents, in form satisfactory to City, prior to receipt of any payment. Contractor shall submit Conditional and Unconditional waivers and release of lien upon (as provided in Civil Code Sections 8132, 8134, 8136 and 8138) on behalf of itself, subcontractors and suppliers that furnished labor, material, equipment or services to the Project.

SECTION 3 - ENTIRE AGREEMENT

This Agreement represents the entire agreement between City and Contractor and supersedes any prior written or oral representations. No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.

SECTION 4 - TIME

Contractor shall complete the Project no later than 45 **calendar days** following City's issuance of the Notice to Proceed (the "Contract Time").

Time is of the essence of this Agreement.

Contractor shall provide City with scheduling information in a form acceptable to City, including any changes made by City in the scheduling of work. Contractor shall coordinate its work with that of all other contractors, subcontractors and suppliers so as not to delay or damage their performance.

If Contractor fails to complete the Project within the Contract Time, the City will sustain damage. It is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay, therefore Contractor will pay to the City the sum set forth in the Special Provisions for each and every calendar day's delay beyond the time prescribed to complete the Work; Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract.

It is further agreed that in case Contractor fails to complete the Project in all parts and requirements within the Contract Time, the City shall have the right to extend the Contract Time or not, as may seem best to serve the interest of the City; and if it decides to extend Contract Time, City shall further have the right to charge to the Contractor, his heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses directly chargeable to the Contract that accrue during the period of such extension.

The Contractor will not be assessed with liquidated damages or the cost of engineering and inspection during the delay in the completion of the Project caused solely by acts of God or of the public enemy, fire,

floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided, that the Contractor shall within three (3) days from the beginning of any such delay, notify the City, in writing of the causes of delay. The City shall ascertain the facts and the extent of delay, and his findings thereon shall be final and conclusive.

In the event that Contractor's work is delayed for any reason, including acts of City, Contractor's sole remedy shall be an extension of time equal to the period of delay, provided Contractor has given City written notice of the commencement of delay within three (3) days of its occurrence.

SECTION 5 – LABOR

The Contract is subject to California Labor Code Sections 1720 and following, and Contractor and any subcontractor shall pay not less than the specified prevailing rates of wage to all workers employed in performance of the Work. Pursuant to the provisions of Section 1770 of the California Labor Code, the City has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes in the City, as determined by the Director of the Department of Industrial Relations, a copy of which is on file in the office of the City, and shall be made available for viewing to any interested party upon request. The Contractor and each subcontractor shall forfeit as a penalty to the City not more than Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate in violation of the Labor Code. In addition, the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

Contractor's attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under the Contractor. It shall be the responsibility of the Contractor to effectuate compliance on the part of itself and any subcontractors with the requirements for employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to achieve compliance with this section. If Contractor or subcontractor does not comply after such ten (10)-day period, the Contractor shall, as a penalty to the City, forfeit One Hundred Dollars (\$100) for each day, or portion thereof, for each worker until strict compliance is effectuated.

Pursuant to the requirements of Division 4 of the Labor Code, the Contractor will be required to secure the payment of worker's compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the Contractor shall sign and file with the City a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract."

Contractor shall submit to the City, in advance of excavation five feet or more in depth and an estimated expenditure in excess of twenty-five thousand dollars (\$25,000), a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan

varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations, and all costs therefor shall be included in the Contract Price. Nothing in this section shall be deemed to allow the use of a shoring, bracing, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this section shall be construed to impose a tort liability on the Owner, any of its officers, officials, partners, employees, agents, consultants or volunteers. The Owner's review of the Contractor's excavation plan is only for general conformance to the Construction Safety Orders. Prior to commencing any excavation, the Contractor shall designate in writing to the Owner the "competent person(s)" with the authority and responsibilities designated in the Construction Safety Orders.

Full compensation for conforming to the requirements of this section shall be considered as included in the Contract Price, and no additional compensation will be allowed therefore.

SECTION 6 - CHANGES IN WORK

Contractor shall make no changes in the Work without written direction from the City. Contractor shall not be compensated for any change made without any City's written direction. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

If the City directs the Contractor in writing to make changes in the work that materially affect the cost of performing the work, the Contract Price will be adjusted based on one of the following:

Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed Work;

By a combination of existing and new unit prices and related quantities for the changed work;

Time and Materials, calculated as set forth in Section 6(C), below; or

By mutual acceptance of a lump sum.

The cost for extra or changed work performed on a Time and Materials basis shall be determined as follows:

Labor: Contractor will be paid cost of labor for workers used in actual and direct performance of extra work, including only :

Actual Wages: Actual wages paid shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.

Labor Surcharge: Payments imposed by local, county, state, and federal laws and ordinances, and other payments made to, or on behalf of, workers, other than actual wages as defined above, such as taxes and insurance. Labor surcharge shall be and shall not exceed that set forth in California Department of Transportation official labor surcharges schedule which is in effect on date upon which extra or changed work is accomplished and which schedule is incorporated herein by reference as though fully set forth herein.

Material: Only materials furnished by Contractor and necessarily used in performance of extra Work will be paid for. Cost of such materials will be cost, including sales tax and delivery charges, to purchaser (Contractor, Subcontractor or other forces) from supplier thereof, except as the following are applicable: (a) If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to the City notwithstanding fact that such discount may not have been taken. (b) For materials salvaged upon completion of extra Work, salvage value of materials shall be deducted from cost, less discounts, of materials. (c) If City determines that cost of a material is excessive, then cost of material shall be deemed to be lowest reasonably available wholesale price at which material is available in quantities concerned delivered to Site, less any discounts described in (a), above.

Equipment: For Contractor-owned equipment, payment will be made at rental rates listed for equipment in California Department of Transportation official equipment rental rate schedule which is in effect on date upon which extra Work is accomplished and which schedule is incorporated herein by reference as though fully set forth herein. If there is no applicable rate for an item of equipment, then payment shall be made for Contractor- or Subcontractor-owned equipment at rental rate listed in the most recent edition of the Association of Equipment Distributors (AED) book.

For rented equipment, payment will be made based on actual rental invoices. Equipment used on extra Work shall be of proper size and type.

Cost of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by the City. Rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Rental time will not be allowed while equipment is inoperative due to breakdowns.

Individual pieces of equipment or tools having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools.

Work Performed by Special Forces or Other Special Services: When the City and Contractor, by agreement, determine that special service or item of extra Work cannot be performed by forces of Contractor or those of any Subcontractors, service or extra Work item may be performed by specialist. Invoices for service or item of extra Work on basis of current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with established practice of special service industry to provide complete itemization. In those instances wherein Contractor is required to perform extra Work necessitating a fabrication or machining process in a fabrication or machine shop facility away from Site, charges for that portion of extra Work performed in such facility may, by agreement, be accepted as a specialist billing. In lieu of overhead and profit provided in paragraph 5(a), below, fifteen percent (15%) will be added to specialist invoice price, after deduction of any cash or trade discount offered or available, whether or not such discount may have been taken.

OVERHEAD DEFINED

The following constitutes charges that are deemed included in overhead for all Contract Modifications, including work performed on a Time and Materials basis. Contractor shall not invoice or receive payment for these costs separately: Drawings: field drawings, Shop Drawings, etc., including submissions of drawings; Routine field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; Computer services; Reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary on-Site facilities (Offices, Telephones, Plumbing, Electrical Power, lighting; Platforms, Fencing, Water, Home office expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final cleanup; Other incidental Work; Related warranties.

OVERHEAD FOR TIME AND MATERIALS

For work Contractor performs on Time and Materials at the City's direction, the following markups will be added to the cost of labor, materials and equipment, calculated as described above.

Overhead and profit on labor shall be fifteen percent (15%).

Overhead and profit on materials shall be fifteen percent (15%).

Overhead and profit on equipment rental shall be ten percent (10%).

When work is performed by a first tier Subcontractor, Contractor shall receive a five percent (5%) markup on Subcontractor's total costs of extra work. First tier Subcontractor's markup on its Work shall not exceed fifteen percent (15%).

When extra Work is performed by a lower tier Subcontractor, Contractor shall receive a total of five percent (5%) markup on the lower tier Subcontractor's total costs of extra work. Contractor and first tier Subcontractors and lower tier Subcontractors shall divide the fifteen percent (15%) markup as mutually agreed.

Notwithstanding the foregoing, in no case shall the total markup on any extra work exceed twenty percent (20%) of the direct cost, notwithstanding the actual number of Contract tiers.

On proposals covering both increases and decreases in Contract Price, overhead and profit shall be allowed on the net increase only as determined in this paragraph. When the net difference is a deletion, no percentage for overhead or profit will be allowed, but rather a deduction shall apply.

The markup shall include profit, small tools, cleanup, supervision, warranties, cost of preparing the cost proposal, jobsite overhead, and home office overhead. No markup will be allowed on taxes, insurance, and bonds.

If the City directs the Contractor in writing to make changes in the Work that materially affect the time required to perform the Work, the City will make a reasonable adjustment to the Contract Time.

SECTION 7 – CLAIMS AND DISPUTES

If any dispute shall arise between City and Contractor regarding performance of the work, or any alleged change in the work, Contractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work to City within three (3) days after commencement of the disputed work. Contractor's failure to give written notice within the three (3)-day period constitutes an agreement by Contractor that it will receive no extra compensation for the disputed work.

Disputes arising under this Agreement shall be resolved in accordance with the procedures set forth in Section 20104.50 of the Public Contract Code.

Pursuant to Public Contract Code Section 9201, the City shall provide Contractor with timely notification of the receipt of any third-party claim relating to the Contract.

SECTION 8 - INSPECTION AND PROTECTION OF WORK

Responsibility for, and security of, all work and materials is the responsibility of the Contractor until final acceptance of the project by the City.

Contractor shall make the work accessible at all reasonable times for inspection by the City. Contractor shall, at the first opportunity, inspect all material and equipment delivered to the jobsite by others to be used or incorporated in the Contractor's work and give prompt notice of any defect therein. Contractor assumes full responsibility to protect the work done hereunder until final acceptance by the City.

When the Work is completed, Contractor shall request, in writing, a final inspection. Within ten (10) days of the receipt of such request, the City shall make a final inspection. The Contractor or its representatives may be present at the final inspection. The purpose of such final inspection shall be to determine whether the Work has been completed in accordance with the Contract Documents, including all change orders and all interpretations and instructions previously issued.

SECTION 9 – ASSIGNMENT AND SUBCONTRACTING

Contractor shall give personal attention to the performance of the Contract and shall keep the Work under its control.

No subcontractors will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor, who will be held responsible for their work which shall be subject to the provisions of the Contract and specifications.

No subcontractor who is ineligible to bid work on, or be awarded, a public works project under Labor Code Sections 1771.1 or 1777.7 can bid on, be awarded or perform work as a subcontractor on the Project. The Contractor is prohibited from performing work on the Project with a subcontractor who is ineligible to perform work on a public works project under these sections of the Labor Code.

When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the subcontractor shall be removed immediately on the requisition of the City and shall not again be employed on the work.

Contractor may not assign performance of the Contract may not be assigned except upon written consent of the City.

SECTION 10 - TERMINATION

Should Contractor fail within seven (7) calendar days from receipt of City's written notice to correct any default, including but not limited to failure perform the Work in accordance with the Contract Documents, failure to comply with the directions of City, or failure pay its creditors, City may terminate this Agreement. Following a termination for default, City shall have the right to take whatever steps it deems necessary to correct Contractor's deficiencies and charge the cost thereof to Contractor, who shall be liable for the full cost of City's corrective action, including reasonable overhead, profit and attorneys' fees.

City may at any time terminate the Contract at City's convenience upon five days written notice to Contractor; in the event of termination for convenience, Contractor shall recover only the actual cost of work completed to the date of termination, which costs are documented to City's satisfaction, plus a reasonable amount not to exceed fifteen percent (15%) of the actual cost of the Work performed for overhead and profit. Contractor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination.

If City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

SECTION 11 – HOLD HARMLESS AND INDEMNIFICATION

The City of El Paso de Robles and all officers and employees thereof connected with the Work, including but not limited to the City Council and the Chief Building Official, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence of the City of El Paso de Robles' officers or employees.

To the fullest extent allowed by law, Contractor shall defend, indemnify and hold harmless the City of El Paso de Robles, its elected and appointed officials, and employees and agents, from all liability, penalties, costs, losses, damages, expenses, fines, causes of action, claims or judgments, including attorney's fees and other defense costs, resulting from injury to or death sustained by any person (including Contractor's employees), or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with the performance of the Work, regardless of the Contractor's fault or negligence, including any of the same resulting from City's alleged or actual negligent act or omission, or its agents, contractors or employees; except that this indemnity obligation shall not be applicable to injury, death or damage to property arising from the sole or active negligence or willful misconduct of City, its officers, agents, or servants who are directly responsible to City. This indemnification shall extend to claims asserted after termination of this Contract for whatever reason.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall be considered necessary by the City, may be retained by the City of El Paso de Robles until disposition has been made of such suits or claims for damage.

SECTION 12 – BONDS AND INSURANCE

Bonds [applies only if contract > \$25,000]

Within ten (10) days after being notified of the award of the contract, and before the City will execute the agreement for construction, the Contractor to whom the Contract is awarded shall furnish and file with the City Performance and Payment Surety bonds as set forth below.

Contractor shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to City conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price.

Insurance

Contractor shall obtain, at its sole cost and expense, all insurance required by Attachment B. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to City within ten (10) days after being notified of the award of the contract, and before execution of the agreement for construction by the City.

SECTION 13 - WARRANTY

Contractor warrants to City that all materials and equipment furnished shall be new, free from faults and defects and of good quality. Contractor hereby warrants its work against all deficiencies and defects for the period required by the prime contract or the longest period permitted by the law of this State, whichever is more.

SECTION 14 - LAWS TO BE OBSERVED

Contractor shall keep itself fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations that in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

Contractor shall at all times observe and comply with, and shall cause all of its agents and employees to observe and comply with all such existing and future Federal, State and local laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Project; and shall protect and indemnify the City, and all officers and employees thereof connected with the Project, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the City's representative or their employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order or decree, Contractor shall promptly report the same to the City in writing.

SECTION 1 SECTION 15 – MISCELLANEOUS

A. UTILITY FACILITIES

1. Contractor shall take all steps reasonably necessary to ascertain the exact location of all underground facilities prior to doing work that may damage such facilities or interfere with

their service, including but not limited to calling Underground Service Alert to locate utilities in accordance with the procedures described in Government Code 4215 et seq.

2. Contractor shall protect from damage any utility facilities that are to remain in place, be installed, relocated or otherwise rearranged.
3. If Contractor while performing the Work discovers utility facilities not identified in the Contract Documents, Contractor shall immediately notify the City and the utility owner. City shall arrange the removal, relocation, or protection of existing main or trunk line utility facilities located at the site of the Work but not identified in the Contract.
4. If the Contractor is required to locate, repair damage not due to the Contractor's failure to exercise reasonable care, and remove or relocate existing main or trunk line utility facilities, it shall be compensated under Section 6 of this Contract – Changes in the Work - including payment for equipment on the Project necessarily idled during such work.
5. Contractor will not be entitled to damages or additional payment for delays caused solely by the failure of City, or the owner of the utility, to provide for removal or relocation of existing main or trunk line utility facilities not identified in the Contract Documents, except for equipment necessarily idled during such work.
6. Contractor shall not be assessed liquidated damages for delay in completing the WORK solely attributable to the failure of City, or the owner of the utility, to provide for removal or relocation of existing main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy.
7. The right is reserved by the City and the owners of facilities or their authorized agents, to enter the job for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct his operations in such a manner as to avoid any delay or hindrance to the work being performed by such other forces.
8. Attention is directed to the possible existence of underground facilities not known to the City, or in a location different from that which is shown on the plans or in the Special Provisions.

Existing Utilities

5.5.1 General – The location of known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require the Owner to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the site of the Project.

The Owner will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the Owner in the Contract Documents or which can reasonably be inferred from the presence of other visible facilities.

5.5.2 Utility Location – It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this section.

The locating of utilities shall be in conformance with Government Code Section 4216 except for the Owner's utilities located on the Owner's property and not on public right-of-way.

A "High Priority Subsurface Installation" is defined in Section 4216 (e) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."

A "Subsurface Installation" is defined in Section 4216 (l) as "any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines."

Pursuant to Government Code Section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more than 14 calendar days before performing any excavation. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor shall furnish to the Construction Manager written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.

After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit. The Construction Manager shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.

The Contractor's attention is directed to the requirements of Government Code Section 4216.2 (a)(2) which provides: "When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation prior to the legal excavation start date and time, as such date and time are authorized pursuant to paragraph (1) of subdivision (a) of 4216.2. The excavator and the operator or its representative shall conduct an onsite meeting at a mutually-agreed-on time to determine actions or activities required to verify the location of the high priority subsurface installation prior to start time." The Contractor shall notify the Construction Manager in advance of this meeting.

Utility Relocation and Repair – If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Construction Manager in writing. The Construction Manager will supply information for correcting the interferences in accordance with the responsibilities of this section and Government Code Section 4215.

Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, the Contractor shall call 911 emergency services.

The Owner will compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Section 00700-7.1, Change Orders. The Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay is caused by the failure of the Owner or utility company to provide for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Sections 7 of this Agreement and SC-8.

The public utility, where it is the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the Owner and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

When the Contract Documents indicate that a utility is to be relocated, altered or constructed by others, the Owner will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Agreement.

Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

B. DIFFERING SITE CONDITIONS.

1. The Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any:
 - (a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (b) Subsurface or latent physical conditions at the site differing materially from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or
 - (c) Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
2. The City shall promptly investigate the conditions, and if it finds that such conditions do materially so differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, it shall issue a change order under the provisions described in the Contract Documents.
3. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in the Contract Documents.
4. In the event a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from completing the Work as provided in the Contract Documents. The Contractor shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by this Contract or by law, which pertain to the resolution of disputes and protests.

C. RECORDS AND AUDITS

1. Contractor and its subcontractors shall establish and maintain records pertaining to this contract. Contractor's and subcontractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of all costs charged under this contract, including properly executed payrolls, time records, invoices and vouchers.

2. Contractor shall permit City and its authorized representatives to inspect, examine and make copies of Contractor's books, records, accounts, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this contract and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3)-year period following the termination of this Contract; and Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after the termination of this Contract.
3. Pursuant to California Government Code Section 8546.7, the parties to this Contract shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the contract. The examination and audit shall be confined to those matters connected with the performance of this contract including, but not limited to, the cost of administering the contract.

D. CLAYTON ACT AND CARTWRIGHT ACT

Section 7103.5 of the Public Contract Code specifies that in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding 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 Sec. 16700) of Part 2 of Division 7 of the Business Profession Code, arising from purchase of goods, services or materials pursuant to the contract or subcontract. Pursuant to Public Contract Code Section 7103.5 the Contractor and all of its Subcontractors hereby offer and agree to assign to the City 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 Sec. 16700) of Part 2 of Division 7 of the Business Profession Code, arising from purchase of goods, services or materials pursuant to this Agreement. This assignment shall become effective when the City tenders final payment to the Contractor without further acknowledgement by the parties.

E. SITE SUPERINTENDANT

The Contractor shall provide competent supervision and staffing of the Work as approved by the City. The Contractor or designated representative shall be present at the site at all times while work is actually in progress. Superintendent must be able to proficiently speak, read and write in English.

F. CHARACTER OF WORKERS

If any subcontractor or person employed by the Contractor shall appear to the City to be incompetent or to act in a disorderly or improper manner, he shall be discharged immediately on the request of the City, and such person shall not again be employed on the Work.

G. NOTICES

All notices permitted or required under this Agreement shall be given at the following address, or at such other address as the parties may provide in writing for this purpose:

CITY:

821 Spring Street Ste A

Paso Robles, CA 93446

Email: mseden-hansen@prcity.com

CONTRACTOR

Email:

Attn: Michael Seden-Hansen

Attn.: _____

The parties may designate, in writing, other individuals to whom notice is to be given. Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by email, upon delivery; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

5 – MISCELLANEOUS

SECTION 16 - WAIVERS OF LIEN

Upon request the Contractor shall submit a complete list of major suppliers and/or subcontractors who will be providing material and/or labor for the performance of the Work, and shall submit with each payment request waivers of lien from each major supplier and/or subcontractor. Sample forms to be used will be furnished by the City.

SECTION 17 - CLEAN-UP

Contractor will remove from the project site all debris resulting from performance of the Work no less often than daily. If Contractor fails to do so, City may, after twenty-four (24) hours' notice to Contractor, clean up the site and deduct the cost from the Contract Price.

SECTION 18 - LICENSE REQUIREMENT

Contractor's attention is directed to Business and Professions Code Sections 7000 et seq. concerning the licensing of contractors. At the time Contractor enters into this Contract and all times Contractor is performing the Work, Contractor shall have a valid license issued by the Contractors State License Board in the classification stated in the Special Provisions. All bidders and subcontractors shall be licensed in accordance with the laws of this State and any contractor or subcontractor not so licensed is subject to penalties imposed by such laws.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

SECTION 19 – LABOR COMPLIANCE

Pursuant to Subchapter 4.5 of Chapter 8 of Title 8 of the California Code of Regulations, this Project is subject to labor compliance oversight by the Department of Industrial Relations, Division of Labor Standards Enforcement, Compliance Monitoring Unit (CMU). The Contractor shall comply with all the labor compliance requirements under this contract and applicable provisions of the California Labor Code and California Code of Regulations. In bidding on this Project, it shall be the Contractor's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this contract and applicable law in its bid.

Contractor shall post, at each job site, the notice required by Section 16451(d) of Title 8 of the California Code of Regulations. Template notices are also available by emailing a request to CMU@dir.ca.gov or at the following location.

District Office of the Division of Labor Standards Enforcement
1515 Clay Street, Suite 801
Oakland, CA 94612

Contractor and each subcontractor shall keep certified payroll records in accordance with Labor Code section 1776, and such records shall be furnished to the District on a monthly basis, and within ten (10) days of any separate request by the CMU. Payroll records shall be in the format prescribed by Section 16401 of Title 8 of the California Code of Regulations, with use of the current version of the Department of Industrial Relations' Public Works Payroll Reporting Form (A-1-131) and Statement of Employer Payments (DLSE Form PW26).

Contractor and subcontractor shall also submit electronic certified payroll reports to the CMU on a monthly basis, and within ten (10) days of any separate request by the CMU, via the Department of Industrial Relations' online payroll system called Labor Compliance Management (MyLCM), and/or in any other format requested/required by the CMU. The City shall contact Contractor with registration details for MyLCM, and Contractor, within three (3) days thereafter, shall register itself and any subcontractors in MyLCM. Contractor shall work with City staff and consultants to ensure full compliance with the CMU requirements and all other labor compliance requirements under this contract and applicable labor law.

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SECTION 20 – COMPLIANCE WITH STATE STORM WATER PERMIT

Contractor shall be required to comply with all aspects of the State Water Resources Control Board (State Water Board) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit) for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.

CITY OF EL PASO DE ROBLES:

CONTRACTOR:

By: _____
James L. App, City Manager

By: _____
(Authorized Representative of Contractor)

Dated: _____

Printed Name: _____

ATTEST:

Title: _____
(Attach Acknowledgment for Authorized
Representative of Contractor)

Caryn Jackson, Deputy City Clerk

License No. _____

APPROVED AS TO FORM:

Dated: _____

Linda R. Beck, Special Counsel
(Contractor Signatures must be Notarized)

SECTION 21 - FTA REQUIREMENTS; FEDERAL TRANSIT AUTHORITY THIRD PARTY CONTRACT

Contractor shall be required to enter this
Third Party Contract
with the Federal Transit Authority (FTA)

**THIRD PARTY CONTRACT
Federal Transit Authority Required Provisions**

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

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.

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.

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 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

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.*

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 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.

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 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.

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, 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

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.

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 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.

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 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).

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.

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.

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)

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.

44. Environmental requirements. The CONTRACTOR recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Contract. Some, but not all, of the major Federal laws that may affect the Contract include: the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and scattered sections of 29 U.S.C.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. The CONTRACTOR also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Contract. Thus, the CONTRACTOR agrees to comply, and assures the compliance of each Subcontractor and each third party CONTRACTOR, with any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and the CONTRACTOR. The CONTRACTOR agrees that those laws and regulations do not constitute the CONTRACTOR's entire obligation to meet all Federal environmental and resource conservation requirements.

A. Clean Air. 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 LTA, and understands and agrees that the LTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. 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.

B. Clean Water. 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 LTA and understands and agrees that the LTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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.

45. Recycled products. To the extent applicable, the CONTRACTOR agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

By signing below I acknowledged that I have read, understand and will comply with all applicable provisions.

Print name: _____ Title: _____

Signature: _____

Print CONTRACTOR company name: _____

Date: _____

By signing below I acknowledged that I have read, understand and will comply with all applicable provisions.

Print name: _____ Title: _____

Signature: _____

Print name: City of Paso Robles

Date: _____

ATTACHMENT A SPECIAL PROVISIONS

SC 1. LIQUIDATED DAMAGES

As provided in the Notice Inviting Bids, Contractor shall pay to City the sum of \$500. for each and every calendar day's delay in completion of the Work beyond expiration of the Contract Time.

SC 2. LICENSE CLASSIFICATION

In accordance with Section 3300 of the Public Contract Code, the City has determined that the Contractor shall have a **Class A (General Engineering) License** at the time it enters into the Contract and at all times it is performing the Work.

SC 3. COOPERATION AND CARE

A. Should construction be under way by the City, other agencies or other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The City reserves the right to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

B. Until the final acceptance of the contract, the Contractor shall have the charge and care of the Work and of the materials to be used therein, including materials for which partial payment has been received. The City of El Paso de Robles shall not be held responsible for the care or protection of any material or parts of the Work prior to final acceptance, except as expressly provided in the Special Provisions.

SC 4. PROGRESS OF THE WORK

A. Hours of work - Overtime and holidays. The Contractor shall perform all work during the hours of 7:00 a.m. to 3:30 p.m., Monday through Friday unless otherwise specified in the Special Provisions or authorized by the City in writing. If the Contractor wishes to work during any other hours or on weekends, written permission must be received from the City. The request must be received at least two (2) working days in advance of any work. No work will be allowed on City of El Paso de Robles Holidays except in the case of an emergency. A listing of City of El Paso de Robles holidays is on file in the office of the City. If Contractor requests overtime work in which the City will incur costs, Contractor shall be responsible for payment of the City's costs incurred in connection with the overtime work. The City will invoice the Contractor at time and one half to cover the costs incurred. If Contractor does not pay the invoice within ten (10) days, the City may deduct the amount billed from other payments due or to become due to Contractor under the Contract.

B. The Public Works Director or his designee shall have the authority to suspend the Work wholly or in part, for such a period as he may deem necessary.

SC 5. LIMITS OF WORK

The "limits of work" are shown on the plans. The Contractor shall make its own arrangements, and pay all expenses for additional area required outside of the limits of work unless provided in the Special Provisions. **SC 6. CONTRACT TIME**

The Contract Time and all time periods in connection with the Project will be calculated based on calendar days. Contractor shall complete the Work no later than 60 calendar days Following City's issuance of the Notice To Proceed (the "Contract Time"). Time is of the essence of this Agreement.

SC 7. SITE STAGING AND SECURITY

- a. The work will be performed on City of El Paso de Robles property. The area will remain open to the transit operators/personnel during construction. Contractor and all subcontractors shall, as part of the Work and without any increase in the Contract Price, comply with any and all rules, procedures, or requirements the City may adopt or have in effect related to performance of the Work. These include, but are not limited to, safety, appropriate attire and communication with the public.
- b. Access must be maintained for transit operators and personnel at all times.
- c. Contractor shall obtain and pay for storage and parking areas as needed.

SC 8. CONSTRUCTION PROGRESS SCHEDULE

- a. Initial/Baseline Schedule
 - i) The Contractor shall prepare and submit the Contractor's Initial Construction Schedule to the City within five (5) calendar days after the issuance of the Notice to Proceed. The Initial Construction Schedule shall be in sufficient detail to show the sequence of activities required for the complete performance of all work, including submittals affecting the critical path.
 - ii) The City will meet with the Contractor to review and comment on the Contractor's Initial Schedule within five (5) days of its receipt.
 - iv) The Contractor will finalize and re-submit the schedule within five (5) days of the review meeting. Upon favorable review by the City, the Initial Schedule will become the project Baseline Contract Schedule. The Baseline Schedule shall not be revised without written approval of the City.
 - v) The City shall have the right to withhold progress payments from the Contractor at its discretion if the Contractor fails to finalize and obtain approval for the Baseline Contract Schedule within the prescribed period.
 - vi) Failure of the Contractor to incorporate all elements of the Work or any inaccuracy in the Baseline Contract Schedule shall not excuse the Contractor from performing all the work required for a completed project within the specified contract time period, notwithstanding favorable review of the Baseline Contract Schedule by the City's authorized representative(s).
- b. Schedule updates
 - i) Contractor shall submit an updated schedule, modified to show the actual progress and status of the Work, and any added or deleted work, with each Payment Application.
 - ii) The City may withhold payment, in whole or in part, if Contractor does not provide the required schedule update with its payment application.

c. Time Extension Requests

i) The monthly updated construction schedules submitted by the Contractor shall not show a completion date later than expiration of the Contract Time, subject to any time extensions granted by the City.

ii) If the Contractor believes that it is entitled to an extension of the Contract Time due to a Change Order or delay/disruption, the Contractor, within five (5) days of the qualifying event(s), shall submit:

- A Time Extension Request notification letter with a detailed narrative justifying the time extension requested;
- An analysis of the delay impact, identifying all schedule activities that are affected by the subject occurrence; and
- A schedule analysis that incorporates the findings of the analysis of the delay impact into the latest update of the schedule.

iii) The Time Extension Request shall forecast the adjusted project completion date and impact to any intermediate milestones.

iv) Float is not for the exclusive use or benefit of either the City or Contractor. Contract time extensions shall be granted only to the extent the equitable time adjustments to the activity or activities affected by a change order or delay/disruption exceed the total float of a critical activity (or path) and extend the Contract Completion Date.

v) What the Contractor does not submit a Time Extension Request within five (5) working days, it is mutually agreed that the particular Charge Order (including Proposed Change Order) or delay/disruption does not affect the construction schedule and hence no time extension is due to the Contractor.

vi) The City shall not have any obligation to consider any time extension request unless the Contractor complies with the requirements of the Contract Documents. The City shall not be responsible or liable to the Contractor for any constructive acceleration due to failure of the City to grant time extensions under the terms of this contract, should Contractor fail to comply with the time extension submission and justification requirements stated herein.

ATTACHMENT B

CITY OF EL PASO DE ROBLES

INSURANCE REQUIREMENTS FOR PUBLIC WORKS PROJECTS

Without limiting Contractor's indemnification of City, and within ten (10) days after award of the Contract, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)) for Contractor's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Contractor shall require each subcontractor to similarly maintain Worker's Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its elected and appointed officers, agents, officials, employees and volunteers.

General Liability Insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Officer form CG 00 01, in an amount not less than one million five hundred thousand (\$1,500,000) per occurrence, one million five hundred thousand dollars (\$1,500,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability, and a one million five hundred thousand (\$1,500,000) completed operations aggregate.

Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million (\$1,000,000) combined single limit for each accident.

Umbrella or Excess Liability Insurance. At the option of the Contractor, primary limits may be less than required, with an Umbrella or Excess Liability Policy providing the additional limits needed. This form of insurance will be acceptable provided that the Primary and Umbrella or Excess Liability Policies both provide the insurance coverage's herein required, and the Umbrella or Excess Liability Policy provides bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverage's set forth above, including commercial general liability and employers liability. Such policy or policies shall include the following terms and conditions:

A drop down feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;

Pay on behalf of wording as opposed to reimbursement;

Concurrency of effective dates with primary policies; and

Policies shall "follow form" to the underlying primary policies.

Insureds under primary policies shall also be insureds under the Umbrella or Excess Policies.

Builder's Risk Insurance. Upon commencement of construction and with approval of City, Contractor shall obtain and maintain builder's risk insurance as specified below.

The named insureds shall be Contractor, all Subcontractors (excluding those solely responsible for design work) of any tier, suppliers, and City, its elected and appointed officers, agents, officials, employees and volunteers. Contractor shall not be required to maintain property insurance for any portion of the Project following transfer or control thereof to City.

Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to City to ensure adequacy and sublimits.

OTHER PROVISIONS OR REQUIREMENTS

Proof of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of Coverage. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by Contractor, his agents, representatives, employees or subcontractors. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. City, its elected and appointed officers, agents, officials, employees and volunteers shall continue as additional insureds under such policies.

City Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor, or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholder's Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City.

Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the City, its elected and appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

Enforcement of Contract Provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide City with thirty (30) days' notice of cancellation (except for nonpayment for which ten (10) days' notice is required) or nonrenewal of coverage for each required coverage.

Additional Insured Status. Commercial general liability policies shall provide or be endorsed to provide that City, its elected and appointed officers, agents, officials, employees and volunteers shall be additional insureds under such policies. This provision shall also apply to any umbrella or excess liability policies. Additional insured endorsement shall use the standard ISO for CG 2010 with an edition date prior to 1992. If unable to obtain the CG 2010 prior to 1992, a combination of CG 2010 and CG 2037 may be submitted to the City for consideration. Commercial general liability policies shall apply on a primary, non-contributory basis. Contractor shall list the California department of Transportation (Caltrans) as additional insured on their liability policy.

City's Right to Revise Requirements. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Contractor ninety (90) days' advance written notice of such change. If such change results in substantial additional costs to the Contractor, the City and Contractor may negotiate Contractor's compensation.

Self-insured Retentions. Any self-insured retentions must be declared to and approved by the City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

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

Injury or Illness Reports. The Contractor shall furnish the City with a copy of the Employers Report of Injury immediately following any incident requiring the listing of said report on the OSHA Log during the prosecution of the Work under this contract. The Contractor shall also furnish the City with a copy of the Employer's Report of Injury involving any subcontractor on this Project.

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

END OF INSURANCE REQUIREMENTS

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of El Paso de Robles, California (hereinafter referred to as "City") and _____ (hereinafter referred to as "Principal"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the _____ (hereinafter referred to as the "Agreement"); the terms and conditions of which are incorporated herein by reference; and the terms of the Agreement require the Principal to furnish performance security.

NOW, THEREFORE, Principal and _____ ("Surety"), are hereby held and firmly bound unto the City in the amount of _____ Dollars (\$ _____), for payment of which Principal and Surety hereby bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal (or its heirs, executors, administrators, successors, or assigns approved by the City) performs all of the covenants, conditions, and obligations of the Agreement, including the obligation to indemnify, defend, and hold harmless the City, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

The Surety's obligation under this bond shall arise after the City has provided written notice to the Surety, at the address set forth below, of the Principal's default under the Agreement, and the Principal's failure to cure the default in accordance with the terms of the Agreement.

The Surety hereby agrees, for value received, that its obligations under this bond shall in no way be impaired or modified by any modification to the Agreement by the City and the Principal, and the Surety hereby waives notice of any such modification.

In the event suit is brought upon this bond, the surety shall pay reasonable attorneys' fees and costs incurred by the prevailing parties in such suit, which fees and costs shall be in addition to the face amount of the bond.

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this document on behalf of the Principal and the Surety, and have caused this document to be executed by setting hereto their names, titles, and signatures.

**

CONTRACTOR, as Principal

SURETY

By: _____

By: _____

Its: _____

Its: _____

Address: _____

Address: _____

FAX: _____

FAX: _____

NOTE: NOTARY ACKNOWLEDGMENT FOR SURETY AND SURETY'S POWER OF ATTORNEY MUST BE ATTACHED.

PAYMENT FOR LABOR AND MATERIALS BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of El Paso de Robles, California (hereinafter referred to as "Owner") and _____ (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **North County Transportation Center Traffic Circle Improvements** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish a bond to secure payment for all work, labor, materials, equipment or services furnished in connection with the Construction Contract;

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Claimants, as defined herein, in the penal sum of _____ Dollars (\$_____), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Payment Bond.

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner to pay for work, labor, materials, equipment, services, or other items furnished for use and actually used in the performance of the Construction Contract, which is incorporated herein by reference.

With respect to Owner, this obligation shall be null and void if Contractor:

Promptly makes payment, directly or indirectly, for all sums due Claimants, and

Defends, indemnifies and holds Owner harmless from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for work, labor, materials, equipment, services or other items furnished for use in the performance of the Construction Contract, provided Owner has promptly notified Contractor and Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety.

With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.

Surety shall have no obligation to Claimants under this Bond until:

Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described below) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Payment Bond and, with substantial accuracy, the amount of the claim.

Claimants who do not have a direct contract with the Contractor:

Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, as required by and conforming with Civil Code sections 9300 - 9306; and

Not having been paid within thirty (30) days of sending the required notice, have sent a written notice to Surety (at the address described below) and sent a copy to the Owner, stating that a claim is being made under this Payment Bond and enclosing a copy of the previous written notice furnished to Contractor.

When the Claimant has satisfied the conditions of Paragraph 4, Surety shall promptly and at Surety's expense take the following actions:

Send an answer to the Claimant, with a copy to Owner, within twenty (20) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

Pay or arrange for payment of any undisputed amounts.

Surety's total obligation shall not exceed the amount of this Payment Bond, and the amount of this Payment Bond shall be credited for any payments made in good faith by Surety.

Amounts owed by Owner to Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Performance Bond. By Contractor furnishing and Owner accepting this Payment Bond, they agree that all funds earned by Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work or the satisfaction of Owner's claims, including liquidated damages, under the Construction Contract.

Surety shall not be liable to Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. Owner shall not be liable for payment of any costs or expenses of any Claimants under this Payment Bond, and shall have under this Payment Bond no obligation to make payments to, give notices on behalf of, or otherwise have any obligation to Claimants under this Payment Bond.

Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as costs.

Notice to Surety, Owner or Contractor shall be mailed or delivered to the address shown on the signature page.

This Payment Bond has been furnished to comply with Civil Code sections 9550 et seq. Any provision in this Payment Bond conflicting with those statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Payment Bond shall be construed as a statutory bond and not as a common law bond.

Upon request by any person or entity appearing to be a potential beneficiary of this Payment Bond, the Contractor shall promptly furnish a copy of this Payment Bond or shall permit a copy to be made.

DEFINITIONS

Claimant: An individual or entity identified in California Civil Code section 9100.

Construction Contract: The agreement between Owner and Contractor identified above, including all Contract Documents and changes thereto.

[SIGNATURES ON NEXT PAGE]

CONTRACTOR, as Principal

SURETY

By: _____

By: _____

Its: _____

Its: _____

Address: _____

Address: _____

FAX: _____

FAX: _____

NOTE: NOTARY ACKNOWLEDGMENT FOR SURETY AND SURETY'S POWER OF ATTORNEY MUST BE ATTACHED.

**CONTRACTOR'S CERTIFICATE
REGARDING WORKERS COMPENSATION**

PROJECT NAME:

Labor Code Section 3700 states:

"Every employer, except the State, and all political subdivisions or institutions thereof, will secure the payment of compensation in one or more of the following ways:

By being insured against liability to pay compensation by one or more insurers, duly authorized to write compensation insurance in this State.

By securing from the Director of Industrial Relations a certificate on consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to employees."

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance. In accordance with the provisions of that code, I will comply with such provisions before commencing the performance of the work of this contract.

CONTRACTOR:

By: _____

Printed Name: _____

Title: _____

Date: _____

(SEAL)

(Labor Code Section 1861, provides that the above certificate must be signed and filed by Contractor, with City prior to performing any work under this contract.)

RESOLUTION NO. 13-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES AWARDING
A CONTRACT FOR THE IMPROVEMENTS TO THE TRAFFIC CIRCLE AT THE NORTH
COUNTY TRANSPORTATION CENTER

WHEREAS, the City owns the North County Transportation Center located at 800 Pine Street, and

WHEREAS, over 100 buses, from multiple transportation providers, enter the traffic circle at the North County Transportation Center daily, and

WHEREAS, there is insufficient space in the traffic circle for the current level of vehicular traffic, and

WHEREAS, staff sought bids from contractors to make improvements to the circle to increase its capacity, and

WHEREAS, at the bid opening, four (4) bids were received, ranging from \$43,830 to \$63,930, and

WHEREAS, staff reviewed the bids and determined the lowest responsive bid received was from Viborg Sand and Gravel, in the amount of \$43,830, and

WHEREAS, an arborist report to assess potential impact on a mature Valley Oak tree located in the traffic circle has been obtained, and

WHEREAS, the arborist determined that mitigation measures could be taken to lessen the impact of the construction on the existing oak tree, and/or a new oak tree planted near the existing oak tree,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of El Paso de Robles does hereby award a contract to Viborg Sand and Gravel in the amount not to exceed \$43,830, for the construction of the desired traffic circle improvements and authorize the City Manager to execute the contract, and retain construction oversight and arborist services necessary for trimming and protection of the existing oak tree, and to plant a sapling oak tree for a total project cost of \$49,485, to be appropriated to account #206-910-5452-230,

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 19th day of March, 2013 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Duane Picanco, Mayor

Caryn Jackson, Deputy City Clerk