AGREEMENT FOR THE PROVISION OF TRANSIT OPERATIONS AND MAINTENANCE SERVICES

by and between

SOLANO COUNTY TRANSIT (SOLTRANS)

and

[CONTRACTOR]

July 1, 2020

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TRANSIT OPERATIONS AND MAINTENANCE SERVICES CONTRACT

THIS TRANSIT OPERATIONS AND MAINTENANCE SERVICES CONTRACT (Contract) is made as of July 1, 2020 between SOLANO COUNTY TRANSIT (SolTrans), a California joint powers authority existing pursuant to Government Code section 6500, et seq. and XXX XXX ("CONTRACTOR"), (collectively, the "Parties" and individually as a "Party").

RECITALS

1. Public entities are authorized by Government Code section 26002 to furnish and operate public transportation services and by the Public Utilities Code section 99288 and Government Code section 31000 to contract with an operator to provide such services.
2. SolTrans was formed on November 30, 2010 as Joint Powers Authority between the Cities of Benicia and Vallejo and the Solano Transportation Authority whose purpose is to take advantage of the opportunities for more economical provision of transit services through economies of scale and to improve and expand the provision of a variety of transit services including, but not limited to, normal and customary intra-city bus transit, intercity commuter transit, ADA paratransit services, and connecting transit to other transportation providers.
3. On October 18, 2019, SolTrans issued a Request for Proposals No.: 2019-RFP-05 ("RFP") for transit operations and maintenance services.
4. Prior to the submission of proposals by interested firms, SolTrans issued XX addenda to the RFP (Addenda) which amended or clarified requirements in the RFP and once issued, were incorporated into the RFP.
5. On December 18, 2019, CONTRACTOR submitted a proposal to provide transit operations and maintenance services for SolTrans as requested in the RFP and Addenda.
6. On January XX, 2020, Contractor submitted a "Best and Final Offer" which was recommended to the SolTrans Board of Directors on March 20, 2020 for approval.
7. This Contract is intended to satisfy the requirements of Public Utilities Code section 99288, and the rules and regulations adopted by the State of California Secretary of Business, Transportation and Housing Agency, and the Metropolitan Transportation Commission, pursuant to Public Utilities Code section 99401, making a portion of SolTrans funds available under the Mills-Alquist-Deddeh Act of 1971, as amended.
8. CONTRACTOR represents that it is in the business and fully qualified in the field of public transportation, and is fully willing and able to perform this Contract at the specified costs, and with the specified level of service and quality, including all attached Exhibits, inclusive. SolTrans has awarded this Contract in reliance upon such representations, and on CONTRACTOR's particular skills,

experience, and abilities as represented by CONTRACTOR.

9. That for and in consideration of the payments and obligations to be made and performed by SolTrans, the CONTRACTOR agrees with SolTrans, to provide transit operation and maintenance services as required in this Contract from the date of execution for the prices set forth as full compensation in the manner specified and contained in the Contract and related Exhibits.

AGREEMENT

The Parties agree as follows:

1 DEFINITIONS

The following are definitions of special terms used in this document.

Authorized Signer: The person who is executing this Contract on behalf of the CONTRACTOR and who is authorized to bind the CONTRACTOR.

Baseline Revenue Service Hours: The number of hours projected to be performed during the first year of this agreement, calculations of percentage of future annual revenue hours are based upon changes in revenue hours divided by the Baseline Revenue Service Hours.

Best and Final Offer (BAFO): The last offer made by CONTRACTOR.

CONTRACTOR: The successful CONTRACTOR who is awarded a Contract for providing all services described in the contract documents.

CONTRACTOR REPRESENTATIVES: Employees, agents, or otherwise representatives of the successful CONTRACTOR who is awarded a Contract for providing the services herein.

Offer: A promise, if accepted, to deliver services according to the underlying solicitation of the Procuring Agency documented using the prescribed form in the solicitation, including any bid or proposal or Best and Final Offer.

Procuring Agency: An agency seeking services through a competitive, solicitation process. In this case, Solano County Transit (SolTrans) is the procuring agency.

Executive Director: The person who is executing this Contract on behalf of the Procuring Agency (Soltrans) and who has complete and final authority except as limited herein.

Request for Proposals (RFP): The document that is issued by the Procuring Agency for services that it desires to outsource to a Contractor for managing and delivering on its behalf. The RFP outlines the scope of work and requirements for CONTRACTORS.

Solicitation: Procuring Agency's Request for Proposals.

2 SCOPE OF WORK

2.1 SCOPE OF SERVICES

1. This is an agreement to provide transit operations and maintenance services. The CONTRACTOR agrees to provide these services to SolTrans in accordance with the terms and conditions of this Contract. In the performance of its work, the CONTRACTOR represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of CONTRACTORs with special expertise in providing all bus operations, maintenance, management, courteous service, operating and supervisory staff, and to provide lubricants and other supplies and equipment as relate to operate the SolTrans Transportation Services; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations -in active status throughout the duration of this engagement.
2. The scope of the CONTRACTOR's services shall consist of the services set forth in the Request for Proposals dated October 18, 2019, including all addenda, attached and incorporated herein as Exhibit A, as supplemented by CONTRACTOR's written proposal dated December 18, 2019, attached and incorporated herein as Exhibit B.
3. As part of its scope and services, CONTRACTOR shall, at its sole cost and expense, obtain any and all permits, licenses, certifications, or entitlements to operate as are now or hereafter required by any agency to enable CONTRACTOR to perform this Contract, and shall provide copies of all such entitlements to SolTrans when received by CONTRACTOR.

2.2 CHANGES IN SERVICE

1. SolTrans shall reimburse CONTRACTOR for each fixed route Vehicle Revenue Hour (VRH) that is deployed as per the published fixed route timetables, or other previously specified hours for special events or other services. A VRH does not include initial (deadhead) travel time from CONTRACTOR's office, facility, or driver's break location to the first passenger's pick-up location or first timepoint of revenue service vehicle pre-or post-trip inspections, vehicle maintenance time, driver unpaid break times, meal breaks, fueling, or probing/vaulting operations.
2. SolTrans shall reimburse CONTRACTOR for each revenue service hour, under the complementary paratransit program. ADA Paratransit Revenue Service Hours shall be measured "gate-to-gate" from the time a vehicle leaves the yard in service until the vehicle returns to the yard, exclusive of unpaid break time, excessive slack time, or other out of service time.
3. SolTrans will reimburse CONTRACTOR for vehicle maintenance at the agreed upon rate for each fixed route revenue mile.

4. SolTrans reserves the right to order an increase or decrease in the overall quantity of scheduled fixed route/commuter VRH(s) with thirty, (30) days written notice to CONTRACTOR. SolTrans reserves the right to reduce or increase overall VRH(s) by up to 20%. Such reduction shall not be considered a change in the Scope of Work under the CONTRACT.
5. SolTrans reserves the right to establish dates of service changes and CONTRACTOR shall execute said services changes upon date as approved by SolTrans.
6. Furthermore, should SolTrans require changes in routes, schedules and other elements of work to respond to immediate issues impacting on-time performance, reliability, efficiency, or safety of services, CONTRACTOR shall implement such changes within 30-calendar days (preferably sooner) from receipt of written notice to proceed by SolTrans' Executive Director or his/her designee.
7. Any changes outside of the aforementioned range or limits may be provided by CONTRACTOR at a separately negotiated fee.

2.3 MODIFICATIONS TO CONTRACT

1. SolTrans, without invalidating the contract, may order additions to or deletions from the work to be performed. If justified, the contract charges will be adjusted accordingly. Any alteration(s) made in the provisions that are a part of the contract shall not operate to release any surety or sureties from liability or any bond(s) attached to and made a part of this Contract. New provisions in excess of 20% of the Baseline Revenue Service Hours must be mutually agreeable to SolTrans and the CONTRACTOR. Contract Modifications must be authorized by the SolTrans Executive Director and must be executed as a written amendment to the Contract.
2. SolTrans shall have the right to make changes in routes, schedules and other elements of work not involving extra cost and not inconsistent with the work to be performed. In addition, SolTrans may make alterations or additions in routes or schedules to respond to the demands of special events and other occurrences, provided that if additional cost to the CONTRACTOR results therefrom, extra payment will be made by SolTrans in an amount equal to the extended (applicable revenue hour) rate specified in the contract or as may be otherwise agreed to by SolTrans and CONTRACTOR in writing and in advance of such extra work.

2.4 VERBAL AGREEMENT OR CONVERSATION

No prior, current, or post award verbal agreement(s) with any officer, agent or employee of SolTrans shall affect or modify any terms or obligations of this Contract or subsequent amendments.

2.5 CONTRACTOR'S REPRESENTATIVE

It is understood and agreed by the parties that, at all times during the term of this Contract, that the CONTRACTOR's General Manager shall serve as the primary staff person of CONTRACTOR to undertake, render, and oversee all of the services under this Contract. The CONTRACTOR may substitute this person with another person, who shall possess similar qualifications and experience for this position; however, SolTrans reserves the right to interview and/or approve each person presented for substitution prior to the substituted person providing services pursuant to this Contract.

3 TERM OF AGREEMENT

The CONTRACTOR shall furnish SolTrans with all the materials, equipment, and services called for under this Contract, and perform all other work, if any, described in the Exhibit A. The term of this Contract shall commence on July 1, 2020 and shall continue thereafter for a five-year period through June 30, 2025, unless terminated sooner pursuant to the Contract. SolTrans reserves the right, at its sole discretion, to exercise up to five one-year option terms. If SolTrans determines to exercise the option term(s), SolTrans will give the CONTRACTOR at least 90 days written notice of its determination.

4 COMPENSATION, MANNER OF PAYMENT, NOTICES

4.1 COMPENSATION

1. As compensation for the faithful performance by the CONTRACTOR of the service called for under the base term of this Contract, SolTrans shall pay the CONTRACTOR in accordance with this RFP at the rates set forth in the CONTRACTOR's Best and Final Offer dated January XX, 2020, incorporated into this Contract as Exhibit C. Total Compensation shall not exceed $X,XXX,XXX.XX for FY 2020-21.
2. On occasion, SolTrans may request CONTRACTOR to purchase and "pass through" invoices for items necessary to the services performed pursuant to this Contract. The goods purchased remain the property of SolTrans. The invoices shall not count against agreed upon the contracted Maximum Obligation.

4.2 MANNER OF PAYMENT

1. The CONTRACTOR shall submit monthly invoices/billing statements detailing the services performed during the billing period. Each invoice/billing statement must provide a description of the work performed during the invoice period and the contract number. Specifically, CONTRACTOR shall present costs by function within the given month as based upon the agreed upon method by which SolTrans shall compensate CONTRACTOR, i.e.:

   a. Fixed Route VRH
   b. ADA Paratransit VRH
   c. Fixed Route VRM for overall Vehicle Maintenance
   d. Customer Service
   e. Insurance
   f. Subcontracted Services, and
   g. Overhead/GA

2. SolTrans will pay approved invoices/billing statements within 30 calendar days of their receipt. SolTrans reserves the right to withhold payment or partial payment to the CONTRACTOR, provisionally or permanently, if SolTrans disputes the amounts due and owing for performance by CONTRACTOR as previously documented by SolTrans to CONTRACTOR in writing or if the invoices/billing statements appear to SolTrans to be in error, or in accordance with Section 8.5 of this agreement. SolTrans shall provide written notice to the CONTRACTOR within 10 business days of SolTrans' decision not to pay provided, however, that any amounts not in dispute shall be timely paid.

3. One copy of each invoice should be submitted via soft copy format (PDF) via email to the current SolTrans Executive Director, the Operations and Planning Manager, and the Accountant as follows:

   E-Mail: beth@soltransride.com, john@soltransride.com, kelly@soltransride.com

   A hard copy may be mailed to SolTrans administrative offices at:

   SolTrans
   Attn: Accounting Department
   311 Sacramento Street
   Vallejo, CA 94590

4.3 NOTICES

1. All communications relating to the day-to-day activities of the provided services shall be exchanged between SolTrans' designee and the CONTRACTOR's designee.

2. All other notices and communications deemed by either party to be necessary or desirable to be given to the other party shall be in writing and may be given by personal delivery to a representative of the parties or by national overnight courier addressed as follows:

If to SolTrans: Executive Director: Beth Kranda
Solano County Transit (SolTrans)
311 Sacramento Street
Vallejo, CA 94590

If to the CONTRACTOR:

3. The address to which mailings may be made, may be changed from time to time by email notice to either party.

5 OWNERSHIP AND CONFIDENTIALITY

5.1 OWNERSHIP OF WORK

1. All reports, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for reporting on the performance of the services to be performed by CONTRACTOR shall be and are the property of SolTrans. SolTrans shall be entitled to copies and access to these materials during the progress or after completion of the work. Any such materials remaining in the hands of the CONTRACTOR or in the hands of any subcontractor upon completion or termination of the services pursuant to this Contract shall be immediately delivered to SolTrans in hard copy if available and requested by SolTrans, and in a generally accessible and mutually agreed-upon digital format, i.e.: PDF, CSV, etc. If any materials are lost, damaged, or destroyed before final delivery to SolTrans, the CONTRACTOR shall replace them at its own expense and the CONTRACTOR assumes all risks of loss, damage, or destruction of or to such materials. The CONTRACTOR may retain a copy of all material produced under this Contract for its use in its general business activities. SolTrans shall retain access to and ownership rights for all software, hardware, facilities, tools and equipment provided to CONTRACTOR by SolTrans for use under this SolTrans Agreement. If CONTRACTOR-owned or controlled software applications or utilities are necessary to access any materials covered under this section, CONTRACTOR shall make such tools available to SolTrans to facilitate SolTrans' access in accordance with this agreement.
2. Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Contract are hereby assigned to SolTrans. The CONTRACTOR agrees to

execute any additional documents which may be necessary to evidence such assignment.

5.2 CONFIDENTIALITY

1. Any SolTrans materials to which the CONTRACTOR has access or materials prepared by the CONTRACTOR during the course of this Contract ("Confidential Information") shall be held in confidence by the CONTRACTOR, who shall exercise all reasonable precautions to prevent the disclosure of Confidential Information to anyone except the officers, employees and agents of the CONTRACTOR as necessary to perform the services set forth in Section 1 of this Contract; provided, however that Confidential Information does not include information that CONTRACTOR can demonstrate: (x) was known to the CONTRACTOR prior to disclosure by SolTrans, (y) is or becomes generally available to the public other than as a result of disclosure, directly or indirectly, by CONTRACTOR, or (z) becomes available to CONTRACTOR on a non-confidential basis from a source other SolTrans.

2. The CONTRACTOR, its employees, subcontractors, sub-consultants and agents, shall not release any reports, information, or other materials prepared in connection with this Contract, whether deemed Confidential Information or not, without the approval of SolTrans' Executive Director or designee.

6 INDEMNIFICATION AND INSURANCE

6.1 RESPONSIBILITY: INDEMNIFICATION

1. CONTRACTOR agrees to, and will, indemnify and hold SolTrans, its directors, officers, agents, employees, and certified volunteers as maintained in SolTrans log, (hereinafter, collectively, "Owner Indemnities") harmless from, and defend Indemnities against any and all claims, demands, actions, causes of action, or damages of any kind whatsoever without regard to negligence of the CONTRACTOR (hereinafter referred to collectively as "Claims and Damages") which may arise from the CONTRACTOR's provision of the Transportation Services as contemplated by this Contract excepting the negligence or willful misconduct of Owner (SolTrans).

2. CONTRACTOR shall also indemnify and hold harmless SolTrans, its agents, officers and employees from and against any and all Claims and Damages: 1) arising out of ownership, operation, use, maintenance and/or control of non-revenue vehicles (excluding buses) and any automobiles registered to, owned by or used by CONTRACTOR in the provision of Transportation Services; and 2) arising from CONTRACTOR's obligations to its employees under Workers' Compensation and any amendments or successor acts thereto. With respect to those matters referred to above, the CONTRACTOR shall also have the duty to defend as well as to indemnify and hold harmless SolTrans.

3. If any of the provisions to indemnify a party against liability, loss or damage would be prohibited by or unenforceable under the law of the State of California for any reason, the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. The provisions of this subsection shall under no circumstances be interpreted as limiting in any manner the obligations of any insurer under any insurance policy maintained in accordance with the terms of this Contract.

6.2 INSURANCE

The insurance requirements specified in this Section shall cover CONTRACTOR's own liability and any liability arising out of work or services performed under this Contract by any subcontractors, sub-consultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Contractor Representatives") that CONTRACTOR authorizes to work under this Contract. The CONTRACTOR and all Contractor Representatives are required to procure and maintain at their sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Contract.

CONTRACTOR is also required to assess the risks associated with work to be performed by Contractor Representatives under subcontract and to include in every subcontract the requirement that the Contractor Representative maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks. To the extent that any Contractor Representative does not procure and maintain such insurance coverage, the CONTRACTOR shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONTRACTOR's indemnity obligation as to itself or any of Contractor Representatives in the absence of coverage. In the event CONTRACTOR or Contractor Representatives procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONTRACTOR's insurance be primary without any right of contribution from SolTrans. SolTrans requires that CONTRACTOR insure all vehicles provided and owned by SolTrans and operated under this agreement by CONTRACTOR. SolTrans acknowledges that it has reviewed the insurance certificates and insurance provided by CONTRACTOR and has determined that such coverage and certificates are acceptable.

6.2.1 CONTRACTOR'S RESPONSIBILITIES - MINIMUM TYPES AND SCOPE OF INSURANCE

1. Without limiting CONTRACTOR's obligation to indemnify SolTrans, CONTRACTOR must 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 under this Contract and the results of that work by

CONTRACTOR, CONTRACTOR's agents, representatives, employees or subcontractors.

2. Minimum Scope of Insurance

Coverage must be at least as broad as:

a. Commercial General Liability Insurance
b. Automobile Liability Insurance
c. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
d. A crime Insurance policy covering CONTRACTOR'S employees or outsiders for loss of or damage to money, securities, or other property resulting from theft. In lieu of a Client Property Blanket Bond, Contractor may provide a policy that contains a Joint Loss Payee endorsement or other Third Party coverage naming SolTrans.
e. Employer's Liability Insurance

3. Minimum Limits of Insurance

CONTRACTOR must maintain limits no less than:

i. General Liability: (Including operations, products and completed operations.)	$ 15,000,000	per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
ii. Automobile Liability:	$ 15,000,000	per accident for bodily injury and property damage.
iii. Workers' Compensation:	As required by the State of California.	
iv. Employer's Liability:	$2,000,000	Per accident for bodily injury or disease, and in the aggregate.
v. Employee Theft Insurance/ Crime Insurance	$ 250,000 $ 250,000 $ 250,000 $ 50,000 $ 250,000	per Employee Dishonesty per Client Property Blanket Bond per Computer Fraud incident per Inside or Outside Premises per Depositors Forgery

4. If CONTRACTOR maintains higher limits than the minimums shown above, SolTrans is entitled to coverage for the higher limits maintained by CONTRACTOR.

5. Deductibles and Self-Insurance Retentions:

   Any deductibles or self-insured retentions exceeding $50,000 must be declared to and approved by SolTrans. At the option of SolTrans, either: the Contractor shall reduce or eliminate such deductibles or self-insured retentions with respect to SolTrans, its officers, officials, employees and volunteers; or Contractor shall provide a financial guarantee satisfactory to SolTrans guaranteeing payment of losses and related investigations, claim administration and defense expenses.

6. Other Insurance Provisions

   The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

   a. SolTrans, the cities of Benicia and Vallejo, STA (Solano Transportation Authority), AC Transit, and the respective officers, officials, agents, employees, and volunteers must be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; and with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations.

   b. For any claims related to work performed under this Contract, CONTRACTOR's insurance coverage must be primary insurance with respect to the SolTrans, the cities of Benicia and Vallejo, and STA and the respective officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by SolTrans, the cities or Benicia or Vallejo, STA, or AC Transit, the respective officers, officials, agents, employees, or volunteers is excess of CONTRACTOR's insurance and shall not contribute to it.

   c. Each insurance policy required by this clause must be endorsed to state that coverage may not be canceled by CONTRACTOR, except after 30 days prior written notice has been provided to SolTrans.

7. Waiver of Subrogation

   a. CONTRACTOR agrees to waive subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

b. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of SolTrans for all work performed by CONTRACTOR, its employees, agents and subcontractors.

8. Acceptability of Insurers

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

9. Verification of Coverage

a. CONTRACTOR must furnish SolTrans with original certificates and endorsements effecting coverage required by this Contract.

b. The endorsements should be on forms provided by SolTrans or, if on other than SolTrans's forms, must conform to SolTrans's requirements and be acceptable to SolTrans.

c. SolTrans must receive and approve all certificates and endorsements before work commences.

d. However, failure to do so shall not operate as a waiver of these insurance requirements.

e. SolTrans reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Failure to provide evidence of and maintain insurance coverage as specified in this agreement (Section 6.2.1 above) shall trigger a penalty in the amount of $5,000 per day per violation.

6.3 PERFORMANCE BOND AND PERFORMANCE BOND RENEWAL

The CONTRACTOR shall provide SolTrans with a series of Performance Bonds. Pursuant to the RFP, the CONTRACTOR shall maintain a valid Performance Bond in a form satisfactory to SolTrans, and in an amount equal to 25% of the value of the fifth year of operations (FY 2024-25) as set forth in Exhibit C throughout the entire term of this Contract, including option years if exercised, guaranteeing the CONTRACTOR's full performance under this Contract. The CONTRACTOR shall file a renewed Performance Bond with SolTrans a minimum of 120 days prior to any expiration date indicated on an existing Performance Bond. The Performance Bond then in place shall terminate automatically upon provision of a replacement Performance Bond. At no time during the term of the Contract, including any option terms that may be exercised, will there be any gap in coverage of a valid Performance Bond. Failure to provide continuous coverage of a Performance Bond will constitute a material breach. If no replacement Performance Bond is provided as required, the existing Performance Bond shall continue in effect for its full term, but CONTRACTOR may be deemed in material breach of the contract if CONTRACTOR fails to provide a replacement bond in the manner described above.

7 SUBCONTRACTING & ASSIGNMENT

7.1 USE OF SUBCONTRACTORS/SUBCONSULTANTS

The CONTRACTOR shall not subcontract any services to be performed by it under this Contract without the prior written approval of SolTrans. Any subcontractors/sub-consultants must be engaged under written contract with the CONTRACTOR with provisions requiring the Subcontractor/Subconsultant to comply with all requirements of this Contract.

7.2 INDEPENDENT CONTRACTOR'S STATUS

Neither the CONTRACTOR nor any party contracting with the CONTRACTOR shall be deemed to be an agent or employee of SolTrans. The CONTRACTOR is and shall be an independent contractor and the legal relationship of any person performing services for the CONTRACTOR shall be one solely between that person and the CONTRACTOR.

7.3 ASSIGNMENT

The CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Contract without the prior written consent of SolTrans.

7.4 SOLTRANS WARRANTIES

SolTrans makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated in this Contract. SolTrans warrants that the vehicles and equipment supplied to CONTRACTOR as of the date of commencement of CONTRACTOR's operations under this Contract are road worthy and/or in operable condition and the facilities to be occupied are in compliance with applicable building codes and are OSHA compliant.

7.5 SOLTRANS REPRESENTATIVE

Except when approval or other action is required to be given or taken by the Board of Directors of SolTrans, SolTrans' Executive Director, or such person or persons as he/she shall designate in writing from time to time, shall represent and act for SolTrans. For purposes of overseeing the day to day operations of CONTRACTOR, SolTrans' representative shall be the Operations and Planning Manager.

8 CLAIMS, DISPUTES & TERMINATION

8.1 CLAIMS OR DISPUTES

1. The CONTRACTOR shall be solely responsible for providing timely written notice to SolTrans of any claims for additional compensation and/or time in accordance with the provisions of this Contract. It is SolTrans' intent to

investigate and attempt to resolve any CONTRACTOR claims before the CONTRACTOR has performed any disputed work. Therefore, CONTRACTOR's failure to provide timely notice shall constitute a waiver of CONTRACTOR's claims for additional compensation and/or time.

2. The CONTRACTOR shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by SolTrans, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given SolTrans due written notice of a potential claim. The potential claim shall set forth the reasons for which the CONTRACTOR believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

3. If based on an act or failure to act by SolTrans, such notice shall be given to SolTrans prior to the time that the CONTRACTOR has started performance of the work giving rise to the potential claim for additional compensation. In all other cases, notice shall be given within 10 days after the happening of the event or occurrence giving rise to the potential claim.

4. If there is a dispute over any claim arising out of this Contract including but not limited to performance, amounts due and owing, results of an audit or inspection, the CONTRACTOR shall continue to work during the dispute resolution process in a diligent and timely manner as directed by SolTrans, and shall be governed by all applicable provisions of the Contract. The CONTRACTOR shall maintain cost records of all work that is the basis of any dispute. If an agreement can be reached which resolves the CONTRACTOR claim, the parties will execute a contract modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONTRACTOR claim, they may choose to pursue a dispute resolution process or termination of the Contract.

8.2 REMEDIES

In the event the CONTRACTOR fails to comply with the requirements of this Contract in any way, SolTrans reserves the right to implement administrative remedies which may include, but are not limited to, withholding of payments, assessment of liquidated damages, and termination of the Contract in whole or in part. Prior to exercising any administrative remedy, SolTrans shall promptly notify CONTRACTOR in writing if CONTRACTOR is in default of CONTRACTOR's performance under this Contract. If CONTRACTOR fails to cure a default within 30 days after notification, or if the default requires more than 30 days to cure and CONTRACTOR fails to commence to cure the default within 30 days after notification, SolTrans reserves the right to either cure the default at its own expense which shall be chargeable to CONTRACTOR or terminate this Contract pursuant to Section 8.3 below..

8.3 TERMINATION

1. SolTrans shall have the right to terminate this Contract at any time for cause or convenience by giving ninety (90) days written notice to the CONTRACTOR. Upon receipt of such notice, the CONTRACTOR shall not commit itself to any expenditure of time or resources past the ninety (90) day period.

2. If the Contract is terminated for any reason other than a breach or default by CONTRACTOR, SolTrans shall pay to the CONTRACTOR in accordance with the provisions of this Contract all sums actually due and owing from SolTrans for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by CONTRACTOR to effect such suspension or termination. If the Contract is terminated for breach or default, SolTrans shall remit final payment to CONTRACTOR in an amount to cover only those services performed and expenses incurred in full accordance with the terms and conditions of this Contract up to the effective date of termination.

3. SolTrans shall not in any manner be liable for the CONTRACTOR's actual or projected lost profits had the CONTRACTOR completed the services required by this Contract.

8.4 MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

1. All CONTRACTOR and subcontractor/sub-consultant costs incurred in the performance of this Contract will be subject to audit upon advance notice and on a reasonable basis not disruptive to CONTRACTOR'S operations. The audit will be conducted by personnel qualified and experienced in audits of this nature and subject to a confidentiality agreement that names CONTRACTOR as a third party beneficiary. The CONTRACTOR and its subcontractors/sub-consultants shall permit SolTrans, or its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy the CONTRACTOR's books, maintenance software system, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Contract at any reasonable time, and to audit and verify statements, invoices or bills submitted by the CONTRACTOR pursuant to this Contract. The CONTRACTOR shall also provide such assistance as may be required in the course of such audit. The CONTRACTOR shall retain these records and make them available for inspection for a period of six (6) years after expiration or termination of the Contract..

2. If, as a result of the audit, it is determined by SolTrans' auditor or staff that reimbursement of any costs including profit or fee under this Contract was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the CONTRACTOR agrees to reimburse SolTrans for those costs within sixty (60) days of written notification by SolTrans;

provided, however, if Contractor disagrees with the results of the audit, Contractor shall have the ability to subject to a claims dispute process in accordance with Section 8.

8.5 LIQUIDATED DAMAGES

The Scope of Work sets forth conditions under which liquidated damages may be assessed by SolTrans against the CONTRACTOR. In order to implement an effective liquidated damages arrangement, within thirty (30) days of receipt of the monthly invoice from CONTRACTOR, Sol Trans will notify CONTRACTOR in writing (email is an acceptable form of writing) as to any liquidated damages to be assessed during the specified invoice period and the specifics of the occurrence giving rise to such liquidated damage claim. The CONTRACTOR has ten (10) business days thereafter to review the claim(s) for liquidated damages made by Sol Trans and provide any information that refutes such claim(s) to Sol Trans. If there is any continued disagreement, the parties shall address such dispute in accordance with the dispute resolution provisions set forth in Section 8.1 and the payment of such refuted claims for liquidated damages shall be held in abeyance until the dispute is resolved. Failure to timely notify shall relieve CONTRACTOR of its obligation to pay liquidated damages for such occurrence.

9 FEDERAL REQUIRED CLAUSES

Parties referenced in the following clauses are defined as:

1. "Awarding Agency" is SolTrans.
2. "PROJECT" is the Awarding Agency's federally supported project.
3. "CONTRACTOR" is the third-party vendor who has entered into this third-party contract with the Awarding Agency to provide goods or services directly to the Awarding Agency for the accomplishment of the PROJECT.
4. "Subagreements" are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

9.1 NO GOVERNMENT OBLIGATION TO THIRD-PARTIES

No Obligation to Third-Parties by use of a Disclaimer

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

CA DOT shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.

4. 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 CA DOT.

5. Awarding Agency Approval of Subagreements. The Awarding Agency shall approve in writing all proposed Subagreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Subagreements unless the same are approved in writing by the Awarding Agency. Any proposed amendments or modifications to such Subagreements must be approved by the Awarding Agency prior to implementation.

9.2 PROGRAM FRAUD AND FALSE OR FRAUDULENT statements or related acts

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

2. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

3. The CONTRACTOR agrees to include the above two clauses in each subagreement financed in whole or in part with Federal Assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9.3 ACCESS TO RECORDS

1. Access to Records: The Awarding Agency, the California Department of Transportation, the State Auditor General, the FTA, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every subagreement entered into relative to the PROJECT.
2. Record Keeping: The CONTRACTOR and all subcontractors shall maintain all data, books, documents, reports, statistics, papers, sub-agreements, leases, arrangements, accounting records, and other evidence pertaining to the performance of this Contract in whole or in part. All parties shall make such materials available at their respective offices at all reasonable times during the performance and for a period of not less than three (3) years from the date of termination or expiration and final payment under this Contract and all subagreements.
3. 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 and/or the FTA. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

9.4 FEDERAL, STATE OR LOCAL CHANGES

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

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

9.5 CIVIL RIGHTS – TITLE VI, EEO, AND ADA

Civil Rights (Title VI, EEO, & ADA)

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

1. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49

U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the FTA and the California Department of Transportation may issue.

2. 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 (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the FTA/California Department of Transportation may issue.

3. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. 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

FTA/California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the Awarding Agency or the FTA/California Department of Transportation as appropriate, and shall set fourth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the Awarding Agency shall:
    1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
    2. Cancellation, termination, or suspension of the Contract, in whole or in part.
6. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the Awarding Agency or the California Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the Awarding Agency to enter into such litigation to protect the interest of the Awarding Agency, and, in addition, the CONTRACTOR may request the FTA/California Department of Transportation to enter into such litigation to protect the interests of the FTA/California Department of Transportation.

9.6 INCORPORATION OF FEDERAL TERMS

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement.

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

refuse to comply with any Awarding Agency requests which would cause the Awarding Agency to be in violation of the FTA terms and conditions.

9.7 ENERGY CONSERVATION

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

9.8 DISADVANTAGED BUSINESS ENTERPRISE (DBE) – PROMPT PAYMENT/RETURN OF RETAINAGE

CONTRACTOR agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

A. CONTRACTOR agrees to comply with U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

B. The CONTRACTOR, or SUBCONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR or SUBCONTRACTOR shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of this contract by the Awarding Agency, or such other remedy the Awarding Agency deems appropriate. which may include, but is not limited to:

   a. Withholding monthly progress payments;
   b. Assessing sanctions;
   c. Liquidated damages; and/or
   d. Disqualifying the CONTRACTOR from future bidding as non-responsible. 49 C.F.R. § 26.13 (b).

C. Prompt Payment and Return of Retainage

1. The Awarding Agency shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency.

2. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.

3. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262

and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.

4. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the Awarding Agency. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

9.9 EMPLOYEE PROTECTIONS

1. ***Prevailing Wage and Anti-Kickback:*** Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. A-39 Contract Work Hours and Safety Standards.

2. ***Contract Work Hours and Safety Standards:*** For all contracts in excess of $100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701- 3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible

therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

9.10 TERMINATION

Additional Termination Provisions

1. Termination for Convenience (General Provision). When it is in the Awarding Agency's best interest, the Awarding Agency reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the Awarding Agency. If the CONTRACTOR has any property in its possession belonging to the Awarding Agency, the CONTRACTOR will account for the same, and dispose of it in the manner the Awarding Agency directs.

2. Termination for Default (General Provision). If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the Awarding Agency may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

   If it is later determined by the Awarding Agency that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the Awarding Agency, after setting up a new delivery of performance schedule, may

allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

3. 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.

9.11 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

Debarment and Suspension

1. 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.
2. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.
3. Before entering into any subagreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that awarding agency and its "principals," as defined at 49 CFR Part 29.
4. 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 subagreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding $25,000.

9.12 BUY AMERICA

The CONTRACTOR shall comply with the Buy-America requirements of 49 U.S.C. 5323(j) and 49 CFR Part 661 for all procurements of steel, iron, and manufactured

products used in PROJECT. Buy-America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase equals or exceeds $150,000. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

9.13 BREACHES AND DISPUTE RESOLUTION

Provisions for Resolution of Disputes, Breaches, or Other Litigation

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

9.14 LOBBYING RESTRICTIONS

1. The CONTRACTOR agrees that it will not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, "New Restrictions on Lobbying." 49 CFR Part 20, if the bid is for an award for $100,000 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;

2. If applicable, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, the

undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with the form instructions.

3. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed $100,000 and that all awarding agencies shall certify and disclose accordingly.

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

9.15 CLEAN AIR

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

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

9.16 CLEAN WATER

1. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the Awarding Agency and understands and agrees that the Awarding Agency will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

9.17 FLY AMERICA

1. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subagreements must comply with the “Fly America” Act and 49 U.S.C. Section

40118, “Use of United States of America Flag Carriers,” and 41 CFR Section 301-10.131 through 301-10.143.

2. 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.

9.18 CHARTER SERVICE OPERATIONS

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.

9.19 SCHOOL BUS OPERATIONS

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

9.20 RECYCLED PRODUCTS

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive

Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9.21 SECTION 504 AMERICANS WITH DISABILITIES ACT REQUIREMENTS

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

9.22 VEHICLE OPERATOR LICENSING

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

9.23 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS

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

1. 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 Contact and to meet the employee protective requirements of 49 U.S.C. 5333(b), and U.S.DOL guidelines at 29 CFR Part 215, and any amendments there to.
2. The CONTRACTOR also agrees to include the applicable requirements in each subagreement involving transit operations financed in whole or in part with federal assistance provided by the FTA.

9.24 SAFE OPERATIONS OF MOTOR VEHICLES

CONTRACTOR agrees as follows:

A. Seat Belt Use: In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, CONTRACTOR is required to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the CONTRACTOR or SOLTRANS.

B. Distracted Driving: In accordance with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, and DOT

Order 3902.10, “Text Messaging While Driving,” December 30, 2009, CONTRACTOR is required to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle CONTRACTOR owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

9.25 SUBSTANCE ABUSE REQUIREMENTS

CONTRACTOR agrees to comply with the following Federal substance abuse regulations:

A. Drug-Free Workplace: U.S. DOT regulations, “Drug-Free” Workplace Requirements (Grants),” 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. § 702 et seq.

B. Alcohol Misuse and Prohibited Drug Use: FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655, to the extent applicable. CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or SOLTRANS, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. CONTRACTOR agrees further to certify annually its compliance with Part 655. To certify compliance CONTRACTOR shall use the “Substance Abuse Certifications” in the “Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements,” which is published annually in the Federal Register.

10 ADDITIONAL REQUIREMENTS

10.1 COMPLIANCE WITH CALIFORNIA LABOR CODE SECTIONS 1070-1074

The CONTRACTOR agrees to comply with all the provisions of California Labor Code Sections 1070-1074 regarding Transit Employee Protective Agreements.

11 GENERAL TERMS

11.1 WAIVER

Any waiver of any breach or covenant of this Contract must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Contract shall not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

11.2 SEVERABILITY

If any provision of this Contract shall be deemed invalid or unenforceable, that provision shall be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Contract, and in any event, the remaining provisions of this Contract shall remain in full force and effect.

11.3 NO THIRD-PARTY BENEFICIARIES

This Contract is not for the benefit of any person or entity other than the parties.

11.4 APPLICABLE LAW

This Contract, its interpretation and all work performed under it shall be governed by the laws of the State of California with venue residing in Solano County in the State of California. The CONTRACTOR must comply with all federal, State, and local laws, rules, and regulations applicable to the Contract and to the work to be done hereunder, including all rules and regulations of SolTrans.

11.5 RIGHTS AND REMEDIES OF SOLTRANS

The rights and remedies of SolTrans provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

11.6 BINDING ON SUCCESSORS

All of the terms, provisions, and conditions of this Contract shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

11.7 ENTIRE AGREEMENT; MODIFICATION

This Contract for Services, including any attachments, constitutes the complete Contract between the parties and supersedes any prior written or oral communications. This Contract may be modified or amended only by written instrument signed by both the CONTRACTOR and SolTrans. The Contract documents are intended to be complementary and interpreted in harmony so as to avoid any conflict. In the event of a conflict between the terms and conditions of this Contract and the attachments, the parties agree that the order of precedence shall be the terms and conditions of this Contract, the RFP, the CONTRACTOR'S bid response and the CONTRACTOR'S BAFO.

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized officers as of the Effective Date.

SOLANO COUNTY TRANSIT	CONTRACTOR:
_____	_____
PRINTED NAME & SIGNATURE	PRINTED NAME & SIGNATURE
TITLE: EXECUTIVE DIRECTOR	TITLE: _____

APPROVED TO FORM:

_____	_____
PRINTED NAME & SIGNATURE	PRINTED NAME & SIGNATURE
TITLE: LEGAL COUNSEL	TITLE: _____

Note: If the CONTRACTOR is a Corporation, this Contract must be executed by two Corporate Officers, consisting of:

1. the President, Vice President or Chair of the Board, *and*
2. the Secretary, Assistant Secretary, Chief Financial Officer, Assistant Chief Financial Officer, Treasurer, or Assistant Treasurer.

In the alternative, this Contract may be executed by a single Officer or a person other than an Officer provided that evidence satisfactory to SolTrans is provided demonstrating that such individual is authorized to bind the Corporation (e.g. a copy of a certified resolution from the Corporation's Board or a copy of the Corporation's bylaws).