



REQUEST FOR PROPOSALS

SECURITY SERVICES

CALEXICO INTERMODAL

TRANSPORTATION CENTER

RELEASE DATE: MARCH 06, 2026

Contact Information:

David Aguirre
Imperial County Transportation Commission
1503 N. Imperial Ave., Suite 104
El Centro, CA 92243

DUE DATE: April 6, 2026

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SECURITY SERVICES/CALEXICO INTERMODAL TRANSPORTATION CENTER

I. REQUEST FOR PROPOSALS (RFP)

The Imperial County Transportation Commission ('ICTC' or 'Commission') is requesting proposals from security companies to provide security services at the Calexico Intermodal Transportation Center:

Security Service: Unarmed

Calexico Intermodal Transportation Commission
220 3rd Street
Calexico CA 92231

The Request for Proposal (RFP) is available on the ICTC website at <https://www.imperialctc.org/doing-business-with-ictc> or at the ICTC offices.

DEADLINE

Bidders are requested to submit three (3) copies, one (1) original , (2) copies, and one (1) electronic copy (USB) of their proposal before **5:00P.M. on April 06, 2026** to the following:

Attn: David Aguirre
Imperial County Transportation Commission
1503 N. Imperial Ave., Suite 104
El Centro, CA 92243

Non-Mandatory Pre-Proposal Conference

A pre-proposal conference is scheduled for 10:00A.M. on **March 18, 2026** at the Imperial County Transportation Commission located at 1503 N. Imperial Ave., Suite 104, El Centro, CA 92243.

II. **PROJECT DESCRIPTION**

The Imperial County Transportation Commission ("COMMISSION") requires a professional experienced Security Guard Services Firm ("CONTRACTOR") to assist and provide security services at the Calexico Intermodal Transportation Center located in downtown Calexico to provide a safer environment for members of the community. The COMMISSION requires a CONTRACTOR to provide trained and certified professional, courteous, uniformed, unarmed security guard(s) for a period of one (1) year, with up to three (3) one (1) year extensions.

The Calexico Intermodal Transportation Center includes a pedestrian area, seating areas and canopy infrastructure, a transit center building with a public restroom, security, and a customer service area. The intermodal terminal is fully-accessible ADA compliant with features canopies, benches, trash receptacles, information kiosks, EV charging stations, and bike racks.

Although this agreement is not directly federally funded, the services to be performed under this RFP support operations at a facility developed and operated using federal funds. As such, the selected CONTRACTOR shall comply with all applicable federal requirements, regulations, and contract clauses, including but not limited to those required by the Federal Transit Administration (FTA).

All applicable federal provisions and required contract clauses are attached to this RFP and shall be incorporated by reference into any Agreement resulting from this RFP. Proposers are responsible for reviewing and complying with all such requirements.

III. SCOPE OF WORK

The selected CONTRACTOR shall be required to provide a detailed scope of services. Successful proposals shall address all pertinent requirements addressed in the proposal. The following elements are anticipated to be critical components of the required scope of work and should provide prospective candidates with a starting point for developing a detailed scope of work:

Security Guard Services:

- It shall be the responsibility of CONTRACTOR to protect and safeguard the COMMISSION'S facility and grounds area, and equipment from any harm, theft and/or vandalism. CONTRACTOR'S response to the RFP shall contain an outline of how CONTRACTOR proposes to provide such services.
- CONTRACTOR shall provide properly trained, licensed and qualified on-site security officer(s) at the location deemed by this AGREEMENT.
- CONTRACTOR shall maintain and provide to ICTC upon request, within twenty-four (24) hours of said request, daily activity logs and incident reports. Refer to Exhibit E – Sample Activity/Incident Log.

Security Guard Requirements:

- CONTRACTOR shall provide properly trained, qualified and licensed security guard(s).
- CONTRACTOR's security guard staff shall be fully uniformed so as to be identified by the public as an employee of CONTRACTOR, and physically fit.

Removal of Security Guard:

- CONTRACTOR shall be an independent contractor as to ICTC. Notwithstanding, CONTRACTOR shall remove any security officer from servicing the COMMISSION location when so requested by the COMMISSION for any reason whatsoever and replace with a properly trained and qualified security officer.
- **Key Assignment:** COMMISSION shall issue two (2) master building key sets and two (2) restroom key sets to CONTRACTOR. One (1) set shall be for the CONTRACTOR as back up and one (1) set shall be for the security personnel performing services pursuant to the AGREEMENT. Under no circumstances whatsoever, shall CONTRACTOR fabricate or cause to be fabricated a duplicate master building key. Keys assigned to on-site security guards shall be rotated with shift change. CONTRACTOR shall ensure assigned keys do not leave the building site.
- Upon termination of this AGREEMENT, CONTRACTOR must immediately return all keys assigned to CONTRACTOR. If keys are lost or not immediately returned by CONTRACTOR, COMMISSION

may at its sole discretion re-key an entire building at CONTRACTOR's sole expense. All re-key work shall be performed by the COMMISSION and billed at a time and material rate.

Security Guard Services Site Specific:

- **Calexico Intermodal Transportation Center**

Security guard is to be stationed inside the facility but must perform frequent patrols of the facility. Duties include performing routine checks and inspection of the facility, outdoor monitoring and surveillance, reporting any unusual activity such as smoking, drug/alcohol use or illicit activities, loitering, vandalism, graffiti, etc., and opening public restrooms for bus riders when requested. Security guard is to work with Calexico Police Department for the removal of individuals and reporting of illicit activities or crimes.

Tentative service and schedule:

One (1) security guard Security

Service: Unarmed

Days of Service: Monday – Friday Hours:

6:00 a.m. to 6:00 p.m. (ICTC reserves the

right to adjust the schedule of services at its discretion)

Holiday schedule to match Imperial Valley Transit calendar

Additive Alternative - Patrol Services:

CONTRACTOR is to provide periodic patrols of the facility after customer service hours have concluded. During patrol, security guard is required to disembark the vehicle and walk through the facility on foot.

Weekday Patrols shall include three (3) site visits.

Weekend Patrols shall include five (5) site visits.

(ICTC reserves the right to adjust the frequency of patrols at its discretion)

- **Billing/Invoicing**

CONTRACTOR shall invoice once per month for all services rendered during the invoice period. The invoice shall have sufficient detail for services provided.

IV. DELIVERABLES

RATE SCHEDULE

Rates shall include all support services in effect for the security guard including, but not limited to, benefits, licensing, certifications, dispatching, administration, and any other overhead costs etc. The rates listed shall be used to bill all services by the CONTRACTOR. No other fees or charges will be reimbursed by the COMMISSION. **Note that if additional facilities are added by the COMMISSION, the selected PROPOSER will provide services at additional locations for the same base rate.**

This rate schedule shall be included with all RFP submittals:

<u>Personnel/Equipment: Unarmed/Uniformed</u>	<u>Rate:</u>
Security Guard/Unarmed/Uniformed	\$ _____ per hour
Security Guard Holidays/Unarmed/Uniformed	\$ _____ per hour
<u>Additive Alternative</u>	
Patrol Vehicle	\$ _____ per hour

MINIMUM QUALIFICATIONS AND EXPERIENCE

- Hold licensing as a security guard agency per the State of California.
- Employ an adequate level of staffing to ensure that all have a qualified and certified guard at their assigned post at the time and for the duration required.
- The CONTRACTOR shall hold an established record of providing professional, commercial security guard service for a minimum of ten (10) years.
- Maintain accessibility twenty-four (24) hours a day seven (7) days a week, including holidays, by telephone to respond to any issues that may arise in the performance of the requirements as specified herein.

V. PROPOSAL SUBMISSION REQUIREMENTS

The COMMISSION must receive three (3) copies, one (1) original and one (1) reproducible copy of the proposal. The proposal must be received by the IMPERIAL COUNTY TRANSPORTATION COMMISSION by 5:00 p.m. on **April 06, 2026**. The COMMISSION reserves the right to issue written notice to all participating firms with any changes in the submission schedule, scope of work, or work-related products, should it be determined that such changes are necessary.

All proposals must be delivered by the deadline date to:

Imperial County Transportation Commission
Attention: David Aguirre, Executive Director
1503 N. Imperial Ave., El Centro CA 92243
RE: Security Services

On a separate sealed envelope, submit a hard copy Fee Schedule labeled ‘Fee Proposal for Security Services at Calexico Intermodal Transportation Center’ and delivered to the same address by the same deadline, Attn: David Aguirre, Executive Director

****All submitted documents are public records, will become part of Imperial County Transportation Commission files, and will not be returned**

VI. TENTATIVE PROJECT SCHEDULE

TASK	TENTATIVE DATE
1.Request for Proposals Release Date	March 06, 2026
2.Non-Mandatory Conference	March 18, 2026
3.Questions Date	March 20, 2026
4.Proposals Due	April 06, 2026
5.Interviews with Selected Candidates (if required)	April 13, 2026
6.Selection and Award	April 22, 2026 or May 27, 2026
7.Notices to Proceed	April 23, 2026 or May 28, 2026
8.Commence Date	April 23, 2026 or May 28, 2026

VII. PROPOSALS REQUIREMENTS

Proposal responses must adhere to the requirements set forth in this section, both for content and sequence. Failure to adhere to these requirements or the inclusion of conditions, limitations or misrepresentations may be cause for rejection of the submittal. **The submittals in response to this solicitation shall not exceed 25 total pages in length. No appendices or elaborate brochures or other presentation material are desired.** The original proposal and each subsequent copy must be submitted on paper, properly bound, and appropriately labeled in the following order:

A. **Cover Letter:** Provide a cover letter and introduction, including the name and address of the organization and individual submitting the proposal, together with the name, address, telephone number, fax number, e-mail address of the contact person who will be authorized to represent the organization. The introduction shall express the CONTRACTOR's ability and desire to meet the requirements of this Request for Proposals. The letter must be signed by an individual authorized to bind the firm contractually.

B. **Table of Contents:** This section shall include a detailed table of contents and an outline of the submittal, identified by sequential page number and by section reference number, and section title as described herein.

C. **Contractor Qualifications:** Describe the firm's resources, experience, and capabilities as it relates to the Scope of Services described under Section III. Submit in the order identified below:

1. **Executive Summary:** An executive summary should briefly describe the CONTRACTOR's qualifications, including experience in providing armed security services.

2. **Project Approach:** Provide a description of the project approach for executing all the tasks in the Scope of Services. Provide a preliminary scope of work and schedule aligned with key tasks as described in the RFP.

3. **Times of Service:**

Refer to project description and scope of work for site specific hours. CONTRACTOR shall provide services in accordance with the schedule approved by the COMMISSION based on operating conditions, hours of service, and special circumstances. The COMMISSION reserves the right to change assignment duties, schedules, locations or number of Security Guards assigned to the site. The approved shift schedule shall take into consideration hours of service, varying ridership patterns (i.e., peak vs. off- peak, special events, and emergencies), regular occurrences as pertains to local vehicular traffic activity, and incidents that affect operations. Such changes will be communicated to CONTRACTOR in a manner that provides CONTRACTOR with a reasonable amount of time to implement the requested changes.

Time Records: CONTRACTOR shall maintain electronic records of all actual daily assignments and functions in a standard and reportable manner, and make them available for inspection, copying or audit upon the request of the COMMISSION.

Holidays and Special Events/Activities: CONTRACTOR shall supply Security Guard on all scheduled days including holidays and special events unless notified by the COMMISSION.

4. **Qualifications and Experience:** Provide the firm's background and qualifications to perform the requested services. Identify all personnel and/or sub consultants and their role in completing the project, and summarize relevant qualifications and experience of each of the identified personnel. Provide a list of similar projects completed for the past five (5) years. Provide a list of contracts that have been terminated (if any) and the reason for that termination.

5. **Fee Schedule & Cost Estimate:** Provide a fee schedule with hourly rates for each person who will be involved. ***In a separate sealed envelope submit a not to exceed fee proposal tied to a fee estimate.*** Provide a detailed cost breakdown including the

cost and hours for each task necessary for the proposed scope of work. Costs should include hours and staff assignments for each task. The cost estimates should include cost for all administrative costs and shall be a not-to-exceed total budget amount. Statement Validating Offer is valid for at least a ninety (90) day period.

- 6. References:** The CONTRACTOR shall provide a minimum of four (4) client references, preferably city or county governments for whom the CONTRACTOR has previously had contracts with for the provision of services of equal type and scope within the last five (5) years.
- 7. Agreement Exclusions:** Indicate in proposal any clauses, if any, in ICTC's proposed Agreement, which are unacceptable to the Proposer and why. Indicating such provisions does not mean that ICTC will modify or remove them, however.
- 8. Insurance:** A copy of insurance certificate, or a letter of intent to provide insurance from the issuing company which provides the types of coverage and dollar amount limits required in the attached form of agreement.

VIII. SELECTION CRITERIA

Based on relevant work experience, the completeness of the responses and the overall project approach identified in the proposals received, the most qualified firms may be invited, at their expense, for an interview with the selection committee. The COMMISSION reserves the right to reject any or all proposals for any reason. The COMMISSION is an equal opportunity employer and minorities, females, and handicapped are encouraged to participate. A sample evaluation is attached as Exhibit F.

A summary of the Commission's selection process is as follows:

1. Qualifications will be reviewed and ranked by the selection committee.
2. A short-list of no more than three firms will be created from the ranking.
3. Interviews will be requested from the short-listed firms. (ICTC reserves the right to forgo Interviews with the short listed firms and proceed with ranking the top three firms)
4. The selection committee will rank the "top three" firms to be the most highly qualified to perform the services, will approve the list and authorize the contracting officer to begin negotiations with the top-ranked firm.
5. Negotiations will begin with the top-ranked firm; if no agreement is made, negotiations will move to the next top-ranked firm, and so on.

The Imperial County Transportation Commission reserves the right to reject any and all proposals submitted and/or request additional information for clarification. The proposer is responsible for any and all costs of submission.

This RFP does not commit the COMMISSION to award a contract or pay any costs associated with the preparation of a proposal. The COMMISSION reserves the right to cancel, in part or in its entirety, this solicitation should this be in the best interest of the COMMISSION.

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into this ___ day of _____, 2026, is by and between the **IMPERIAL COUNTY TRANSPORTATION COMMISSION** (“ICTC”), a county transportation commission established by the California State Legislature in 2009 through Senate Bill 607 (SB 607 - Ducheny), which is codified as Division 12.8 of the Public Utility Code, Sections 132800 through 132824, and _____, with its principal office located at _____, (“CONSULTANT”), (individually, “Party;” collectively, “Parties”).

WITNESSETH

WHEREAS, ICTC is the sub-regional transportation planning and programming agency for the area’s seven incorporated cities and the county government.

WHEREAS, ICTC membership includes the cities of Brawley, Calipatria, Calexico, El Centro, Holtville, Imperial, Westmorland, the County of Imperial and the Imperial Irrigation District (IID).

WHEREAS, ICTC desires to retain a qualified individual, firm or entity to provide security services for the Calexico Intermodal Transportation Center located in the city of Calexico, described in this Agreement as (“the Project”); and

WHEREAS, ICTC desires to engage CONSULTANT to provide services by reason of its qualifications and experience for performing such services, and CONSULTANT has offered to provide the required services for the Project on the terms and in the manner set forth herein.

WHEREAS, under Section 132820(c) of the California Public Utility Code, ICTC may enter into contracts with qualified vendors to further the purposes of ICTC.

NOW, THEREFORE, ICTC and CONSULTANT have and hereby agree to the following:

1. **DEFINITIONS.**

1.1. “Scope of Work” shall mean the services required to be completed under this agreement. The Scope of Work is attached as **Exhibit “A”** and incorporated herein by this reference.

1 2. CONTRACT COORDINATION.

2 CONSULTANT shall assign a single Contract Manager to have overall responsibility for the
3 progress and execution of this Agreement. _____ is hereby designated as the Contract
4 Manager for CONSULTANT. Should circumstances or conditions subsequent to the execution of this
5 Agreement require a substitute Contract Manager for any reason, the Contract Manager's designee shall be
6 subject to the prior written acceptance and approval of ICTC.

7 3. DESCRIPTION OF WORK.

8 3.1. CONSULTANT shall provide all materials and labor to perform this Agreement. In the
9 event of a conflict among this Agreement, the Scope of Work, the Agreement shall take precedence shall
10 take precedence.

11 3.2. CONSULTANT shall perform additional or extra work if required. ICTC reserves the right
12 to adjust hours of services and adjust the types of applicable services at its discretion.

13 4. WORK TO BE PERFORMED BY CONSULTANT.

14 4.1. CONSULTANT shall comply with all terms, conditions and requirements of this
15 Agreement.

16 4.2. CONSULTANT shall perform such other tasks as necessary and proper for the full
17 performance of the obligations assumed by CONSULTANT hereunder.

18 4.3. CONSULTANT shall:

19 4.3.1. Procure all permits and licenses, pay all charges and fees, and give all notices that
20 may be necessary and incidental to the due and lawful prosecution of the services to be performed
21 by CONSULTANT pursuant to this Agreement;

22 4.3.2. Use the standard of care usual to CONSULTANT's profession to keep itself fully
23 informed of all applicable existing and proposed federal, state and local laws, ordinances,
24 regulations, orders and decrees which may affect those engaged or employed under this Agreement,
25 any materials used in CONSULTANT's performance under this Agreement or the conduct of the
26 services under this Agreement;

27 4.3.3. At all times observe and comply with, and cause all of its employees to observe and
28 comply with all of said laws, ordinances, regulations, orders and decrees mentioned above; and

1 4.3.4. Immediately report to ICTC in writing any discrepancy or inconsistency it discovers
2 in said laws, ordinances, regulations, orders and decrees mentioned above in relation to any plans,
3 drawings, specifications or provisions of this Agreement.

4 4.4. Any videotape, reports, information, data or other material given to, or prepared or
5 assembled by, CONSULTANT pursuant to this Agreement shall be the property of ICTC and shall not be
6 made available to any individual or organization by CONSULTANT without the prior written approval of
7 ICTC. The preceding restriction shall not apply to information which is in the public domain, was
8 previously known to CONSULTANT, was acquired by CONSULTANT from others who have no
9 confidential relationship to ICTC with respect to same, or which through no fault of CONSULTANT
10 comes into the public domain. CONSULTANT shall not be restricted from releasing information,
11 including confidential information, in response to a subpoena, court order, or other legal process.
12 CONSULTANT shall not be required to resist such subpoena, court order, or legal process, but shall
13 promptly notify ICTC in writing of the demand for information before responding to such demand.

14 5. REPRESENTATIONS BY CONSULTANT.

15 5.1. CONSULTANT understands and agrees that ICTC has limited knowledge in the multiple
16 areas specified in the Agreement. CONSULTANT has represented itself to have experience in these fields
17 and understands that ICTC is relying upon such representation.

18 5.2. Subject to 5.2.1, CONSULTANT represents and warrants that it is a lawful entity
19 possessing all required licenses and authorities to do business in the State of California and perform all
20 aspects of this Agreement.

21 5.2.1. CONSULTANT shall not commence any work pursuant to this Agreement or
22 provide any other services, or materials, in connection therewith until CONSULTANT has received
23 written authorization from ICTC to do so.

24 5.3. CONSULTANT represents and warrants that the people executing this Agreement on behalf
25 of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind
26 CONSULTANT to the performance of all duties and obligations assumed by CONSULTANT herein.

27 5.4. CONSULTANT represents and warrants that any employee, contractor and/or agent who
28 will be performing any of the duties and obligations of CONSULTANT herein possess all required licenses

1 and authorities, as well as the experience and training, to perform such tasks.

2 5.5. CONSULTANT represents and warrants that the allegations contained in the Scope of
3 Work are true and correct.

4 5.6. CONSULTANT understands that ICTC considers the representations made herein to be
5 material and would not enter into this Agreement with CONSULTANT if such representations were not
6 made.

7 6. COMPENSATION.

8 The total compensation payable under this Agreement shall not exceed _____
9 unless otherwise previously agreed to by ICTC. ICTC will coordinate with the CONSULTANT and
10 provide a listing of approved locations and frequencies to complete the required services.

11 7. PAYMENT.

12 CONSULTANT will bill ICTC on a time and material basis upon completion of the services
13 monthly. ICTC shall pay CONSULTANT for completed and approved services upon presentation of its
14 itemized billing.

15 8. METHOD OF PAYMENT.

16 8.1 CONSULTANT shall at any time prior to the 15th day of any month, submit to ICTC a
17 written claim for compensation for services performed. The claim shall be in a format approved by ICTC.
18 CONSULTANT may expect to receive payment within a reasonable time thereafter and in any event in the
19 normal course of business within thirty (30) days after the claim is submitted.

20 9. TERM AND TIME FOR COMPLETION OF THE WORK.

21 9.1. This Agreement shall commence on the date first written above and shall remain in effect
22 for ONE (1) YEAR with three (3) additional one (1) year extensions unless otherwise terminated as
23 provided herein. ICTC reserves the right to exercise mutual extensions as noted within the contents of the
24 RFP.

25 9.2. Service scheduling shall be as described in **Exhibit "A"** unless revisions to **Exhibit "A"**
26 are approved by both ICTC and CONSULTANT's Contract Manager. Time extensions may be allowed for
27 delays caused by ICTC, other governmental agencies, or factors not directly brought about by the
28 negligence or lack of due care on the part of CONSULTANT.

1 10. SUSPENSION OF AGREEMENT.

2 ICTC shall have the authority to suspend this Agreement, wholly or in part, for such period as
3 deemed necessary due to unfavorable conditions or to the failure on the part of CONSULTANT to perform
4 any provision of this Agreement. CONSULTANT will be paid the compensation due and payable to the
5 date of suspension.

6 11. TERMINATION.

7 11.1. ICTC retains the right to terminate this Agreement for any reason by notifying
8 CONSULTANT in writing seven (7) days prior to termination and by paying the compensation due and
9 payable to the date of termination; provided, however, if this Agreement is terminated for fault of
10 CONSULTANT, ICTC shall be obligated to compensate CONSULTANT only for that portion of
11 CONSULTANT's services which have been performed in accordance with the terms and conditions of this
12 Agreement. Said compensation is to be arrived at by mutual agreement between ICTC and
13 CONSULTANT; should the Parties fail to agree on said compensation, an independent arbitrator shall be
14 appointed, and the decision of the arbitrator shall be binding upon the Parties.

15 11.2. Upon such termination, CONSULTANT shall immediately turn over to ICTC any and all
16 copies of videotapes, studies, sketches, drawings, computations and other data, whether or not completed,
17 prepared by CONSULTANT in connection with this Agreement. Such materials shall become the
18 permanent property of ICTC.

19 12. INSPECTION.

20 CONSULTANT shall furnish ICTC with every reasonable opportunity for ICTC to ascertain that
21 the services of CONSULTANT are being performed in accordance with the requirements and intentions of
22 this Agreement. All work done and materials furnished, if any, shall be subject to ICTC's inspection and
23 approval. The inspection of such work shall not relieve CONSULTANT of any of its obligations to fulfill
24 its Agreement as prescribed.

25 13. OWNERSHIP OF MATERIALS.

26 All original drawings, videotapes and other materials prepared by or in possession of
27 CONSULTANT pursuant to this Agreement shall become the permanent property of ICTC and shall be
28 delivered to ICTC upon demand.

1 14. INTEREST OF CONSULTANT.

2 14.1. CONSULTANT covenants that it presently has no interest, and shall not acquire any
3 interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the
4 performance of the services hereunder.

5 14.2. CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor or
6 person having such an interest shall be employed.

7 14.3. CONSULTANT certifies that no one who has or will have any financial interest pursuant to
8 this Agreement is an officer or employee of ICTC.

9 15. INDEMNIFICATION.

10 A. Indemnity for Professional Services. To the furthest extent allowed by law, Consultant
11 shall indemnify, hold harmless and defend ICTC and its members, board members, officers, officials,
12 employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and
13 damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at
14 any time and property damage), and from any and all claims, demands and actions in law or equity
15 (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the
16 negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees, agents
17 or volunteers in the performance of professional services under this Agreement.

18 B. Other Indemnities. Other than in the performance of professional services, and to the
19 fullest extent allowed by law, Consultant shall indemnify, hold harmless and defend ICTC and its
20 members, board members, officers, officials, employees, agents and volunteers from any and all loss,
21 liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability,
22 including but not limited to personal injury, death at any time and property damage), and from any and
23 all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation
24 expenses) arising or alleged to have arisen directly or indirectly out of performance of this Agreement.
25 Consultant's obligations under the preceding sentence shall apply regardless of whether ICTC or any of
26 its members, board members, officers, officials, employees, agents or volunteers are negligent, but shall
27 not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross
28

1 negligence, or caused by the willful misconduct, of ICTC, or any of its members, board members,
2 officers, officials, employees, agents or volunteers.

3 C. If Consultant should subcontract all or any portion of the services to be performed under
4 this Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend
5 ICTC and its members, board members, officers, officials, employees, agents and volunteers in
6 accordance with the terms of the preceding paragraphs.

7 D. This section shall survive termination or expiration of this Agreement.

8 16. INDEPENDENT CONTRACTOR.

9 In all situations and circumstances arising out of the terms and conditions of this Agreement,
10 CONSULTANT is an independent contractor, and as an independent contractor, the following shall
11 apply:

12 16.1. CONSULTANT is not an employee or agent of ICTC and is only responsible for the
13 requirements and results specified by this Agreement or any other agreement.

14 16.2. CONSULTANT shall be responsible to ICTC only for the requirements and results
15 specified by this Agreement and except as specifically provided in this Agreement, shall not be subject
16 to ICTC's control with respect to the physical actions or activities of CONSULTANT in fulfillment of
17 the requirements of this Agreement.

18 16.3. CONSULTANT is not, and shall not be, entitled to receive from, or through, ICTC, and
19 ICTC shall not provide, or be obligated to provide, CONSULTANT with Worker's Compensation
20 coverage or any other type of employment or worker insurance or benefit coverage required or provided
21 by any Federal, State or local law or regulation for, or normally afforded to, an employee of ICTC.

22 16.4. CONSULTANT shall not be entitled to have ICTC withhold or pay, and ICTC shall not
23 withhold or pay, on behalf of CONSULTANT, any tax or money relating to the Social Security Old Age
24 Pension Program, Social Security Disability Program, or any other type of pension, annuity, or disability
25 program required or provided by any Federal, State or local law or regulation.

26 16.5. CONSULTANT shall not be entitled to participate in, or receive any benefit from, or
27 make any claim against any ICTC fringe program, including, but not limited to, ICTC's pension plan,
28

1 medical and health care plan, dental plan, life insurance plan, or any other type of benefit program, plan,
2 or coverage designated for, provided to, or offered to ICTC's employee.

3 16.6. ICTC shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or local
4 tax, including, but not limited to, any personal income tax, owed by CONSULTANT.

5 16.7. CONSULTANT is, and at all times during the term of this Agreement, shall represent
6 and conduct itself as an independent contractor, not as an employee of ICTC.

7 16.8. CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind
8 or obligate ICTC in any way without the written consent of ICTC.

9 17. INSURANCE.

10 Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and
11 effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by
12 the California Insurance Commissioner to do business in the State of California and rated not less than
13 "A- VII" in Best's Insurance Rating Guide, or (ii) as may be authorized in writing by ICTC's Executive
14 Director or his/her designee at any time and in his/her sole discretion. The following policies of
15 insurance are required:

16 (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the
17 most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form
18 CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising
19 injury" with coverage for premises and operations (including the use of owned and non-owned
20 equipment), products and completed operations, and contractual liability (including, without limitation,
21 indemnity obligations under the Agreement) with limits of liability of not less than the following:

22 \$5,000,000 per occurrence for bodily injury and property damage

23 \$5,000,000 per occurrence for personal and advertising injury

24 \$2,000,000 aggregate for products and completed operations

25 \$2,000,000 general aggregate

26 (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as
27 the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01,
28 and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code

1 1 - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and
2 property damage.

3 (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

4 (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000
5 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

6 (v) PROFESSIONAL LIABILITY (Errors and Omissions) insurance appropriate to Consultant's
7 profession, with limits of liability of \$5,000,000 per claim/occurrence and \$5,000,000 policy aggregate.

8 In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the
9 minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford
10 no less coverage than the primary insurance policy(ies).

11 Consultant shall be responsible for payment of any deductibles contained in any insurance policies
12 required hereunder and Consultant shall also be responsible for payment of any self-insured retentions.
13 Any deductibles or self-insured retentions must be declared to, and approved by, the ICTC's Executive
14 Director or his/her designee in his/her sole discretion. At the option of the ICTC's Executive Director or
15 his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured
16 retentions as respects ICTC, its members, board members, officers, officials, employees and agents; or
17 (ii) Consultant shall provide a financial guarantee, satisfactory to the ICTC's Executive Director or
18 his/her designee in his/her sole discretion, guaranteeing payment of losses and related investigations,
19 claim administration and defense expenses. At no time shall ICTC be responsible for the payment of
20 any deductibles or self-insured retentions.

21 All policies of insurance required hereunder shall be endorsed to provide that the coverage shall
22 not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written
23 notice has been given to ICTC. Upon issuance by the insurer, broker, or agent of a notice of
24 cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish ICTC with a
25 new certificate and applicable endorsements for such policy(ies). In the event any policy is due to
26 expire during the work to be performed for ICTC, Consultant shall provide a new certificate, and
27 applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the
28 expiration date of the expiring policy.

1 The General Liability and Automobile Liability insurance policies shall be written on an
2 occurrence form. The General Liability (including ongoing operations and completed operations) and
3 Automobile Liability insurance policies shall name ICTC, its members, board members, officers,
4 officials, employees and agents as an additional insured. All such policies of insurance shall be
5 endorsed so Consultant's insurance shall be primary and no contribution shall be required of ICTC, its
6 members, board members, officers, officials, employees, agents or volunteers. The coverage(s) shall
7 contain no special limitations on the scope of protection afforded to ICTC, its members, board members,
8 officers, officials, employees and agents. The Workers' Compensation insurance policy shall contain a
9 waiver of subrogation as to ICTC, its members, board members, officers, employees, agents and
10 volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability
11 greater than those shown above, ICTC requires and shall be entitled to the broader coverage and/or the
12 higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of the
13 specified minimum limits of insurance and coverage shall be available to ICTC.

14 If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made
15 coverage form:

16 (i) The retroactive date must be shown, and must be before the effective date of this Agreement
17 or the commencement of work by Consultant.

18 (ii) Insurance must be maintained and evidence of insurance must be provided for at least 5
19 years after completion of the work or termination of the Agreement, whichever first occurs.

20 (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy
21 form with a retroactive date prior to the effective date of the Agreement, or work commencement date,
22 Consultant must purchase extended reporting period coverage for a minimum of 5 years after
23 completion of the work or termination of the Agreement, whichever first occurs.

24 (iv) A copy of the claims reporting requirements must be submitted to ICTC for review.

25 (v) These requirements shall survive expiration or termination of the Agreement.

26 Consultant shall furnish ICTC with all certificate(s) and applicable endorsements effecting
27 coverage required hereunder. **All certificates and applicable endorsements are to be received and**
28 **approved by ICTC's Executive Director or his/her designee in his/her sole discretion prior to**

1 **ICTC's execution of the AGREEMENT and before work commences.** Upon request of ICTC,
2 Consultant shall immediately furnish ICTC with a complete copy of any insurance policy required under
3 this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and
4 correct copy of the original policy. This requirement shall survive expiration or termination of this
5 Agreement.

6 If at any time during the life of the Agreement or any extension, Consultant or any of its sub-
7 Consultants fail to maintain any required insurance in full force and effect, all work under this
8 Agreement shall be discontinued immediately, until notice is received by ICTC that the required
9 insurance has been restored to full force and effect and that the premiums therefore have been paid for a
10 period satisfactory to ICTC. Any failure to maintain the required insurance shall be sufficient cause for
11 ICTC to terminate this Agreement. No action taken by ICTC hereunder shall in any way relieve
12 Consultant of its responsibilities under this Agreement.

13 The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the
14 liability of Consultant, including, without limitation, liability under the indemnity provisions of this
15 Agreement. The duty to indemnify ICTC shall apply to all claims and liability regardless of whether any
16 insurance policies are applicable. The policy limits do not act as a limitation upon the policy limits do
17 not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or
18 purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the
19 liability of Consultant, its principals, officers, agents, employees, persons under the supervision of
20 Consultant, vendors, suppliers, invitees, sub-Consultants, or anyone employed directly or indirectly by
21 any of them.

22 If Consultant should subcontract all or any portion of the services to be performed under this
23 Agreement, Consultant shall require each sub-Consultant to provide insurance protection in favor of
24 ICTC, its members, board members, officers, officials, employees, agents and volunteers in accordance
25 with the terms of each of the preceding paragraphs, except that the sub-Consultant's certificates and
26 endorsements shall be on file with Consultant and ICTC prior to the commencement of any work by the
27 sub-Consultant.

28 18. ASSIGNMENT.

1 Neither this Agreement nor any duties or obligations hereunder shall be assignable by
2 CONSULTANT without the prior written consent of ICTC. CONSULTANT may employ other
3 specialists to perform services as required with prior approval by ICTC.

4 19. NON-DISCRIMINATION.

5 During the performance of this Agreement, CONSULTANT shall not unlawfully discriminate
6 against any employee or applicant for employment or employee of ICTC or member of the public
7 because of race, religion, color, national status, age, or sex. CONSULTANT shall ensure that the
8 evaluation and treatment of its employees and applicants for employment and employees and members
9 of the public are free of such discrimination. CONSULTANT shall comply with all provisions of the
10 Fair Employment and Housing Act (Government Code §12900, *et seq.*). The applicable regulations of
11 the Fair Employment Housing Commission implementing Government Code §12900 set forth in
12 Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this
13 Agreement by reference and made a part hereof as if set forth in full. CONSULTANT shall abide by the
14 Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and
15 regulations issued pursuant to said Act. CONSULTANT shall also abide by the American Disabilities
16 Act and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.
17 CONSULTANT shall give written notice of its obligations under this clause to labor organizations with
18 which it has a collective bargain or other agreement. CONSULTANT shall include the non-
19 discrimination and compliance provision of this paragraph in all subcontracts to perform work pursuant
20 to this Agreement.

21 20. NOTICES AND REPORTS.

22 20.1. All notices and reports pursuant to this Agreement shall be in writing and may be given
23 by personal delivery or by mailing by certified mail, addressed as follows:

24 **ICTC**

CONSULTANT

25 Attn: Executive Director
26 Imperial County Transportation Commission
27 1503 N. Imperial Ave., Ste 104
28 El Centro, CA 92243

1 20.2. All notices and reports pursuant to this Agreement may be given by personal delivery or
2 by mailing by certified mail at such other address as either Party may designate in a notice to the other
3 Party given in such manner.

4 20.3. Any notice given by mail shall be considered given when deposited in the United States
5 Mail, postage prepaid, addressed as provided herein.

6 21. ENTIRE AGREEMENT.

7 This Agreement contains the entire agreement between ICTC and CONSULTANT relating to the
8 transactions contemplated hereby and supersedes all prior or contemporaneous agreements,
9 understandings, provisions, negotiations, representations, or statements, either written or oral.

10 22. MODIFICATION.

11 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid
12 unless the same is in writing and signed by both parties.

13 23. PARTIAL INVALIDITY.

14 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid,
15 void, or unenforceable, the remaining provisions will nevertheless continue in full force without being
16 impaired or invalidated in any way.

17 24. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

18 As used in this Agreement and whenever required by the context thereof, each number, both
19 singular and plural, shall include all numbers, and each gender shall include a gender. CONSULTANT
20 as used in this Agreement or in any other document referred to in or made a part of this Agreement shall
21 likewise include both singular and the plural, a corporation, a partnership, individual, firm or person
22 acting in any fiduciary capacity as executor, administrator, trustee or in any other representative capacity
23 or any other entity. All covenants herein contained on the part of CONSULTANT shall be joint and
24 several if more than one person, firm or entity executes the Agreement.

25 25. WAIVER.

26 No waiver of any breach or of any of the covenants or conditions of this Agreement shall be
27 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of
28 the same or any other covenant or condition.

1 26. CHOICE OF LAW.

2 This Agreement shall be governed by the laws of the State of California. This Agreement is
3 made and entered into in Imperial County, California. Any action brought by either Party with respect
4 to this Agreement shall be brought in a court of competent jurisdiction within said County.

5 27. ATTORNEY'S FEES.

6 If either Party herein brings an action to enforce the terms thereof or declare rights hereunder,
7 each Party in any such action, on trial or appeal, shall bear its own attorney's fees and costs.

8 28. AUTHORITY.

9 Each individual executing this Agreement on behalf of CONSULTANT represents and warrants
10 that:

11 28.1. He/She is duly authorized to execute and deliver this Agreement on behalf of
12 CONSULTANT;

13 28.2. Such execution and delivery is in accordance with the terms of the Articles of
14 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

15 28.3. This Agreement is binding upon CONSULTANT accordance with its terms.

16 29. COUNTERPARTS.

17 This Agreement may be executed in counterparts.

18 30. ADDITIONAL FEDERAL CLAUSES.

19 During the performance of this Agreement, the CONSULTANT, for itself, its assignees, and
20 successors in interests, agrees to comply with the Additional Federal Clauses attached hereto as
21 Attachment D as "Required Clauses" and incorporated by this reference as though fully set forth
22 herein.

23 31. REVIEW OF AGREEMENT TERMS.

24 This Agreement has been reviewed and revised by legal counsel for both ICTC and
25 CONSULTANT, and no presumption or rule that ambiguities shall be construed against the drafting
26 Party shall apply to the interpretation or enforcement of the same or any subsequent amendments

27 **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first
28 above written.

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**IMPERIAL COUNTY TRANSPORTATION
COMMISSION:**

CONSULTANT:

By: _____
David Aguirre, Executive Director
ICTC

By: _____

ATTEST:

CRISTI LERMA
Secretary to the Commission

APPROVED AS TO FORM:

GEOFFREY P. HOLBROOK
County Counsel

By: _____
County Counsel

EXHIBIT B

RATE SCHEDULE

Rates shall include all support services in effect for the security guard including, but not limited to, benefits, licensing, certifications, dispatching, administration, and any other overhead costs etc. The rates listed shall be used to bill all services by the CONTRACTOR. No other fees or charges will be reimbursed by the COMMISSION. **Note that if additional facilities are added by the COMMISSION, the selected PROPOSER will provide services at additional locations for the same base rate.**

This rate schedule shall be included with all RFP submittals:

Personnel/Equipment: Unarmed/Uniformed

Rate:

Security Guard/Unarmed/Uniformed \$_____per hour

Security Guard Holidays/Unarmed/Uniformed \$_____per hour

Additive Alternative

Patrol Vehicle \$_____per hour

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting CONTRACTOR's indemnification of COMMISSION, and prior to commencement of Work, 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 COMMISSION.

General liability insurance. CONTRACTOR shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$5,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

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 \$1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. CONTRACTOR shall maintain professional liability insurance that covers the Services to be performed in connection with this AGREEMENT, in the minimum amount of \$5,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and CONTRACTOR agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this AGREEMENT.

Workers' compensation insurance. CONTRACTOR shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONTRACTOR shall submit to COMMISSION, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of COMMISSION, its officers, agents, employees and volunteers.

Other provisions or requirements

Proof of insurance. CONTRACTOR shall provide certificates of insurance to COMMISSION as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by COMMISSION's Executive Director prior to commencement of performance. Current certification of insurance shall be kept on file with COMMISSION at all times during the term of this contract. COMMISSION 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.

Primary/noncontributing. Coverage provided by CONTRACTOR shall be primary and any insurance or self-insurance procured or maintained by COMMISSION shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of COMMISSION before the COMMISSION's own insurance or self-insurance shall be called upon to protect it as a named insured.

COMMISSION's rights of enforcement. In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, COMMISSION has the right but not the duty to obtain the insurance it deems necessary and any premium paid by COMMISSION will be promptly reimbursed by CONTRACTOR or COMMISSION will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, COMMISSION 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 or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the COMMISSION's Executive Director.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against COMMISSION, its elected or 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 COMMISSION, 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 COMMISSION to inform CONTRACTOR of non-compliance with any requirement imposes no additional obligations on the COMMISSION 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. If the CONTRACTOR maintains higher limits than the minimums shown above, ICTC requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall

be available to the COMMISSION.

Notice of cancellation. CONTRACTOR agrees to oblige its insurance agent or broker and insurers to provide to ICTC with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that COMMISSION and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to COMMISSION and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONTRACTOR agrees to ensure that its subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONTRACTOR, provide the same minimum insurance coverage and endorsements required of CONTRACTOR. CONTRACTOR agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONTRACTOR agrees that upon request, all agreements with CONTRACTORS, subcontractors, and others engaged in the project will be submitted to COMMISSION for review.

COMMISSION's right to revise specifications. The COMMISSION reserves the right at any time during the term of the contract 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 cost to the CONTRACTOR, the COMMISSION and CONTRACTOR may renegotiate CONTRACTOR's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by COMMISSION. COMMISSION 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 COMMISSION.

Timely notice of claims. CONTRACTOR shall give COMMISSION 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.

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 the work.

SAMPLE

Exhibit E

PROPOSAL EVALUATION FORM

DATE: _____

EVALUATOR: _____

RESPONDENT: _____

PROJECT: _____

CRITERIA	MAXIMUM POINTS	SCORE
A. Relevant Work Experience	[35 Points]	
B. Proposed Methodology and Approach to Work	[20 Points]	
C. Staff Qualifications	[25 Points]	
D. Completeness of Response and References	[20 Points]	

TOTAL SCORE: _____

Comments:

THIRD PARTY CONTRACT CLAUSES
Federal Transit Administration and
California Department of Transportation Required Provisions

1. Source of Funding:

This contract entered _____ between _____
 on _____ (DATE) _____ (AWARDING AGENCY)
 and _____ (CONTRACTOR) _____ for _____

(PROJECT)
 is being funded with the following fund source(s) and amounts:

FUND SOURCE	AMOUNT

Parties referenced in the following clauses are defined as:

“AWARDING AGENCY” is the subrecipient of the State of California Department of Transportation.

“PROJECT” is the AWARDING AGENCY’s federally-supported project.

“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.

“Subagreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

For All Third-Party Contract Awards Excluding Micro-Purchases, Except Construction Contracts Exceeding \$2,000.00

No Obligation to Third-Parties by use of a Disclaimer

- A. 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.
- 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 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 clauses in each third-party contract and each subagreement financed in whole or in part with financial assistance provided by the FTA.
- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

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 fully responsible to the AWARDDING 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 AWARDDING 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.

- 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. AWARDDING AGENCY Approval of Subagreements. The AWARDDING 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 AWARDDING AGENCY. Any proposed amendments or modifications to such Subagreements must be approved by the AWARDDING AGENCY prior to implementation.

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. Section 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 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 in 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. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 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 subagreement financed in whole or in part with Federal Assistance provided by the California Department of

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records

The AWARDDING AGENCY, the California Department of Transportation, 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 of audits, examinations, excerpts, and transactions, 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.

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 and for three (3) years from the date of final payment under this Contract and all subagreements.

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.

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

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:

- A. 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

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

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 California Department of Transportation any 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 (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 California Department of Transportation may issue.
- C. 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.
- 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 the information, the CONTRACTOR shall certify to the AWARDING AGENCY of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. 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.
- F. 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

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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 California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

G. Section 504 and Americans with Disabilities Act Program 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.

Incorporation of FTA Terms

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

Prohibition on certain telecommunications and video surveillance services or equipment.

AWARDING AGENCY is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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- D. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- E. CONTRACTOR represents and warrants that it has performed a due diligence review of its supply chain and that no such “covered telecommunications equipment or services” shall be provided to the AWARDING AGENCY that would cause the AWARDING AGENCY to be in violation of the prohibition contained in the Act.

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. Section 6321 et seq.

Awards Exceeding \$10,000.00

Additional Termination Provisions

- A. 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.
- B. 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.

- C. Mutual Termination. The PROJECT may also be terminated if the AWARDING AGENCY and the CONTRACTOR agree that its continuation would not produce beneficial results

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commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

Awards Exceeding \$25,000.00

Debarment and Suspension

- 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 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.
- C. 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.
- D. Before entering into any third-party contract exceeding \$25,000.00, 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 \$25,000.00.

Legal Matters Concerning a Covered Transaction

- A. If a current or prospective legal matter that may affect the Federal Government or STATE emerges, the AWARDING AGENCY must promptly notify the STATE. The AWARDING AGENCY must include a similar notification requirement in its Third Party Agreements and must require each CONTRACTOR to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
 1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government or STATE as a party to litigation or a legal disagreement in any forum for any reason.
 2. Matters that may affect the Federal Government or STATE include, but are not limited to, the Federal or STATE Government's interests in the Award, the accompanying Underlying

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Agreement, and any Amendments thereto, or the Federal or STATE Government's administration or enforcement of federal laws, regulations, and requirements.

3. The AWARDING AGENCY must promptly notify the STATE, if the AWARDING AGENCY has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving FY2020 Contractors Manual – Procurement 9-49 federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the AWARDING AGENCY and STATE, or an agreement involving a principal, officer, employee, agent, or CONTRACTOR of the AWARDING AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the AWARDING AGENCY, including divisions tasked with law enforcement or investigatory functions.

Awards Exceeding \$100,000.00

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 () 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.

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 for \$100,000.00 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,

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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 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.
- C. 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 \$100,000.00 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 \$10,000.00 and not more than \$100,000.00 for each failure.

Clean Water

- A. 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.
- B. 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.

Awards Exceeding \$150,000.00

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 \$150,000.00. 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.

Clean Air

- A. 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.

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- B. 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.

Awards with Transport of Property or Persons

U.S. Flag Requirements (Cargo Preferences)(Fly America)

- A. Shipments by Ocean Vessel. For third-party contacts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subagreements must comply with 46 U.S.C. Section 55303 and 46 CFR Part 381, "Cargo Preferences-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 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.
- 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.

Awards with Transit Operations

Transit Employee Protective Arrangements (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 there to.
- B. 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.

Charter Service Operations

(Transit Operation and 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

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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.

School Bus Operations

(Transit Operation and 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 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.

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.

Drug-Free Workplace (FTA Section 5311 Awards)

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 subagreements, sub-grants, and contracts under grants, loans, 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 at 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.

The following drug and alcohol testing options are compliant with drug and alcohol rules. One of these options must be selected. Options 2 and Options 3 require additional information to be completed:

Drug and Alcohol Testing Option 1

The CONTRACTOR agrees to:

Participate in the AWARDING AGENCY's drug and alcohol program established in compliance with 49 CFR Part 655.

Drug and Alcohol Testing

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Option 2

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the California Department of Transportation, or the AWARDING AGENCY to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date) to (insert title and address of person responsible for receiving information). To certify compliance the 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.

Drug and Alcohol Testing

Option 3

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the California Department of Transportation, or the AWARDING AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date) to (insert title and address of person responsible for receiving information). To certify compliance the 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. The CONTRACTOR agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the AWARDING AGENCY wishes the contractor to use) as its policy statement as required under 49 CFR Part 655; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the CONTRACTOR agrees to: (to be determined by the AWARDING AGENCY, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

Awards with Rolling Stock

Bus Testing

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5318(e), 5323(c), and the FTA regulations, "Bus Testing," 49 CFR Part 665, and any revision thereto, 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.

Pre-Award and Post Delivery Audit

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The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5323(l), 5323(m), and the FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

Miscellaneous Special Requirements

Intelligent Transportation Systems (ITS) National Architecture

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 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.

DBE Contract Assurance

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 requirement of 49 CFR Part 26 in the award and administration of [Federal] 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 the Standard Agreement between the STATE and the AWARDDING AGENCY, the termination of this contract by the AWARDDING AGENCY, or such other remedy the STATE or AWARDDING AGENCY deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future bidding as non-responsive.

AWARDDING AGENCY shall notify the CALTRANS DBELO in the event the AWARDDING AGENCY finds the CONTRACTOR or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business days the finding is made.

DBE Participation Goal

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The contract goal for participation of Disadvantaged Business Enterprises (DBE) for this contract is 1%.

Offerors are required to document sufficient DBE participation to meet the contract goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53 (3)(i)(A). Award of this contract is conditioned on submission of the following:

1. If the offer meets the DBE contract goal the offeror must include with the offer a completed ADM-0227F form.
2. If the offer cannot meet the DBE contract goal the offeror must include with the offer a completed ADM-0312F form that documents the offeror's good faith efforts (GFE) and ADM-0227F form. The AWARDDING AGENCY must document concurrence with the offeror's GFE and provide a copy of the GFE to Caltrans DRMT Compliance Liaison for additional concurrence prior to contract award.

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The CONTRACTOR shall not terminate the DBE subcontractors listed on ADM-0227F without the AWARDING AGENCY's prior written consent and concurrence from the CALTRANS DBELO. The AWARDING AGENCY may provide such written consent only if the CONTRACTOR has good cause to terminate the DBE firm. Before transmitting a request to terminate, the CONTRACTOR shall give notice in writing to the DBE SUBCONTRACTOR of its intent to terminate and the reason for the request. The CONTRACTOR shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the contract for any reason, the CONTRACTOR shall make good faith efforts (GFE) to find another DBE subcontractor to substitute for the original DBE and immediately notify the AWARDING AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.

Continued Compliance

The AWARDING AGENCY shall monitor the CONTRACTOR'S DBE compliance during the life of this contract and submit to the STATE a completed ADM-3069 form in each their request for reimbursement (RFR) packet.

Prompt Payment and Return of Retainage

- A. 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.
- B. 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.
- C. 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.
- D. 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.

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.