

MEMORANDUM

DEPARTMENT OF PUBLIC WORKS
County of Placer

TO: BOARD OF SUPERVISORS

DATE: November 15, 2011

FROM: KEN GREHM / WILL GARNER *WG*

SUBJECT: **MV TRANSPORTATION CONTRACT FOR PEAK SEASON BUS DRIVERS**

ACTION REQUESTED / RECOMMENDATION

Adopt a Resolution authorizing the Director of the Department of Public Works (DPW) to execute, with County Counsel and Risk Management's review and approval, a Contract with MV Transportation, Inc. for peak season bus drivers for Tahoe Area Regional Transit (TART) through September of 2014, based on hourly rates offered by MV Transportation, Inc. in an amount estimated at \$150,000 per fiscal year and not to exceed \$450,000 over the three-year period.

BACKGROUND / SUMMARY

DPW has had a contract for additional bus driver staff for the peak summer and winter seasons at TART since 2006. The most recent contract was with MV Transportation, which ended in September of 2011. The Procurement Services Division released an RFP on September 2, 2011, with two subsequent addenda for a new contract. Proposals were submitted on September 26, 2011 by two companies. The proposals were evaluated based on the following criteria, 1) Background, Experience and Qualifications; 2) Personnel and Organizational Program; 3) Operations, Training and Employee Safety Program; and 4) Proposed Cost.

The RFP evaluation panel determined that MV Transportation's proposal was the highest ranked proposal of the two with the most relevant and extensive experience & qualifications, and most comprehensive personnel, training and safety programs. The hourly shift price offered by MV is \$41.25 for the first year, \$41.46 for year two and \$41.82 for year three, with overtime charges being an additional 27% for all three years. These prices are a reduction from the price charged by MV through September of 2011, which was \$43.26 per shift hour and \$64.89 for overtime. The Contract calls for up to five drivers per day during the peak seasons. Based on the history of the last three years, the Contract drivers typically work three shifts per day, with the County employed drivers working the remainder of the nine to eleven shifts per day. DPW estimates the annual expenditures under this Contract to be between \$135,000 and \$150,000. For the remainder of FY 2011/12 expenditures are expected to be approximately \$93,000. The proposed Contract will run through the end of the summer peak season of 2014, with extension options of two one-year periods.

ENVIRONMENTAL

The project is statutorily exempt from CEQA pursuant to section 21080(b)(10), as it is a project to provide passenger service.

FISCAL IMPACT

DPW has budgeted adequately in the 2011/12 Budget for these services and anticipates adequate funding to be available for the future years of the Contract.

Attachments: Resolution,
Copy of Final Contract

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**Before the Board of Supervisors
County of Placer, State of California**

In the matter of: ADOPT A RESOLUTION
AUTHORIZING THE DIRECTOR OF THE
DEPARTMENT OF PUBLIC WORKS TO
EXECUTE A CONTRACT WITH MV
TRANSPORTATION IN AN AMOUNT NOT TO
EXCEED \$450,000 THROUGH SEPTEMBER OF
2014, FOR THE PROVISION OF PEAK SEASON
BUS DRIVERS FOR TAHOE AREA REGIONAL
TRANSIT (TART).

Resol. No:.....

Ord. No:.....

First Reading:.....

The following RESOLUTION was duly passed by the Board of Supervisors

of the County of Placer at a regular meeting held _____

by the following vote:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:
Clerk of said Board

Chair, Board of Supervisors

BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Placer, State of California, that this Board authorizes the Director of the Department of Public Works to execute an agreement with MV Transportation through September 30, 2014 based on the hourly rates offered by MV Transportation in an amount estimated at \$150,000 per fiscal year and not to exceed \$450,000 over the three-year period, for the provision of peak season bus drivers for Tahoe Area Regional Transit.

Project: Contract Drivers for TART Peak Season Program
Administering Agency: Department of Public Works
Contract No.:
Contract Description: Provision of Public Transit Drivers for TART Peak Season Program

CONTRACTOR SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of _____ 2011, by and between the County of Placer, ("County"), and _____ ("Contractor"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide the services described in Exhibit A. Contractor shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. **Payment.** County shall pay Contractor for services rendered pursuant to this Agreement at the time and in the amount set forth in Exhibit B. The payment specified in Exhibit B shall be the only payment made to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all billings for said services to County in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures which Contractor uses for billing clients similar to County.
3. **Facilities, Equipment and Other Materials, and Obligations of County.** Except as set forth in Exhibit C, Contractor shall, at its sole cost and expense, furnish all facilities, equipment, and other materials, which may be required for furnishing services pursuant to this Agreement. County shall furnish Contractor only those facilities, equipment, and other materials, and shall perform those obligations listed in Exhibit C according to the terms and conditions set forth in Exhibit C.
4. **General Provisions.** The general provisions set forth in Exhibit D are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.
5. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.
6. **Time for Performance.** Time is of the essence, and, subject to County's compliance with Exhibit C and to the provisions of paragraph 3 of Exhibit D, failure of Contractor to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract.

7. **Terms of Agreement**

- A. Initial Term: The initial term of this Agreement shall be from December 1, 2011 through and including September 30, 2014.
- B. Extension Options: The County may, at its sole discretion, renew this agreement for up to two (2) one (1) year periods subject to satisfactory negotiations of fees for any and all renewal periods.

8. **Notices.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax or reliable overnight mail to the address of the respective parties set forth below:

AGENCY: Placer County Department of Public Works, Transit Division
Attn: Will Garner
3091 County Center Drive, Suite 220
Auburn, CA 95604-7096 (Project Inquiries)
Phone: (530) 745-3150 Fax: (530) 745-3152

CONTRACTOR: Business Name
Attn: Company Principal or Contact person
Street Address
City & State & Zip Code
Phone: Fax:

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

WITNESS WHEREOF, the parties have hereunto set their hands the year and date first above written

APPROVED AS TO PROCEDURE

“CONTRACTOR”

By: _____
Ken Grehm, Director
Department of Public Works

Officer Signature #1
(Signature Notarized)

By: _____
Print Name and Title

APPROVED AS TO FUNDS

Date: _____

By: _____
Auditor, Placer County

By: _____
Signature #2
(Signature Notarized)

Date: _____

By: _____
Print Name and Title

APPROVED AS TO FORM

Date: _____

By: _____
County Counsel, Placer County

Licensed in accordance with an act providing County
for the registration of Contractors,

Contractor's License Number _____

Date: _____

***If Contractor is a corporation, contract must be signed by the following two corporate officers, one from each category (1) President or any Vice President and (2) Corporate Secretary, any Assistant Corporate Secretary, Chief Financial Officer or any Treasurer or Assistant Treasurer, unless an authenticated copy of a resolution of the corporation which delegates to a single officer the authority to bind the corporation is attached to this contract.**

Exhibits

- A. Scope of Services
 - Attachment 1a – Winter Season Route Map
 - Attachment 1b – Summer Season Route Map
- B. Cost Proposal – Payment for Services Rendered
- C. Facilities, Equipment and Other Obligations of County
- D. General Provisions and Insurance Requirements
- E. FTA Required Guidelines

Exhibit A
Contract Drivers for TART Peak Season Program

Scope of Services

I. Introduction

Tahoe Area Regional Transit (TART), which is operated by the Placer County Department of Public Works, operates the TART service continually in North Lake Tahoe. This contract is to provide professional qualified drivers to supplement TART's permanent and extra help employees during peak winter and summer seasons.

II. Services Required

The service described below is the entire service, including that to be operated directly by TART personnel. The proposed TART service area is displayed on Attachments 1a and 1b to this Scope of Services. The bus service is operated with 14 vehicles from 5:00 a.m. to midnight during summer months and 10 vehicles from 5:00 am to 8:00 pm during winter months. All vehicles are transit style buses 35' to 40' in length, and powered by either CNG or diesel engines.

Each contract driver will be expected to work a minimum of 20 hours per week and a maximum of 40 hours per week. It is expected the contract drivers will work approximately 800 to 1,500 hours during the summer season and 1,500 to 2,500 hours during the winter season.

The Contractor shall provide qualified transit drivers to Placer County for use in the TART peak season program. Placer County will supply the management, supervision, dispatch, route training, vehicles, uniforms and all supplies necessary to work the required shifts. The Contractor will not be required to provide on-site supervision. Listed below are the requirements for this contract:

- A. Number of Drivers:** 1 to 5 per day
- B. Dates:** Contract commencement date is December 1, 2011. Training shall be conducted December 1, 2011, through December 16, 2011. Each training session will be approximately 16 hours.
- C. Peak Seasons (Approx.):** Winter Season – December 15 – April 10
Summer Season – July 1 – September 3
- D. Operating Days:** 7 days per week, except December 25 (Christmas Day)
- E. Operating Hours:** Winter Season – 5:00 am to 8:00 pm
Summer Season – 5:00 am to 12:00 am
- F. Shift Days per week:** 7 days per week, except December 25 (Christmas Day)

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G. Shift Assignments: Shifts not filled by TART permanent and extra help employees shall be filled by the Contractor. Shifts will be assigned one week in advance by the TART supervision staff.

Winter Season – 10 shifts, 4 to 10 hours in duration

Summer Season – 14 shifts, 4 to 10 hours in duration

H. Reporting Location: Tahoe Area Regional Transit Facility
870 Cabin Creek Road
Truckee, CA
3 miles south of I-80 off of Highway 89

I. Driver Transportation: Contractor or driver shall be responsible for transportation to and from the TART office.

J. Service Modification: County reserves the right to modify the service area or shift times of this contract to best serve TART service requirements.

III. General Requirements

A. Driver Qualifications

Drivers must possess at minimum one (1) year of verifiable transit (or equivalent) experience. Driver shall possess at all times a valid Class B driver's license with air brake and passenger endorsements allowing passenger transport in a Class B vehicle carrying more than 15 passengers. The driver must possess documented training sufficient to hold or obtain a Verification of Transit Training (VTT), School Bus, or Student Pupil Activity Bus (SPAB) certificate. The Contractor shall provide a DMV printout for each driver identifying the proper endorsements. The Contractor shall bear all costs associated with acquiring the DMV report(s).

Drivers must be able to operate and perform routine tasks typical of bus operations on a public transit vehicle in passenger service, operate a public transit vehicle safely and legally, and practice principles of good customer service.

Each driver provided by the Contractor will be required to pass a basic skills driving test administered by the County's certified trainers before being approved to operate in service. The test will include but is not limited to the following elements:

- Pre and post trip vehicle inspection
- Basic vehicle operations
- Basic driving skills; and
- On route drive test

- B. Drug & Alcohol Testing**
The Contractor shall 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 State Oversight Agency of the State of California, or County, 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 shall certify annually its compliance with Part 655 before March 15 and to submit the Management Information System (MIS) reports before March 15 to Placer County Department of Public Works, c/o Senior Transportation Systems Supervisor, 3091 County Center Drive, Auburn, CA 95603. 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.
- C. Operating of County Equipment**
Contractor shall operate transit buses and other County supplied vehicles and equipment in accordance with the provisions of this agreement, the operating procedures set forth by County personnel responsible for supervision of the TART operation, and all applicable federal, state, and local laws.
- D. Pickup and Discharge of Passengers**
Unless otherwise directed by County in writing, passengers shall be picked up and discharged only at approved bus stops along prescribed route and schedule.
- E. Receiving Fares and Counting Passengers**
Drivers may, on a random basis, be required to record passenger boarding by location in accordance with procedures provided by TART supervisors. Drivers will be required to operate GFI Genfare automated fareboxes.
- F. Pre/Post-Trip Inspections and Defect Reports**
Drivers are required to perform pre/post-trip inspections of each revenue vehicle prior to and at the conclusion of daily operation. Pre/post-trip inspections shall be performed in accordance with the procedures prescribed by TART supervisors. Drivers will be responsible for reporting, in writing, any defects to both revenue and non-revenue vehicles provided by County.
- G. Incident Reports**
Drivers will be responsible for completing incident reports for vehicle and non-vehicle incidents, accidents, and collisions during performance of this contract. Incident reporting will be completed on a form prescribed by the County and provided by TART supervisors.
- H. Insurance**
See Exhibit D

I. Driver Performance

Failure of a driver to perform duties in a manner required by this Contract or as directed by TART supervisors will be cause for Placer County to require the Contractor to remove a driver from service.

J. Vehicle Cleanliness

Drivers shall maintain the cleanliness of the vehicle interior, passenger windows, windshields and mirrors during operation. Drivers may be assigned to wash vehicles during the course of their shifts.

K. Fueling

Drivers will be required to fuel buses as part of their shift. Refueling will take place at the County diesel and CNG fuel dispensers located at the TART Facility, 870 Cabin Creek Road, Truckee, CA for the duration of the contract.

IV. California Labor Code and Industrial Welfare Commission (IWC) Wage Order 9-2001

All drivers are subject to California Labor Code and IWC Wage Order 9-2001 (Wage Order 9). Wage Order 9 concerns meal and rest periods for non-exempt employees and provides for at least a thirty (30) minute unpaid meal period for a work period of more than five (5) consecutive hours and a second meal period of at least thirty (30) minutes for a work period of more than ten (10) consecutive hours. These meal periods may be waived by mutual consent of the employer and employee when employees' work periods of not more than six (6) hours will complete the day's work or when the employees' total hours worked for the day is no more than twelve (12) hours and the first meal period was duty-free. Furthermore given the nature of the work employees in the transportation industry perform, when drivers cannot be relieved of all duty as contemplated by Section 11.C. of IWC Wage Order No. 9, the driver will be given an on-duty meal period. Therefore the employee may receive a paid meal period rather than a duty-free meal period.

Contractor's drivers will be required to sign three forms related to Wage Order 9:

- On Duty Meal Agreement
- 5-6 Hour Waiver
- 10-12 Hour Waiver

It is the obligation of the County to schedule work in such a way as to comply with Wage Order 9 and allowed exceptions. Any monetary penalties incurred by the Contractor under Wage Order 9 as a result of County staff scheduling will be reimbursed to the Contractor.

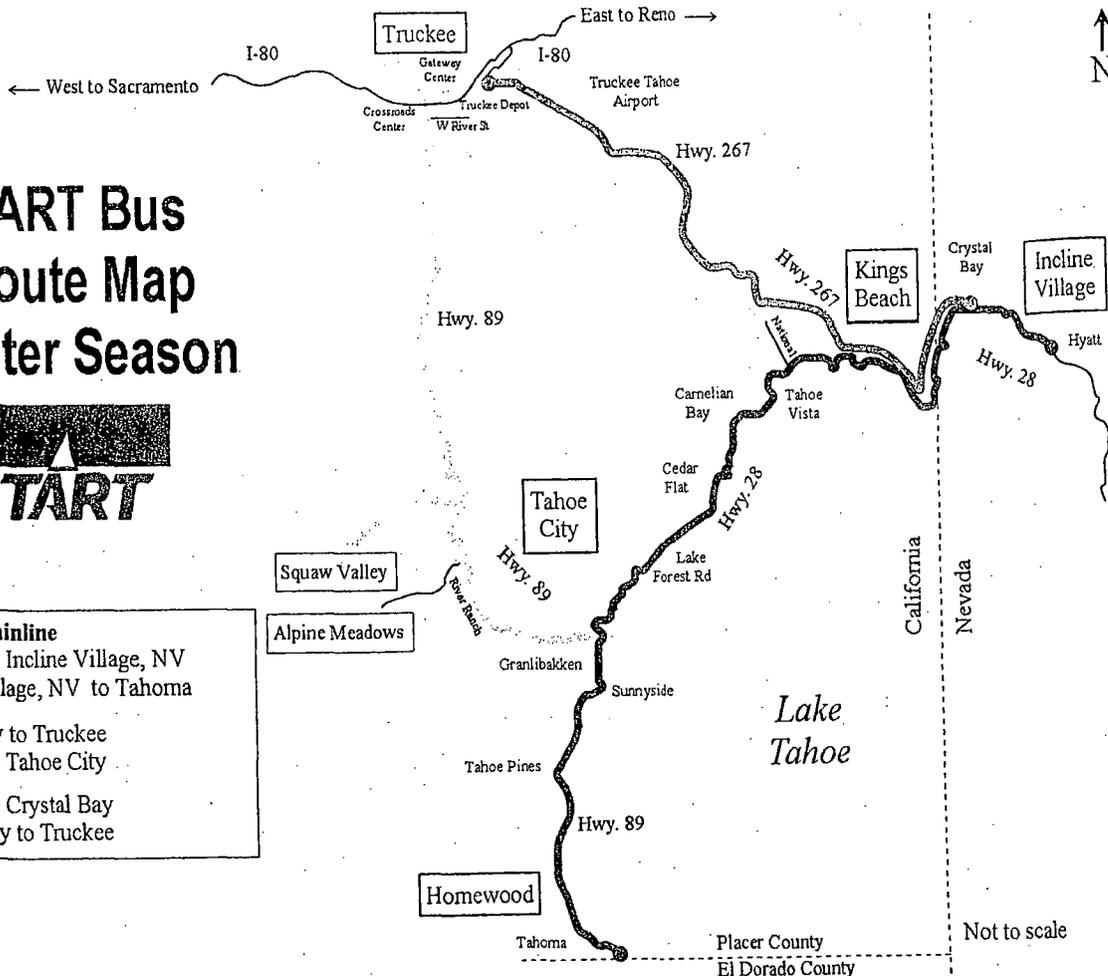
**Attachment 1a
To Scope of Services**

**TART Bus
Route Map
Winter Season**



Legend:

	TART Mainline Tahoma to Incline Village, NV Incline Village, NV to Tahoma
	Tahoe City to Truckee Truckee to Tahoe City
	Truckee to Crystal Bay Crystal Bay to Truckee



Tahoe Area Regional Transit
(530) 550-1212 or (800) 736-6365
Email: tart@placer.ca.gov

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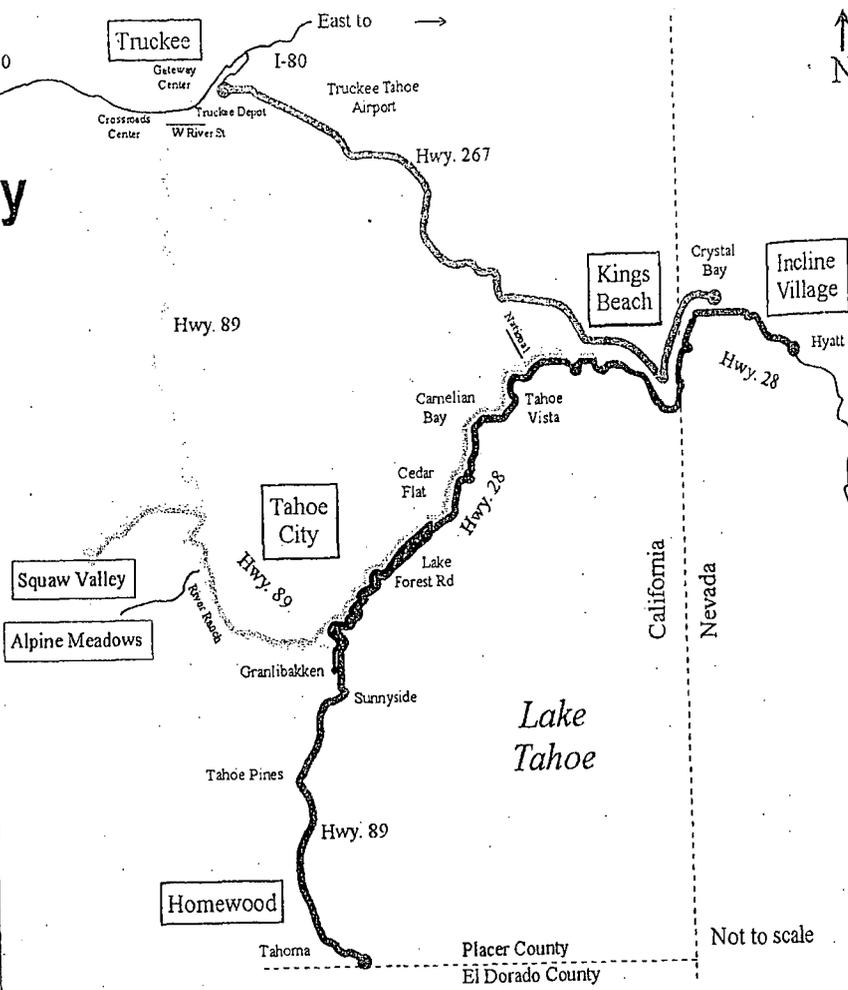
Attachment 1b
To Scope of Services

TART Bus & Trolley Route Map Summer Season



Legend:

	TART Mainline
	Tahoma to Incline Village, NV Incline Village, NV to Tahoma
	Tahoe City to Truckee Truckee to Tahoe City
	Truckee to Crystal Bay Crystal Bay to Truckee
	Trolley Day - Tahoe City Loop Between Granlibakken & Lake Forest
	Trolley Day - Tahoe Vista to Crystal Bay Crystal Bay to Tahoe Vista
	Trolley Night - Squaw Valley to Incline Incline to Squaw Valley



Tahoe Area Regional Transit
(530) 550-1212 or (800) 736-6365
Email: tart@placer.ca.gov

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Exhibit B
Contract Drivers for TART Peak Season Program
Payment for Services Rendered

Pricing

Placer County will be charged the hourly rates shown below. A week shall be defined as 12:00 a.m. Saturday through 11:59 p.m. Friday.

	Regular Hourly Rate per driver shift hour up to 40 hours per week, per driver: driver:	Overtime Hourly Rate per driver shift hour in excess of 40 hours per week, per driver:
Year 1 - Winter 2011/12 & Summer 2012:	<u>\$ 41.251</u>	<u>\$ 52.553</u>
Year 2 - Winter 2012/13 & Summer 2013:	<u>\$ 41.458</u>	<u>\$ 52.779</u>
Year 3 - Winter 2013/14 & Summer 2014:	<u>\$ 41.821</u>	<u>\$ 53.162</u>

Changes in Service Levels

It is expected the contract drivers will work 800 to 1,500 hours during the summer season and 1,500 to 2,500 hours during the winter season. Any increases or decreases to the range of expected shift hours resulting in a 15% or greater change will be subject to re-negotiation of the Contractor's pricing to the satisfaction of both parties.

Reimbursement for Lodging Costs

Contractor will be reimbursed lodging costs at a rate not to exceed \$110 per employee per day. Lodging costs will be reimbursed only for instances when TART requires more than five (5) drivers per day and the shifts are worked by Contractor drivers that are required to commute from outside of the Reno-North Lake Tahoe-Truckee region. Contractor shall make all reasonable efforts to employ drivers from the Reno-North Lake Tahoe-Truckee region for the purpose of minimizing lodging costs. Placer County will not be responsible for any additional per diem charges or costs.

Invoices/Reporting

Invoices shall be submitted monthly. Invoices shall identify total charge, time period covered, driver name, driver shift hours and shift worked each day, number of hours worked by week up to 40 hours, number of hours worked by week in excess of 40 hours (if applicable), and total hours for both categories. The County will make payment within 30 days of receipt of a correct invoice, unless Contractor offers a discount off the invoice price for earlier payment. Contractor shall provide its drivers with any time sheets or records needed for Contractor's record keeping.

Liquidated Damages

County will deduct charges resulting from liquidated damages from payments of Contractor invoices under the following conditions:

- **Failure to Report for Shift:** For any occurrence of driver's failure to report for scheduled shift assignments, the Contractor shall be liable to the County the amount equal to the cost of the shift, based on the contract regular hourly rate.
Formula: Contract rate x length of shift in driver shift hours = Total cost of damages

- **Failure to Report for Shift at Designated Time:** Contractor shall be liable to the County the cost of 2 (two) hours at the contract regular hourly rate for any occurrence of driver's failure to report within 0 to 5 minutes of scheduled report time for scheduled shift assignments. Failure to report within thirty (30) minutes of a scheduled report time shall be considered as a failure to report for shift.
- **Sick Outs:** Any shift assigned to the Contractor that must be back-filled by a County employee due to a sick out will be considered a failure to report for shift.

Exhibit C
Contract Drivers for TART Peak Season Program

Facilities, Equipment, and Other Materials, and Obligations of County

Placer County shall provide all facilities, equipment and materials necessary for contract drivers to fulfill their duties, as described in Section 2.0 of RFP No. 10118 and Exhibit A of this contract.

Placer County shall provide supervision and management of the transit services operated by contract drivers.

Placer County will provide Contractor with bi-weekly driver schedule one week in advance.

Exhibit D
Contract Drivers for TART Peak Season Program

General Provisions

1. Independent Contractor

At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of the County. County shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement.

2. Licenses, Permits, Etc.

Contractor represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Contractor to practice its profession. Contractor represents and warrants to County that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Contractor to practice its profession at the time the services are performed.

3. Time

Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Contractor's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

4. Hold Harmless and Indemnification Agreement

The Contractor hereby agrees to protect, defend, indemnify, and hold Placer County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by Placer County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the County) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. Contractor agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Contractor. Contractor also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against Contractor or the County or to enlarge in any way the Contractor's liability but is intended solely to provide for indemnification of Placer County from liability for damages or injuries to third persons or property arising from Contractor's performance pursuant to this contract or agreement.

As used above, the term Placer County means Placer County or its officers, agents, employees, and volunteers.

5. Insurance

Contractor shall file with County concurrently herewith a Certificate of Insurance, in companies acceptable to County, with a Best's Rating of no less than A-:VII showing.

6. **Worker's Compensation and Employers Liability Insurance**

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to Contractor's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Contractor shall require all subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

7. **General Liability Insurance**

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Contractor, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by Contractor in this Agreement.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If Contractor carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

→Five million dollars (\$5,000,000) each occurrence

→Five million dollars (\$5,000,000) aggregate

D. If Contractor carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

→Five million dollars (\$5,000,000) each occurrence (combined single limit for bodily injury and property damage)

→Five million dollars (\$5,000,000) for Products-Completed Operations

→Five million dollars (\$5,000,000) General Aggregate

(2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be five million dollars (\$5,000,000).

E. Special Claims Made Policy Form Provisions:

Contractor shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

(1) The limits of liability shall not be less than:

→Five million dollars (\$5,000,000) each occurrence (combined single limit for bodily injury and property damage)

→Five million dollars (\$5,000,000) aggregate for Products Completed Operations

→Five million dollars (\$5,000,000) General Aggregate

(2) The insurance coverage provided by Contractor shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

8. Endorsements

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."

B. "The insurance provided by the Contractor, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."

C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer"

9. **Automobile Liability Insurance**

Automobile Liability insurance covering bodily injury and property damage in an amount no less than three million dollars (\$3,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

10. **Contractor Not Agent**

Except as County may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind County to any obligation whatsoever.

11. **Assignment Prohibited**

Contractor may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County.

12. **Personnel**

A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Contractor to perform services pursuant to this Agreement, Contractor shall remove any such person immediately upon receiving notice from County of the desire of County for removal of such person or persons.

B. Notwithstanding the foregoing, any persons identified in Contractor's proposal shall be utilized in the performance of this contract. Reassignment or substitution of individuals or sub-Contractors by the Contractor without the prior written consent of County shall be grounds for cancellation of the agreement by County, and payment shall be made pursuant to Paragraph 14 – Termination, only for that work performed by authorized persons.

13. **Standard of Performance**

Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession. All products of whatsoever nature which Contractor delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Contractor's profession.

14. **Termination**

A. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Contractor. In the event County shall give notice of termination, Contractor shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:

- 1) Contractor shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include handwriting,

typewriting, printing, Photostatting, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

- 2) County shall have full ownership and control of all such writings delivered by Contractor pursuant to this Agreement.
- 3) County shall pay Contractor the reasonable value of services rendered by Contractor to the date of termination pursuant to this Agreement not to exceed the amount documented by Contractor and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Contractor had Contractor completed the services required by this Agreement. In this regard, Contractor shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Contractor. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.
- 4) The County, at its sole discretion, may terminate this Agreement at any time if the TART service is eliminated or materially reduced due to a lack of funds. Such termination shall be effective upon thirty (30) day written notice and the payment of all consideration earned to date by Contractor. Acceptance of such final payment by Contractor shall constitute a complete accord and satisfaction as between Contractor and the County.

B. Contractor may terminate its services under this Agreement upon ninety (90) working days' advance written notice to the County, or at anytime with the mutual consent of both parties.

15. **Non-Discrimination**

Contractor shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, age, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code Section 12900 et seq.

16. **Records**

Contractor shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to Contractor until County is satisfied that work of such value has been rendered pursuant to this agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

17. **Ownership of Information**

All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of County, and Contractor agrees to deliver reproducible copies of such documents to County on completion of the services

hereunder. The County agrees to indemnify and hold Contractor harmless from any claim arising out of reuse of the information for other than this project.

18. **Waiver**

One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.

19. **Conflict of Interest**

Contractor certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, Contractor agrees that no such person will be employed in the performance of this agreement without immediately notifying the County.

20. **Entirety of Agreement**

This Agreement contains the entire agreement of County and Contractor with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

21. **Attorney's Fees**

If any party to this Agreement commences legal proceedings to enforce any of its terms or for damages for its breach, the prevailing party shall be entitled to recover reasonable attorney's fees, including those incurred on appeal, if any.

22. **Governing Law**

This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California, and Contractor hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.

Exhibit E
Contract Drivers for TART Peak Season Program

FTA Assisted Required Clauses for Capital and Professional Service Procurements

The Federal Government requires that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements.

Activities performed resulting from the original contract to this and any other prior or subsequent contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations.

Accordingly, any contractor and its subcontractors performing activities under this Agreement must adhere to the Federal regulations stated herein as a condition of satisfactory performance.

All subcontracts and subcontractors employed as a result of this Agreement are subject to the same conditions and regulations as set forth herein unless specifically exempted.

The Prime Contractor shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The Prime Contractor will be held liable for compliance failures by its subcontractors.

Failure to comply will render the Prime Contractor responsible for damages and/or contract termination.

1. FLY AMERICA REQUIREMENTS

This clause is not applicable to this procurement.

2. BUY AMERICA REQUIREMENTS

This clause is not applicable to this procurement.

3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and sub-recipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

Charter Service Operations

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

4. **SCHOOL BUS REQUIREMENTS**

49 U.S.C. 5323(F)

49 CFR Part 605

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and sub-recipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations

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

5. **CARGO PREFERENCE REQUIREMENTS**

This clause is not applicable to this procurement.

6. **SEISMIC SAFETY REQUIREMENTS**

This clause is not applicable to this procurement.

7. **ENERGY CONSERVATION REQUIREMENTS**

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and sub-recipients and their sub-agreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

Energy Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

8. **CLEAN WATER REQUIREMENTS**
33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and sub-recipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended; the following language developed by FTA contains all the mandatory requirements:

Clean Water

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

9. **BUS TESTING**
49 U.S.C. 5323(c)
49 CFR Part 665

This clause is not applicable to this procurement.

10. **PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**
49 U.S.C. 5323
49 CFR Part 663

This clause is not applicable to this procurement.

11. **LOBBYING**
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-

Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any 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 its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

Refer to **Attachment B** for signatory requirements.

12. **ACCESS TO RECORDS AND REPORTS**

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records

The following access to records requirements apply to this Contract:

- (1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) Where the Purchaser is a State and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- (3) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (4) Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (5) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- (6) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
- (7) FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
<u>II Non State Grantees</u>						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

1 49 USC 5325 (a)

2 49 CFR 633.17

3 18 CFR 18.36 (i)

**13. FEDERAL CHANGES
49 CFR Part 18**

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

14. **BONDING REQUIREMENTS**

This clause is not applicable to this procurement.

15. **CLEAN AIR**

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air

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

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

16. **RECYCLED PRODUCTS**

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Purchaser or Contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials

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.

17. **DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS**

This clause is not applicable to this procurement.

18. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

This clause is not applicable to this procurement.

19. **[RESERVED]**

20. **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government

- (1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the 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, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

22. **TERMINATION**
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

23. **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Suspension and Debarment

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

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **Placer County, Department of Public Works**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Placer County, Department of Public Works**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

24. **PRIVACY ACT** **5 U.S.C. 552**

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

25. **CIVIL RIGHTS REQUIREMENTS**

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (c) Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

26. **BREACHES AND DISPUTE RESOLUTION**
49 CFR Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract; nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

27. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

This clause is not applicable to this procurement.

28. **TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**
49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language:

Transit Employee Protective Provisions

- (1) The Contractor agrees to comply with the applicable transit employee protective requirements as follows:
- (a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, 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. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
 - (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of

which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

- (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

- (2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

29. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**
49 CFR Part 26

Background and Applicability

The newest version of the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

- (a) 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 national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE

participation is 5 %. A separate contract goal has not been established for this procurement.

- (b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Placer County deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- (c) The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from Placer County. In addition, the Contractor may not hold retainage from its subcontractors.
- (d) The Contractor must promptly notify Placer County, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Placer County.

30. [RESERVED]

31. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

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 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

32. **DRUG AND ALCOHOL TESTING**
49 U.S.C. §5331
49 CFR Part 655

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or sub recipient is required to comply with 49 CFR 655, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any 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 its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
[Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by title 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Pursuant to title 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Executed this _____ day of _____, 20__.

By: _____
(Signature of Contractor's Authorized Official)

(Printed Name and Title of Contractor's Authorized Official)