

SPECIAL MEETING
AGENDA
Tulare County Regional Transit Agency

September 27, 2021, 3:00 p.m.

Tulare County Board of Supervisors Chambers
2800 West Burrel Avenue
Visalia, CA 93291

NOTE: This meeting will allow Board Members and the public to participate in the meeting via Teleconference, pursuant to the Governor’s Executive Order N-29-20 (March 17, 2020), available at: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>

Zoom Meeting | Direct Link: <https://bit.ly/2Zt4BQY>

Toll Free Call in: (888) 475-4499 | **Meeting ID:** 744 710 0343 | **Passcode:** 82243742

Call in only instructions: Enter your meeting ID followed by #, Enter # for participant ID, Enter the passcode followed by #.

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, including auxiliary aids, translation requests, or other accommodations, or to be able to access this agenda and documents in the agenda packet, please contact the Tulare County Association of Governments (“TCAG”) office at 559-623-0450 at least 3 days prior to the meeting. Any staff reports and supporting materials provided to the Board after the distribution of the agenda packet are available for public inspection at the TCAG office.

- I. CALL TO ORDER, WELCOME, AND ROLL CALL**
- II. PLEDGE OF ALLEGIANCE**
- III. PUBLIC COMMENT**

NOTICE TO THE PUBLIC
PUBLIC COMMENT PERIOD

At this time, members of the public may comment on any item of interest to the public and within the subject matter jurisdiction of TCRTA but not appearing on this agenda. Under state law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Board consideration. Any person addressing the Board will be limited to a maximum of three (3) minutes so that all interested parties have an opportunity to speak with a total of fifteen (15) minutes allotted for the Public Comment Period. Speakers are requested to state their name(s) and address(es) for the record.

IV. COMMITTEE REPORTS:

- a. Technical Advisory Committee

V. CONSENT CALENDAR ITEMS:

Request Approval of the Consent Calendar Action Items V-A through V-D.

- A. Action: Approve Minutes of August 16, 2021 (Pages 1-4)
- B. Action: Ratification of the September 20, 2021 Meeting Cancellation (Pages 5-6)
- C. Action: Approve Agreement with the City of Visalia for FTA Grant Management Services (Pages 7-34)
- D. Action: Approve Memorandum of Understanding with the San Joaquin Joint Powers Authority for the Cross Valley Rail Corridor (Pages 35-42)

VI. ACTION AND INFORMATION ITEMS:

- A. Action: Approve Measure R Cooperative Agreement (Pages 43-54)
- B. Action: Approve Measure R Program Supplement to Cooperative Agreement for Transit Services (Pages 55-60)
- C. Action: Recommend the Purchase of Electric Shuttle Vans for State of Good Repair Project (Pages 61-62)
- D. Discussion: Cal-ITP Contactless Fare Payment Demonstration Project Update (Pages 63-74)

VII. OTHER BUSINESS:

- a. Information: Directors Report (Pages 75-81)
- b. Information: Items from Staff
- c. Information: Items from Board Members
- d. Request from Board Members for Future Agenda Items

VIII. ADJOURN:

The next scheduled meeting of the Tulare County Regional Transit Agency (TCRTA) Board of Directors will be held on Monday, October 18, 2021 at 3:00 p.m. in the Tulare County Board of Supervisors Chambers, 2800 W. Burrel Avenue, Visalia, CA 93291.

TULARE COUNTY REGIONAL TRANSIT AGENCY

BOARD OF DIRECTORS	ALTERNATE	AGENCY
Kuldip Thusu	Armando Longoria	City of Dinuba
Steve Garver	Dave Hails	City of Exeter
Greg Gomez – Vice Chair	Tina Hernandez	City of Farmersville
Ramona Caudillo	Hipolito Cerros	City of Lindsay
Monte Reyes	Milt Stowe	City of Porterville
Jose Sigala – Chair	Terry Sayre	City of Tulare
Rudy Mendoza	Florencio Guerra Jr	City of Woodlake
Eddie Valero	Amy Shuklian	County of Tulare

EX OFFICIO MEMBERS

Georgina Landecho, CalVans

AD HOC & SUBCOMMITTEES

AD HOC –EXECUTIVE DIRECTOR SEARCH	POLICY COMMITTEE
Greg Gomez Eddie Valero Jose Sigala	Jose Sigala Monte Reyes Eddie Valero

TECHNICAL OPERATION COMMITTEE	FINANCE COMMITTEE
Greg Gomez Armando Longoria Eddie Valero	Kuldip Thusu Monte Reyes Rudy Mendoza

TCRTA STAFF **OFFICE INFORMATION**

Rich Tree, Executive Director

*The TCTRA is temporarily receiving support from the Tulare County Association of Governments.

TCAG
210 N. Church Street, Suite B
Visalia, CA 93291
Phone: (559) 623-0450
Fax: (559) 733-6720
www.tularecog.org

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Tulare County Regional Transit Agency

Minutes

August 16, 2021, 3:00 p.m.

Members Present: Thusu, Gomez, Reyes, Sigala, Valero
Members Absent: Garver, Caudillo, Mendoza
Alternates Present:
Staff Present: Rich Tree, and Elizabeth Forte
Counsel Present:

I. CALL TO ORDER:

Chair Sigala called the meeting to order at 3:01 p.m.

III. PUBLIC COMMENT:

Public comments opened/closed at 3:03 p.m. No public comments received.

IV. COMMITTEE REPORTS:

a. Policy Committee

Mr. Tree shared that the Tule River Tribe had expressed interest in receiving assistance from TCRTA for the Transit operations and potentially a future agreement would be reviewed.

b. Finance Committee

Mr. Tree announced that later in the agenda the amendment to the transit budget would be discussed and approval requested.

c. Technical Operations Committee

Mr. Tree discussed Americas Open and Transits Open initiative to renew ridership and would be outlined in more detail later in the meeting agenda.

V. CONSENT CALENDAR ITEMS:

Request Approval of the Consent Calendar Action Items V-A through V-C

A. Action: Approve Minutes of July 19, 2021

B. Action: Approve Agreement with the Tulare County Association of Governments (TCAG) Concerning Services and Office Space

C. Action: Approve Memorandum of Understanding (MOU) with the Tulare County Association of Governments (TCAG) Regarding Federal Transit Planning and Programming

Upon motion by Member Valero and seconded by Member Thusu the Tulare County Regional Transit Agency unanimously approved the Consent Calendar Action Items V-A through V-C.

D. Information: All About Transit Collected Clippings

VI. ACTION AND INFORMATION ITEMS:

A. Action: Approve FY 2021/2022 State of Good Repair Project

Mr. Tree discussed the history of SB-1 and the annual funding for infrastructure repair and transit service improvements. He explained that TCRTA was not eligible to perform a project until after its annual TDA audit at the end of the fiscal year, and

therefore a member agency would be needed to perform the project on behalf of TCRTA. This proposed project would be the purchase of battery-electric vans to operate a regional on-demand service. Mr. Tree stated that staff recommend the City of Porterville perform the project on behalf of TCRTA.

Upon motion by Member Gomez and seconded by Member Valero the Tulare County Regional Transit Agency unanimously approved the FY 2021/2022 State of Good Repair Project as presented.

B. Action: FY 2021-2022 Budget Amendment

Mr. Tree shared details regarding the proposed budget amendment and summarized the items that would increase or decrease, highlighting the need for office supplies and furniture.

Upon motion by Member Thusu and seconded by Member Valero the Tulare County Regional Transit Agency unanimously approved budget amendment as recommended.

C. Action: 10-Steps to Renew Ridership

Mr. Tree explained the FTA's America's Open and Transit's Open initiative to help transit agencies rebuild and enhance ridership. In response to these initiatives Mr. Tree outlined a proposed 10-step strategy to renew ridership, build public confidence, and increase ridership with a focus on building community partnerships. Staff have been actively working to implement the 10-Step strategy which Mr. Tree stated would include a TCRTA Website and social media campaign.

Upon motion by Member Thusu and seconded by Member Valero the Tulare County Regional Transit Agency unanimously approved the 10-Steps to renew ridership as presented.

D. Action: Authorize Staff to Apply for Areas of Persistent Poverty Program Funding

Mr. Tree outlined the staff's recommendation to prepare and apply for the Federal Transit Administration's Areas of Persistent Poverty Program; authorize up to \$35,000 in local match funding for the project; and authorize the City of Porterville to apply for funding on behalf of the TCRTA as a direct recipient of FTA funding. Mr. Tree explained the eligibility guidelines and the elements of the proposed scope of work.

Upon motion by Member Sigala and seconded by Member Gomez the Tulare County Regional Transit Agency unanimously authorized staff recommendations as presented.

E. Action: Consolidation of Subcommittees

Mr. Tree provided an overview of subcommittees and overlap in content and purpose. He proposed a technical advisory committee be formed by consolidating the other three ongoing committees that had been meeting to focus on finance, policy, and technical operations. Discussion ensued regarding meeting schedule and membership to the technical advisory committee. Member Gomez, Member Valero, Member Thusu, Member Reyes, and Chair Sigala all expressed that they would want to be included members to the consolidated advisory committee.

The ad-hoc director search committee would no longer be needed since a director had been hired.

Upon motion by Member Valero and seconded by Member Thusu the Tulare County Regional Transit Agency unanimously approved to dissolve the Ad Hoc - Executive Director's Search Committee; and consolidate the remaining subcommittees into one advisory committee.

VII. OTHER BUSINESS

a. Information: Directors Report

Mr. Tree discussed the FTA grantee process and plans that are coming down the pipeline such as Title VI and paratransit plan. Mr. Tree provided an update on the MOUs for transferring of services for County of Tulare and City of Porterville. Implementation update highlighting the Visalia Transit Agreement to receive FTA program funding for City of Tulare. Mr. Tree discussed regional planning assistance received from TCAG to hire a part-time regional planner and branding and marketing. Efforts for regional coordination, annual ridership, and free fare ridership numbers were also outlined. Mr. Tree explained that the Tule River Tribe of California is seeking assistance with their Tribal Transit program and expressed interest in becoming a member of the Agency or establishing a MOU, further discussions would be best to identify the best actions moving forward.

b. Information: Items from Staff.

None

c. Information: Items from Board Members.

None

d. Request from Board Members for Future Agenda Items.

Chair Sigala requested that ridership data would be presented ongoing on at least a quarterly basis. He mentioned drafting a letter of support for the infrastructure bill on behalf of TCRTA and given the 1 year anniversary of the formation of TCRTA it was suggested that a presentation be given to highlight all the work completed and reach out again to Visalia Transit. Chair Sigala requested for legal counsel to review the Tule River Tribe assistance options and a report be presented of the findings.

VIII. ADJOURN

The meeting adjourned at 4:16 p.m. Chair Sigala confirmed the next scheduled meeting of the Tulare County Regional Transit Agency (TCRTA) Board of Directors will be held on Monday, September 20, 2021 at 3:00 p.m. in the Tulare County Board of Supervisors Chambers, 2800 W. Burrel Avenue, Visalia, CA 93291.

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AGENDA ITEM V B

September 27, 2021

Prepared by Richard Tree, TCRTA Staff

SUBJECT:

Action: Ratification of the September 20, 2021 Meeting Cancellation

DISCUSSION:

Section 5 of the Tulare County Regional Transit Agency's Joint Powers Agreement states, "Meetings may be canceled by a vote of the Board. Special meetings may be called at any time by the Chair, or at the suggestion of the Executive Director, or upon written request by any two members of the Board."

However, the Bylaws of the Tulare County Regional Transit Agency states, "Regular meetings of the Board may be cancelled or may be held on such other dates and/or at such other times and locations as may be approved by the Board or as directed by the Board's Chair."

On September 14, 2021, staff informed the Board Chair that there was a COVID-19 exposure and that it would be difficult to continue with the Board meeting scheduled for September 20, 2021. The Board Chair directed staff to cancel the Board meeting scheduled for September 20, 2021 and to prepare an agenda for a Special Board Meeting at a future date.

Staff is working with County Counsel to draft appropriate language to align the Joint Powers Agreement with the TCRTA Bylaws.

It is recommended that the Board:

1. Ratify the cancellation of the Board meeting of September 20, 2021.

ATTACHMENT:

None

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AGENDA ITEM V C

September 27, 2021

Prepared by Richard Tree, TCRTA Staff

SUBJECT:

Action: Approve Agreement with the City of Visalia for FTA Grant Management Services

DISCUSSION:

As a result of the 2010 Census, the City of Tulare became a part of the Visalia Urbanized Area and designated the City of Visalia as the direct recipient of Federal Transit Administration (FTA) funding. In order for Tulare to receive FTA funding, as a subrecipient, an agreement must be made between Tulare and Visalia.

In July of 2013, Visalia and Tulare entered into an Agreement to provide coordination of ongoing FTA Section 5307 and 5339 funded activities. Which allowed Visalia to transfer FTA funds to Tulare for eligible transit activities.

On July 1, 2021, the Tulare County Regional Transit Agency assumed the transit services for the City of Tulare and therefore required to have an agreement with Visalia to define roles and responsibilities of the two parties in the FTA Section 5307 and 5339 grant application and grant management process to ensure the smooth and equitable distribution of funds and ensure compliance with all federal grant regulations and requirements.

It is recommended that the Board:

1. Authorize the Executive Director to enter into an agreement with the City of Visalia for grant management services; and
2. Authorize County Counsel to approve the Agreement.

ATTACHMENT:

1. Draft City of Visalia/TCRTA Agreement

**AGREEMENT
BETWEEN
THE CITY OF VISALIA
AND
TULARE COUNTY REGIONAL TRANSIT AGENCY**

“Regarding the Coordination of Ongoing Federal Transportation Administration (FTA) Section 5307 & 5339 Funded Activities for the Visalia Urbanized Area”

THIS AGREEMENT (hereinafter “Agreement”) between the City of Visalia and Tulare County Regional Transit Agency is made and entered into this _____ day of _____ by and between the City of Visalia (hereinafter referred to as “Visalia”) and Tulare County Regional Transit Agency (hereinafter referred to as “TCRTA”), each of which is a “Party” and both of which may be collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, TCRTA desires to contract with Visalia on behalf of the City of Tulare, to provide grant management functions; and

WHEREAS, TCRTA is a public entity created by a Joint Powers Agreement executed by the Cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, Woodlake, and the County of Tulare as of the 11th day of August, 2020; and

WHEREAS, Visalia and Tulare previously entered into that certain “Memorandum of Understanding” dated July 16, 2013, as amended by that certain “Amendment No. 1” dated July 22, 2014, to provide coordination of ongoing Federal Transportation Administration (FTA) Section 5307 & 5339 funded activities for the Visalia Urbanized Area; and

WHEREAS, the Parties agree that this Agreement shall supersede the Visalia and Tulare Agreement dated October 6th, 2018 and the Memorandum of Understanding and Amendment No. 1, and that the certain terms and conditions of the Memorandum of Understanding and Amendment No. 1 have now been incorporated into this Agreement; and

WHEREAS, this Agreement is also intended to clarify that it applies to a broad array of transportation related grants and is not limited to any specific grant(s); and

WHEREAS, the Tulare County Association of Governments (TCAG) has been designated by the Federal Transit Administration (FTA) to receive and/or suballocate Section 5307 & 5339 federal transit funds, which are made available to the Visalia Urbanized Area; and

WHEREAS, TCAG is the Metropolitan Planning Organization for the Tulare County region, and that Tulare, which is now part of the TCRTA, is part of the federally designated Visalia and Tulare Urbanized Area (VUA), as designated by the U.S. Census Bureau; and

WHEREAS, Tulare, which is now part of TCRTA, has current and future eligible activities for FTA Section 5307 & 5339 federal transit funds that have and will be included in the TCAG transit planning and programming documents; and

WHEREAS, Visalia, as designated by the U.S. Census Bureau, is the major population center in the federally defined VUA, has been the designated applicant for FTA Section 5307 & 5339 funds within the VUA since 1981, and as a result of Census 2010, Tulare, which is now part of TCRTA, is now included in the VUA; and

WHEREAS, FTA formula funds are allocated to the VUA based on criteria that now includes Tulare, making Tulare eligible for these funds, which have increased as a result of the added Tulare data; and

WHEREAS, In accordance with the provisions of the FTA, TCRTA and Visalia must enter into this Agreement to define roles and responsibilities of the two Parties in the FTA Section 5307 & 5339 grant application and grant management process to ensure the smooth and equitable distribution of funds and ensure compliance with all federal grant regulations and requirements; and

WHEREAS, Visalia and TCRTA mutually agree that the responsibilities outlined in this Agreement foster healthy collaboration for the purpose of transit planning and programming federal funds within the VUA.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the Parties hereto mutually agree as follows:

I. TERM

The term of this Agreement shall commence upon adoption of a formal resolution by each entity authorizing entry into this Agreement and shall continue until terminated by any party according to the termination provisions contained herein.

II. DISTRIBUTION OF FUNDS

This Agreement is intended to include any transportation-related grant that TCRTA might qualify to receive on behalf of the City of Tulare and that the City of Visalia agrees to assist TCRTA with managing:

1. Population, Revenue Miles, and Passenger data will be used to allocate funds to Visalia or Tulare. Each Party will include data from other communities it serves and has a contractual responsibility to do so, within the VUA. Visalia's data includes Farmersville, Exeter, Goshen CDP, and county islands surrounded by the City of

Visalia. Visalia provides service to these areas under separate agreements. Tulare's data will include the East Tulare Villa CDP and the portions of the county surrounding the College of the Sequoias campus located near the City of Tulare, and county islands included in the urbanized area, surrounded by the City of Tulare, each of which are located outside of the City of Tulare.

2. Allocation will be based on the percentage of the population served by Tulare and Visalia transit according to the previous year California Department of Finance published annual figures every January (for Tulare, Visalia, Farmersville, Exeter) and the US Department of Commerce US Census Bureau Selected Social Characteristics Place of Birth Total Population (for Goshen & East Tulare Villa). This percentage shall be applied to VUA's Section 5307 apportionment service area. The population percentage shall include all incorporated and unincorporated areas served by either Tulare or Visalia transit services.
3. Allocations will be based on a weighted average index comprised of and weighted 40% by population which will come from the previous year California Department of Finance published figures each January (for Tulare, Visalia, Farmersville, Exeter) and the US Department of Commerce US Census Bureau Selected Social Characteristics Place of Birth Total Population (for Goshen & East Tulare Villa) ; 20% by Bus Revenue Miles and 40% by Ridership which will come from each agencies' previous Fiscal Year State Controllers Report (Fixed Route, Trolley, and Dial-A-Ride only). The population percentage shall include all incorporated and unincorporated areas served by either Tulare or Visalia transit services.

III. TRANSPORTATION SERVICES FOR EACH AGENCY

Visalia and TCRTA will operate transit services independent of each other. Each Party will determine their separate fares and create, adopt, use, and share with each other such policies, transit policies, transit information, marketing schedules, service coordination, data needed to meet periodic reporting requirements, and other activities as required. Each Party will be responsible for their separate financial obligations including the National Transit Database (NTD), State Controller's Report, and any other state, local, and federal reports. Each Party will have their separate contractor to run the operations and maintenance contract for their respective transit services.

IV. PRINCIPALS

Visalia & TCRTA will be responsible for complying with all Federal requirements independently. TCRTA shall indemnify Visalia for any additional administrative costs or loss of Federal funding directly attributable to a failure to comply with the Federal requirements associated with this funding. These requirements will include but are not limited to:

1. Federal Transit Administration (FTA) grants management including contract compliance, quarterly reporting, and Electronic Clearing House Operation (ECHO) draws.
2. Annual certifications submitted to FTA that detail the federal requirements with which it must comply to be eligible to receive federal transit assistance. The

annual submission of these Certification and Assurance is required by Federal law prior to the submission of any grant application.

3. National Transit Data Base (NTD) annual report. If each Party desires to receive FTA funding based on services provided, or any factors other than population each Party, must submit NTD information to the FTA. This would require each Party to provide adequate and properly trained staff resources to regularly attend FTA training on NTD reporting. Neither Party shall receive any portion of the FTA Section 5307 apportionment that is determined, in whole or in part, on the basis of bus revenue miles or other data obtained through the National Transit Database process, unless that Party submits NTD reporting data by the required deadlines or cures any noncompliance as allowed by federal regulations.
4. Comply with all applicable Subrecipient Federal Clauses identified in Exhibit "A" and incorporated herein by this reference including, but not limited to, the following: nondiscrimination in Federal Public Transportation Programs; nondiscrimination following the requirements of Title VI of the Civil Rights Act of 1964; Equal Employment Opportunity; nondiscrimination on the basis of sex; nondiscrimination on the basis of age; nondiscrimination on the basis of disability; and, Disadvantaged Business Enterprise.

V. REVISIONS, ADDENDUM

Revisions to the basic framework of this Agreement shall be by the mutual written agreement of the Parties. Supplements to this Agreement may be by numeric addendums executed by each Party and attached to the original of this Agreement.

VI. TERMINATION

Either Party may terminate this Agreement at the end of any federal fiscal year. In the event of termination, the Parties shall consult prior to the date of termination to ensure termination occurs on the most equitable terms; however, such consultation shall not prohibit or restrict either Party from exercising its right to terminate.

VII. SETTLEMENT OF DISPUTES

The Parties have worked cooperatively to prepare their framework for this Agreement, and the language herein should not be construed against any of the Parties. Disagreement between the Parties arising under or relating to this Agreement, as amended and supplemented, shall be resolved only by consultation between the Parties and not referred to any other person or entity for settlement unless mutually agreed in writing.

VIII. ADMINISTRATION FEE

TCRTA shall reserve sufficient grant funds to pay for the City of Visalia’s actual administrative expenses in providing grant management services, including but not limited to any additional administrative costs Visalia might incur from TCRTA failing to comply with the Federal requirements described in Section IV above. The Parties shall agree to the amount of grant funds to be reserved for administrative costs prior to the Federal fiscal year that the costs will be incurred. Designation of the amount to be reserved for administrative costs shall have no bearing on whether the City of Visalia is entitled to additional administrative cost reimbursement from future available grant funds.

**Tulare County
Regional Transit Agency**

Executive Director

Date _____

Approved as to form:
County Counsel

Date: _____

City of Visalia

City of Visalia City Manager

Date _____

City Attorney
(PELTZER & RICHARDSON, LLP)

Date: _____

City of Visalia Risk Manager

Date: _____

City of Visalia Project Manager

Date: _____

Exhibit “A”

Subrecipient Federal Clauses

FEDERAL REQUIREMENTS WHICH APPLY TO PROJECT AND RELATED CONTRACT INTO WHICH THIS ATTACHMENT IS INCORPORATED

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

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

Energy Conservation Requirements

**42 U.S.C. 6321 et seq.
49 CFR Part 18**

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.

Clean Water Requirements

33 U.S.C. 1251

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.

Lobbying

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

- 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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.]

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.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Access to Records and Reports

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

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 subgrantee 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 subgrantee 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 subgrantee 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 subgrantee 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	Contract	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I. State Grantees	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	Those imposed on state pass thru to Contractor	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
II. Non State Grantees	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	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

Sources of Authority

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

Federal Changes

49 CFR Part 18

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.

CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

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.

Recycled Products

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

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.

No Government Obligation to Third Parties

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.

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

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.

Termination

49 U.S.C. Part 18
FTA Circular 4220.1E

- a. **Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.
- b. **Termination for Default [Breach or Cause] (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 (Recipient) 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 (Recipient) 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 (Recipient), 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. **Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

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

- e. **Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

- f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

- h. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

- i. **Termination for Convenience or Default (Architect and Engineering)** The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- j. **Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Government-Wide Debarment and Suspension (Nonprocurement)

49 CFR Part 29 Executive Order 12549

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 **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, 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.

Privacy Act

5 U.S.C. 552

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.

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.**

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.

Breaches and Dispute Resolution

49 CFR Part 18
FTA Circular 4220.1E

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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or 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 thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by 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 thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprise(DBE)

49 CFR Part 26

Background and Applicability

The newest version on 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.

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 ___ %. A separate contract goal **[of ___ % DBE participation has] [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 **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. **{If a separate contract goal has been established, use the following}** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 6. If the contract goal is not met, evidence of good faith efforts to do so.
- [Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).
- {If no separate contract goal has been established, use the following}** The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. 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 the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**
- e. The contractor must promptly notify **{insert agency name}**, 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 **{insert agency name}**.

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 the comply with 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 nonurbanized 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 subrecipient 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 Nonurbanized 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 the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

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 subrecipient 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.

Model Clause/Language

Introduction

FTA's drug and alcohol rules, 49 CFR 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those

recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing

Option 1

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR Part 655

Drug and Alcohol Testing

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 State Oversight Agency of (name of State), or the (insert name of grantee), 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 before March 15) 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 State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR compliance with Parts 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) 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 recipient wishes the contractor to use) as its policy statement as required under 49 CFR 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 recipient, 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).

CERTIFICATION OF COMPLIANCE

The bidder hereby certifies that it will meet the requirements of the applicable regulations in these Model Clauses.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1E

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.

HELPFUL INTERNET WEBSITE ADDRESSES (City claims NO responsibility for the accuracy of the information contained in these websites. They are provided for convenience only):

Federal OMB Circulars may be found at:

<http://www.whitehouse.gov/omb/circulars/>

United States Codes may be found at:

<http://www4.law.cornell.edu/uscode/>

Codes of Federal Regulations may be found at:

<http://www.gpoaccess.gov/cfr/index.html>

Federal Labor Standards Provisions:

http://www.hudclips.org/sub_nonhud/html/pdfforms/4010.pdf

A Contractor's Guide to Davis-Bacon Wage Requirements & Certified Payroll Reports may be found at:

<http://www.hud.gov/offices/olr/olrwrpc.html>

For Federal Davis-Bacon Wage determinations see:

<http://www.access.gpo.gov/davisbacon/>

California Codes may be found at:

<http://www.caib.net/calcodes.htm>

California Codes of Regulation may be found at:

<http://www.calregs.com/>

California Division of Labor Statistics and Research may be found at:

http://www.dir.ca.gov/DLSR/statistics_research.html

AGENDA ITEM V D

September 27, 2021

Prepared by Richard Tree, TCRTA Staff

SUBJECT:

Action: Approve Memorandum of Understanding with the San Joaquin Joint Powers Authority for the Cross Valley Rail Corridor

DISCUSSION:

In 2016, the Tulare County Association of Governments (TCAG) initiated the Cross Valley Plan to study the connectivity and mobility improvements in the Central Valley. Its aim was to increase transit service efficiency, enable communities and cities within the Cross Valley Corridor to promote development that supports transit usage, encourage revitalization and economic development, and facilitate growth in support of the California High Speed Rail investment.

The project enabled TCAG to evaluate a range of new public transit service alternatives that would be able to accommodate future population and economic growth, while being compatible with existing land uses and future development opportunities. In 2018, the Plan was adopted by TCAG.

The Plan focuses on the development of two components 1) a passenger rail system on a 75-mile segment of the San Joaquin Valley Railroad tracks running between Huron and Porterville with multiple stations along its route, and 2) integrate passenger bus service in the Corridor with the Cross Valley Rail Service and the planned Kings/Tulare Regional High Speed Rail (HSR) Station.

The San Joaquins Amtrak passenger rail service runs north and south through the San Joaquin Valley between Bakersfield, Sacramento, and Oakland with multiple stations located therein between, together with a thruway bus system throughout the San Joaquins System.

The San Joaquin Joint Powers Authority, Tulare County Association of Governments, Kings County Association of Governments, Kings County Area Public Transit Agency, Visalia Transit, and the Tulare County Regional Transit Agency have discussed the potential advantages working together to implement integrated, enhanced local/regional bus service in the Corridor that provides connectivity to the future Kings/Tulare HSR Station and development and ultimately the operation of the Cross Valley passenger rail service along the San Joaquins System. In addition, the parties have

discussed the possibility of retaining the SSJPA to serve as the operator of the Cross Valley Rail Service.

In order to begin the planning process to accomplish these objectives, the parties desire to enter into a Memorandum of Understanding (MOU) for the purposes of memorializing the understanding of the participants and establish a framework to negotiate agreements establishing their roles and responsibilities for the successful implementation of the objects contained in the MOU.

It is recommended that the Board authorize the Executive Director to enter into an agreement with the San Joaquin Joint Powers Authority for the Cross Valley Rail Corridor.

ATTACHMENT:

1. Draft MOU for Cross Valley Rail Corridor

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE
TULARE COUNTY ASSOCIATION OF GOVERNMENTS, TULARE COUNTY REGIONAL
TRANSIT AGENCY, KINGS COUNTY ASSOCIATION OF GOVERNMENTS, KINGS
COUNTY AREA PUBLIC TRANSIT AGENCY, VISALIA TRANSIT
AND
SAN JOAQUIN JOINT POWERS AUTHORITY**

**TO ESTABLISH THE PROCESS AND ROLES AND RESPONSIBILITIES FOR
INTEGRATING THE CROSS-VALLEY CORRIDOR PLAN, THE SAN JOAQUINS, AND
CONNECTIVITY TO THE STATE'S FUTURE HIGH-SPEED RAIL SERVICE**

This Memorandum of Understanding (MOU) is entered into by and between the Tulare County Association of Governments, Tulare County Regional Transit Agency, Kings County Association of Governments, Kings County Area Public Transit Agency, Visalia Transit, and San Joaquin Joint Powers Authority (referred to herein collectively as the "Participants") to facilitate coordination in establishing the roles and responsibilities for integrating the Cross-Valley Corridor Plan, the San Joaquins Thruway bus services, and connectivity to the future State High-Speed Rail Service.

PERTINENT ENTITIES

Tulare County Association of Governments (Referred to in this MOU as "TCAG"): the agency responsible for metropolitan transportation planning for the Tulare County region, including planning for and addressing the mobility needs of the County's growing population.

Tulare County Regional Transit Agency (Referred to in this MOU as "TCRTA"): the agency responsible for providing public transit service to the County of Tulare and cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, and Woodlake.

Kings County Association of Governments (Referred to in this MOU as "KCAG"): the agency responsible for metropolitan transportation planning for the Kings County region, including planning for and addressing the mobility needs of the County's growing population.

Kings County Area Public Transit Agency (Referred to in this MOU as "KCAPTA"): the agency responsible for providing public transit service to the cities of Avenal, Corcoran, Hanford, Lemoore, and the unincorporated communities of Armona, Grangeville, Hardwick, Kettleman City, Laton, and Stratford.

The City of Visalia (Referred to in this MOU as "COV"): the agency responsible for the governance, planning, implementation, operation and maintenance of the Visalia Transit service.

San Joaquin Joint Powers Authority (Referred to in this MOU as "SJJPA"): the agency responsible for the governance, operation and maintenance of the San Joaquins intercity passenger rail service.

GENERAL BACKGROUND

In 2016, TCAG initiated the Cross Valley Plan ("Plan") to study the connectivity and mobility improvements in the Central Valley. Its aim was to increase transit service efficiency, enable communities and cities within the Cross Valley Corridor ("Corridor") to promote development that supports transit usage, encourage revitalization and economic development, and facilitate growth in support of the California High-Speed Rail ("HSR") investment.

The Corridor would follow the existing freight rail corridor ("San Joaquin Valley Railroad tracks") from Huron to Porterville, which also roughly parallels much of State Routes 198 and 65 located in central California. The Corridor would include the proposed Kings/Tulare Regional High-Speed Rail Station and would benefit the region by potentially linking the communities to each other. These cities and communities include Huron, Naval Air Station (NAS) Lemoore, Lemoore, Hanford, Goshen, Visalia, Farmersville, Exeter, Lindsay, and Porterville. Unincorporated communities of Armona and Strathmore may also be served by transit stops. There is also a desire to provide easy transit connections to the Cities of Tulare, Dinuba, and Woodlake by utilizing their existing downtown transit centers.

This project enabled TCAG to evaluate a range of new public transit service alternatives that would be able to accommodate future population and economic growth, while being compatible with existing land uses and future development opportunities. By planning for a Corridor transit system well in advance, right-of-way and land needs can be identified and protected now, avoiding costly acquisitions or eminent domain processes later. In 2018, the Final Plan was adopted by TCAG.

The Plan focuses on the development of two components 1) a passenger rail system ("Cross Valley Rail Service") on a 75-mile segment of the San Joaquin Valley Railroad tracks running between Huron and Porterville with multiple stations along its route, and 2) integrate passenger bus service ("Bus Service") in the Corridor with the Cross Valley Rail Service and the planned Kings/Tulare Regional HSR station.

The *San Joaquins* Amtrak passenger rail service runs north and south through the San Joaquin Valley between Bakersfield, Sacramento, and Oakland ("*San Joaquins System*") with multiple stations located therein between, together with a thruway bus system throughout the *San Joaquins System*. Two (2) of the *San Joaquins* stations are located within the Corridor: downtown Hanford and downtown Corcoran with thruway bus service between Visalia, the Hanford Amtrak station, and the Central Coast. SJJPA expects to truncate the *San Joaquins* at Merced once the Merced-Bakersfield HSR Interim Service is in service, making Merced its southern terminus and connecting the *San Joaquins* at Merced to HSR. SJJPA desires to continue to provide connectivity to the future Kings/Tulare HSR station to Hanford, Corcoran, and Visalia, and other Kings/Tulare communities traditionally served by *San Joaquins* Thruway buses.

The Participants have discussed the potential advantages working together to implement integrated, enhanced local/regional bus service in the Corridor that provides connectivity to the

future Kings/Tulare HSR Station and development and ultimately the operation of the Cross Valley passenger rail service along the *San Joaquins System*. In addition, the Participants have discussed the possibility of retaining the SJJPA to serve as the operator of the Cross Valley Rail Service. In order to begin the planning process to accomplish these objectives, the Participants desire to enter into this MOU for the purposes of memorializing the understanding of the Participants and establish a framework to negotiate agreements establishing their roles and responsibilities for the successful implementation of the objects contained in this MOU.

RECITALS

- A. Whereas, in 2018 TCAG adopted the Plan to develop a rail system and bus service within the Corridor; and
- B. Whereas, the implementation of coordinated bus service within the Corridor will connect to the planned Cross Valley Rail System, and the State's future HSR System; and
- C. Whereas, the implementation of the Cross Valley Rail System will provide regional service over 75 miles of track, connection of multiple communities within the Corridor between Huron and Porterville; and
- D. Whereas, the cities of Hanford, and Corcoran have been served by the *San Joaquins* stations for many years and should be provided good connectivity to the future Kings/Tulare HSR Station; and
- E. Whereas, the residents within and visiting the Corridor will benefit from the development and implementation of the Plan and additional bus connectivity by providing a coordinated and integrated transit system providing riders with transit options within and outside the Corridor; and
- F. Whereas, the Participants desire to work together to develop and implement the objectives in the Plan;
- G. Whereas, the Participants are interested and desire to pursue a coordinated implementation strategy to provide improved transit service, connecting the communities within the Corridor with each other, the Cross Valley Rail System, HSR and the *San Joaquins*; and
- H. Whereas, the Participants desire to memorialize in this non-binding MOU their shared understanding for the development of the Plan; and
- I. Whereas, the Participants intend to utilize this MOU as the next step in implementing the Plan and expect that this process will be collaborative and iterative; and
- J. Whereas, the Participants desire to memorialize in this non-binding MOU their shared commitment to negotiate agreements establishing the roles and responsibilities for the Participants regarding the implementation of the Plan as it develops.

K. Whereas, the Participants are interested in potentially retaining the SJJPA as the Operating Agency of the Rail System due to its experience in its operations of the *San Joaquins* as well as its managing agency, the San Joaquin Regional Rail Commission, development and operation of the ACE commuter rail service between San Joaquin, Alameda and Santa Clara counties.

NOW, THEREFORE, THE PARTICIPANTS SHARE THE FOLLOWING UNDERSTANDING:

Bus System:

- Further develop coordinated bus service along the Corridor, and helping them run more efficiently to serve three counties (Kings, Tulare, and Fresno). This network includes Huron, NAS Lemoore, Lemoore, Hanford, Farmersville, Exeter, Lindsay, Porterville, Dinuba, Woodlake, and Tulare.
- To continue to provide direct connection to downtown Hanford and downtown Corcoran to intercity passenger rail service once HSR Interim Service begins, SJJPA proposes to request state funds to enable timed bus connections from Corcoran and Hanford to the Kings/Tulare HSR Station, while also increasing bus connectivity between the Kings/Tulare HSR Station and Visalia.
- SJJPA intends to partner with the following existing local/regional transit operators: KCAPTA, Visalia Transit, and Tulare County Regional Transit Agency regarding feeder bus service to Hanford, Corcoran, and Visalia. SJJPA intends to request state funds to contribute to a larger, more frequent, and coordinated bus service that will coincide with the opening of Merced-Bakersfield HSR Interim Service. This partnership to enhance bus service will be key towards the implementation of Phase 1 of 2018 TCAG Cross-Valley Corridor Plan.
- SJJPA intends to work with KCAPTA and Visalia Transit to request state funding as part of the San Joaquins Thruway bus network to enhance local/regional bus service between Visalia and Hanford to improve connectivity to the existing San Joaquins service until the Merced-Bakersfield HSR Interim Service begins operations.
- Additional more detailed agreements will be needed. Parties agree to work together towards achieving common agreed upon goals.

Cross Valley Rail System:

- The Cross-Valley Rail System is a 75-mile existing rail corridor between Huron and Porterville in Kings and Tulare Counties which would connect downtown Hanford, downtown Visalia, and other Kings/Tulare cities to the future Kings/Tulare HSR Station. The existing freight rail corridor is active in some segments and abandoned in others.

The majority of the corridor is currently owned and operated by the San Joaquin Valley Railroad (SJVRR) and existing track conditions are not suitable for passenger rail operations.

- KCAG completed a Cross Valley Passenger Rail feasibility study back in 1997 and again in 2015.
- TCAG completed the “Cross Valley Corridor Plan” in March 2018.
- Cross Valley Passenger Rail is supported in the General Plans of Tulare County and Kings County and is included in the 2018 State Rail Plan.
- SJJPA would work in partnership with TCAG and KCAG to plan, secure funding, and implement Cross-Valley Rail.
 - Phase 1 is to secure environmental clearance and right-of-way protection, negotiate with freight railroads, conduct site selection and begin transit stations in communities without existing transit centers.
 - Phase 2 is to implement passenger rail service between Lemoore and Visalia (with stations at Hanford and Kings/Tulare HSR Station).
 - Phase 3 is to extend passenger rail service to Huron and Porterville with additional intermediate stations at NAS Lemoore, Farmersville, Exeter, and Lindsey.
- SJJPA may be identified as the Operating Agency for Cross Valley Rail.
- Additional more detailed agreements will be needed. Parties agree to work together towards achieving common agreed upon goals.

OFFICIAL COMMUNICATIONS

The respective contact points for communication and information exchange, as well as any notice required to be submitted under this MOU are:

- Dan Leavitt, Manager of Regional Initiatives, SJJPA
- Ted Smalley, Executive Director, TCAG
- Richard Tree, Executive Director, Tulare County Regional Transit Agency
- Terri King, Executive Director, KCAG
- Angie Dow, Executive Director, KCAPTA
- Angelina Soper, Transit Manager, Visalia Transit

NON-BINDING MOU

- a. This MOU is a non-binding, voluntary initiative and does not create any legally binding rights, limitations or obligations upon the Participants. This MOU does not purport to include all provisions relative to the structure or terms of the proposed transaction or definitive documents. Rather, the Participants agree that any binding commitments in future will be memorialized in agreements as they are negotiated. Each party shall bear its own costs related to this effort unless otherwise agreed to in writing.
- b. Should the Participants reach an impasse in the collaborative effort anticipated by this MOU, the contact points (identified above) will make an expeditious and good faith effort at working together to resolve the impasse. Should that effort be unsuccessful, the Participants agree to elevate the outstanding issues to their respective governing body who will then make an expeditious and good faith effort at working together to resolve the impasse.
- c. This MOU is not intended to amend or impact in any way other existing written agreements or MOUs that Participants may have entered pertaining to SJJPA, ACE or the Valley Link project, in general.
- d. This MOU is effective from the date of its last signature and shall remain in effect until another MOU or agreement is executed between the Participants, or one Participant withdraws from the MOU, whichever is earlier.
- e. The Participants may, at any time, withdraw from this MOU by providing a written notice to the other Participant.
- f. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile, pdf., or electronic/computer-image signatures will be treated as originals.

(Signature Lines to be inserted)

AGENDA ITEM VI A

September 27, 2021

Prepared by Richard Tree, TCRTA Staff

SUBJECT:

Action: Approve Measure R Cooperative Agreement with the Tulare County Association of Governments

DISCUSSION:

On November 7, 2006, voters of Tulare County approved a ½ Cent Transportation Sales Tax Measure (Measure R) and Expenditure Plan. The Measure R Expenditure Plan was prepared to guide more than \$652 million in transportation fund expenditures generated over the next 30 years.

As outlined in the Measure R Expenditure Plan, 50% for regional transportation projects, 35% is for local improvement projects, 14% for transit, bicycle, and environmental projects, and 1% for administration and planning.

Historically, local jurisdictions have provided transit service and therefore individually approved a Measure R Cooperative Agreement and submitted Supplemental Agreements to receive transit operations and capital funding.

As of August 20, 2020, the Tulare County Regional Transit Agency has assumed transit service responsibilities for the Cities of Dinuba, Exeter, Farmersville, Lindsay, Porterville, Tulare, Woodlake and the County of Tulare.

As of July 1, 2021, the Tulare County Regional Transit Agency is the transit provider for the Cities of Dinuba, Tulare and Woodlake. And on July 1, 2022, will be the transit provider for the City of Porterville and the County of Tulare.

The Tulare County Regional Transit Agency, as a transit provider in Tulare County, is an eligible sponsor and eligible to receive funding from Measure R for transit operations and transit capital projects.

In order to receive Measure R Transit Expansion Operations funding, the Tulare County Regional Transit Agency must submit an annual Transit expansion plan, for each eligible member agency, summarizing how the transit expansion operations funds will be expended.

In order to receive Measure R Transit Capital funding, the capital project must be identified in the Expenditure Plan, and the Transit Agency must submit a Capital plan summarizing how the transit capital funds will be expended.

The following table represents available annual Measure R - Transit Expansion Operations funding:

Amendment No. 5			
Agency	Table 5	Table 5A	Total
Dinuba	\$52,500	\$65,000	\$117,500 annually
Exeter	Included in Visalia		
Farmersville	Included in Visalia		
Lindsay	\$105,000	\$0	\$105,000 annually
Porterville	\$105,000	\$65,000	\$170,000 annually
Tulare	\$105,000	\$65,000	\$170,000 annually
Woodlake	\$52,500	\$0	\$52,500 annually
County	\$525,000	\$65,000	\$590,000 annually

The following table represents available Measure R - Transit Capital funding:

Amendment No. 5		
Agency	Table 5	Project
Farmersville	\$250,000	Transit Center
County	\$1,200,000	Buses

It is recommended that the Board:

1. Approve the Measure R Cooperative Agreement with the Tulare County Association of Governments; and
2. Authorize the Chair to execute the Measure R Cooperative Agreement; and
3. Authorize staff to submit the Measure R Cooperative Agreement to the Tulare County Association of Governments for approval.

ATTACHMENT:

1. Draft Measure R Cooperative Agreement

MEASURE R COOPERATIVE AGREEMENT

This Cooperative Agreement ("Agreement") is made and entered into on _____, by and between the TULARE COUNTY REGIONAL TRANSIT AGENCY (TCRTA) ("Sponsor") and the TULARE COUNTY ASSOCIATION OF GOVERNMENTS, acting as the Local Transportation Authority ("Authority").

RECITALS

WHEREAS, Authority and Sponsor desire to enter into an Agreement for funding of transportation improvements in Tulare County pursuant to the authority provided by 2006 ½ Cent Transportation Sales Tax Measure Expenditure Plan ("Expenditure Plan") and Tulare County Transportation Authority Ordinance No. 2006-01, which was approved by the voters of Tulare County on November 7, 2006 as "Measure R"; and

WHEREAS, Sponsor desires to receive funding from the Authority for the transportation improvement projects ("Projects") specified in the Expenditure Plan; and,

WHEREAS, the Authority is authorized under the Expenditure Plan and Ordinance No. 2006-01 to issue Measure R funds to Sponsor in accordance with the Expenditure Plan; and,

WHEREAS, Authority is authorized to approve project funding in accordance with this agreement and the Expenditure Plan regarding the specific projects listed in the Expenditure Plan or as amended from time to time, and to provide payment or reimbursement for those specific projects in accordance with the Expenditure Plan.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

AGREEMENT

This agreement shall have no force or effect with respect to Regional Projects, Bike projects, or Transit Projects unless and until a project-specific Program Supplement to this Agreement hereinafter referred to as "Program Supplement", has been fully executed by both the Authority and the Sponsor.

SECTION I **Covenants of Sponsor**

Sponsor agrees to abide by the terms and conditions of the Authority as set forth herein for the receipt of Measure R funds and to comply with the Expenditure Plan and Tulare County Transportation Authority Ordinance No. 2006-01; and adopted Policies and Procedures, and current adopted Strategic Action Plan, as well as any subsequent amendments or updates; and,

1.1. Project Application.

1.1a Regional Projects - The complete Project description, scope of work, delivery schedule,

estimate of cost by activity, anticipated amount and type of funds that will supplement Measure R funds, and the anticipated timing for release of Measure R funds shall be specified in the application and approved by the Authority.

1.1b Transit Operations – Sponsor must submit an annual Transit expansion plan summarizing how the transit planning funds will be expended. The transit plan is due each year by the end of May (prior to the fiscal year beginning) except in 2007 when the plan is allowed to be submitted by September 28, 2007.

1.1c Bike and Transit Capital Projects – Sponsor must submit an annual Bike and Transit Capital plan summarizing how the bike and transit capital funds will be expended. The plan is due each year by the end of May (prior to the fiscal year beginning) except in 2007 when the plan is allowed to be submitted by September 28 2007.

1.1d Local Program Funding – Sponsor is not required to submit an annual report prior to the receipt of funding. However, an annual report is required at the end of the year in accordance with the Adopted Policies and Procedures. In addition, Sponsor in the first year must submit the baseline “Maintenance of Effort Summary” prior to any funding being received. The “Maintenance of Effort Summary” is due by June 29, 2007.

1.2. Project Scope. A Project scope of work or any change to such may not be implemented until it has been approved by the Authority in accordance with the Expenditure Plan.

1.3. Eligible Reimbursement Costs. Eligible reimbursement costs shall be costs as specified in the Expenditure Plan or as may be approved from time to time by the Authority pursuant to Section 1.2. In no event shall expenses incurred prior to the execution of this Agreement be considered eligible reimbursement costs.

1.4. Measure R Percentage Share Defined. For this Agreement, the Measure R percentage share of eligible costs shall be as set forth in the Adopted Strategic Action Plan.

1.5. Invoices and Progress Reports. Starting one month after the execution of this Agreement, Sponsor shall provide quarterly progress reports. Sponsor shall provide invoices no less than monthly for activities conducted over the prior unbilled month. These documents shall include the following specified information:

1.5.a. Sponsor’s Staff Expenses. Sponsor may include in the invoice direct staff expenses for the eligible costs of the Project.

1.5.b. Copies of Consultant Invoices. Sponsor shall provide the Authority with one (1) copy of all invoices submitted to Sponsor by every consultant, subconsultant, contractor, or subcontractor performing work related to the Project.

1.5.c. Progress Reports. The quarterly progress reports shall include a brief description of the status of the Project and the work completed to date. This summary may be included on the invoices submitted to the Authority or be attached to those invoices.

1.5.d. Deadline to Submit Reimbursement Requests. All invoices and progress reports shall be submitted to Authority on or before 5:00 p.m. on the tenth (10th) calendar day of the month in which

the Sponsor requests reimbursement payments. Authority shall issue reimbursement payments to Sponsor on or before the last day of the month for all timely submittals.

1.5.e. Late Submittals. If Sponsor fails to submit documents to Authority as set forth in Section 1.5.d, above, then Authority shall provide reimbursement payments for late submittals in the following calendar month.

1.6. Use of Funds. Sponsor shall use Measure R funds consistent with the Project scope of work approved by the Authority pursuant to Section 1.2.

1.7. Submittal of Documents. Sponsor shall provide copies to the Authority of all executed contracts which relate to the Project scope approved by the Authority pursuant to Section 1.2. Sponsor shall retain records pertaining to the Project for a four (4) year period following completion of the Project.

1.8. Completion of Project. Sponsor shall be responsible for the timely completion of construction and provide management of consultant and contractor activities, including responsibility for schedule, budget and oversight of the services, consistent with the scope of work.

1.8.a. Letter of Project Completion. Sponsor shall provide a letter of project completion which includes final cost, revenues, schedule of activities. This letter shall accompany the final invoice for payment from Sponsor to provide notice of project account closing by Authority.

1.9. Provision of Signs. Sponsor shall install Measure R signs approved and/or required by the Authority. Measure R Signs shall be posted at both ends of the project boundaries so as to be visible to motorists traveling in either direction.

1.10. Cost Savings and Excess Costs.

1.10.a. Definition of Cost Savings. After a Project has been accepted by the Sponsor as complete, any positive difference between the total Project cost, as approved by the Authority pursuant to Section 1.2, and the total amount invoiced to the Authority shall be considered Project cost savings.

1.10.b. Cost Savings. If, according to the most recently amended Measure R Expenditure Plan, the Projects are not segments of a larger project, or if all other segments of the larger project have been completed, the Authority shall allocate the Measure R share according to the Adopted Policies and Procedures.

1.10.c. Segmented Projects. If, according to the most recently amended Measure R Expenditure Plan, the Project is a segment of a larger project and other segments have not been completed, the Authority shall allocate the Measure R share (as specified in Section 1.4) of these cost savings to the uncompleted segment(s) of the larger project.

1.10.d. Excess Costs: In the event the actual total project costs exceed the estimate approved by the Authority, this amount will be considered an excess cost.

1.10.e. Reconciliation of Excess Costs: In the event that costs to complete the project exceeds the total amount of funds programmed, Sponsor will be fiscally responsible for the full amount of excess costs associated with the Sponsor's project, unless otherwise agreed by the parties pursuant to Section 2.4.

1.11. Provision of Groundbreaking and Ribbon Cutting Ceremonies. Sponsor shall be responsible for groundbreaking ceremonies and ribbon cutting ceremonies related to their project(s) and as determined necessary by the Authority. Sponsor may contract both ceremonies through a private consultant. All ceremonies shall be coordinated with the Public Relations Officer of the Authority. The cost of all ceremonies will be an expense of the project construction.

SECTION II Covenants of Authority

Authority agrees to issue Measure R funds for the transportation improvements of the Sponsor's Project(s) according to the terms and conditions set forth herein, and to comply with the Expenditure Plan and Tulare County Transportation Authority Ordinance No. 2006-01; and Adopted Policies and Procedures, and current adopted Strategic Action Plan, as well as any subsequent amendments or updates

2.1. Reimbursement Payments. The Authority shall make reimbursement payments to Sponsor for eligible Project costs as specified in the Expenditure Plan and subsequent updates of the Expenditure Plan. To receive monthly reimbursement payments for work completed on the Project, Sponsor shall comply with the following reimbursement procedures:

2.1.a. Ineligible Costs. The Authority reserves the right to adjust current or future reimbursement payments to Sponsor if an invoice includes ineligible costs.

2.1.b. Reimbursement Amount. The amount of reimbursement payments to Sponsor shall be made pursuant to the Expenditure Plan.

2.1.c. Suspension of Reimbursement. Reimbursement payments for the item(s) in question shall be suspended without interest when a dispute arises as to whether or not the cost item(s) is eligible for reimbursement.

2.1.c. (1) Meeting. Once a dispute has occurred, the Authority shall arrange a meeting between the Authority and the Sponsor to discuss and attempt to resolve the dispute. If the invoice was received on or before 5:00 p.m. on the 10th day of the month (or if the 10th is not a business day, then the next business day), the meeting shall be held no later than the 20th day of the same month. If the invoice was received after this date and time, then the meeting shall be held no later than the 20th day of the following month.

2.1.c. (2) Technical Advisory Committee. If an agreement cannot be reached at the meeting, then the Sponsor or the Authority shall have the option to take the dispute to the Authority's Technical Advisory Committee, with the understanding that by doing so the reimbursement for the disputed cost item(s) will be delayed until a resolution of the matter is reached.

2.1.c. (3) Board Decision. If the Sponsor or the Authority disagrees with the resolution by the Technical Advisory Committee then the dispute shall be submitted to the Authority Board for resolution. Reimbursement for the disputed cost item(s) will be further delayed until a resolution of the matter is reached by the Authority Board. If the Authority Board determines that the disputed cost item(s) is ineligible, the Authority shall not provide reimbursement payment to the Sponsor for the disputed item(s). If

the Authority Board determines that the disputed cost item(s) is eligible, then the Authority shall provide reimbursement payment to the Sponsor for the disputed cost.

2.1.c. (4) Reservation of Rights. By utilizing the above procedures, Sponsor does not surrender any rights to pursue available legal remedies if Sponsor disagrees with the Authority Board decision.

2.1.d. Acceptance of Work Does Not Result In Waiver. Reimbursement payments shall not result in a waiver of the right of the Authority to require fulfillment of all terms of this Agreement.

2.2. Right to Conduct Audit. The Authority shall have the right to conduct an audit of all Sponsor's records pertaining to Projects at any time during the four (4) year period after completion of the Projects.

2.3. Reconciliation of Excess Costs. In the event that costs to complete the Project exceeds the total amount of funds programmed, Authority may, by further agreement with Sponsor, agree to provide additional funding.

SECTION III Mutual Covenants

The Authority is released from any liability to Sponsor regarding the Authority's administration and issuance of the Measure R transportation sales tax proceeds except for any breach of Authority's fiduciary duty as set forth in the Expenditure Plan.

3.1. Term. This Agreement shall remain in effect until discharged or terminated as provided in Section 3.2 or Section 3.14.

3.2. Discharge. This Agreement shall be subject to discharge as follows:

3.2.a. Termination by Mutual Consent. This Agreement may be terminated between Sponsor and the Authority at any time by mutual consent of Sponsor and Authority. If this Agreement is mutually terminated by the parties, Sponsor will no longer receive Measure R funds unless a new agreement between Sponsor and Authority is formed.

3.2.b. Discharge Upon Completion of Project. Except as to any rights or obligations which survive discharge as specified in Section 3.13, this Agreement shall be discharged, and the parties shall have no further obligation to each other, upon completion of all of Sponsor's projects as certified by the Authority.

3.3. Indemnity. It is mutually understood and agreed, relative to the reciprocal indemnification of Authority and Sponsor:

3.3.a. Indemnity. Sponsor shall fully defend, indemnify and hold harmless Authority, and any officer or employee of Authority, against any damage or liability occurring by reason of anything done or omitted to be done by Sponsor under the Agreement and related to the Sponsor's Project(s). It is also fully understood and agreed that, pursuant to Government Code Section 895.4, Sponsor shall fully defend, indemnify and hold the Authority harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Sponsor under this Agreement or in connection with any work, authority, or jurisdiction delegated to Sponsor under this

Agreement.

3.3.b. Indemnity. Authority shall fully defend, indemnify and hold harmless Sponsor, and any officer or employee of Sponsor, against any damage or liability occurring by reason of anything done or omitted to be done by Authority under or in connection with any work, authority or jurisdiction delegated to Authority under the Agreement and related to Sponsor's Project(s). It is also understood and agreed that, pursuant to Government Code Section 895.4, Authority shall fully defend, indemnify and hold Sponsor harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by Authority under this Agreement or in connection with any work, authority, or jurisdiction delegated to Authority under this Agreement.

3.4. Notices. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

AUTHORITY:

Executive Director
Tulare County Transportation Authority
210 N. Church St. Ste B.
Visalia, CA 93291
Phone No.: 559-623-0450
Fax No.: 559-733-6720

With A Copy To:

SPONSOR:

Executive Director
Tulare County Regional Transit Agency (TCRTA)
210 N. Church St. Ste B
Visalia, Ca. 93291
Phone No.: 559-623-0450
Fax No.: 559-733-6720

3.4.a. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

3.4.b. Either party may change its address by giving notice of such change to the other party in the manner provided in this Section 3.4. All notices and other communications shall be deemed communicated as of actual receipt or after the second business day after deposit in the United States mail.

3.5. Additional Acts and Documents. Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

3.6. Integration. This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

3.7. Amendment. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

3.8. Independent Agency. Sponsor renders services under this Agreement as an independent agency and the Authority is also an independent agency under the Agreement. None of the Sponsor's agents or employees shall be agents or employees of the Authority and none of the Authority's agents or employees shall be agents or employees of Sponsor.

3.9. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the parties.

3.10. Binding on Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the Authority or as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

3.11. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

3.12. Counterparts. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single document.

3.13. Survival. The following provisions in this Agreement shall survive discharge:

3.13.a. Sponsor. As to Sponsor, the following sections shall survive discharge: Section 1.6 (obligation to apply funds to Project), Section 1.7 (obligation to provide copies and retain records), and Section 1.8 (obligation to continue to manage Project).

3.13.b. Authority. As to Authority, the following section shall survive discharge: Section 2.2 (right to conduct audit).

3.13.c. All Parties. As to all parties, the following sections shall survive discharge: Section 3.2.a. (obligation which survives termination), and Section 3.3. (mutual indemnities).

3.14. Limitation. All obligations of Authority under the terms of this Agreement are expressly contingent upon the Authority's continued authorization to collect and expend the sales tax proceeds provided by Measure R. If for any reason the Authority's right or ability to collect or expend such sales tax proceeds is terminated or suspended in whole or part so that it materially affects the Authority's ability to fund the project, the Authority shall promptly notify Sponsor, and the parties shall consult on a course of action. If, after twenty-five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent. Any future obligation to fund this project or any other project or projects of Sponsor, not already specifically covered by separate Agreement, shall arise only upon execution of a new Agreement.

3.16. Time. Time is and shall be of the essence of this Agreement and each and all of its provisions in which performance is a factor.

3.17. Remedies Cumulative. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give the fullest effect allowed by law.

3.18. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California. The parties agree that this contract is made in and shall be performed in Tulare County, California.

3.19. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the provisions of this Agreement and shall not affect the construction or interpretation of any of its provisions.

3.20. No Continuing Waiver. The waiver by any party of any breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same, or of any other provision of this Agreement.

3.21. No Rights in Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to any party to this Agreement, nor shall any provision of this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

3.22. Exhibits and Recitals. The Recitals and Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

3.23. Signator's Warranty. Each party warrants to each other that he or she is fully authorized and competent to enter into this Agreement in the capacity indicated by his or her signature and agrees to be bound by this Agreement as of the day and year first mentioned above upon the execution of this Agreement by each other party.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement on the day and year first written above.

COUNTY OF TULARE TRANSPORTATION AUTHORITY

By: _____

Chair of the Authority

ATTEST:

By: _____
Authority Director

TULARE COUNTY REGIONAL TRANSIT AGENCY

By: _____

Chair of the Agency

ATTEST:

By: _____
Agency Director

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AGENDA ITEM VI B

September 27, 2021

Prepared by Richard Tree, TCRTA Staff

SUBJECT:

Action: Approve Measure R Program Supplement to Cooperative Agreement for Transit Services

DISCUSSION:

The Tulare County Association of Governments (TCAG), acting as the Local Transportation Authority (Authority), is requesting that the Tulare County Regional Transit Agency (TCRTA) approve and submit a Measure R Program Supplement to Cooperative Agreement for TCRTA transit services. This Program Supplement will allow the TCRTA to receive operating funds from Measure R to be utilized towards expansion routes.

On July 1, 2021, the TCRTA assumed transit operations for the Cities of Dinuba and Tulare. Identified in Amendment No. 5 to the Measure R Expenditure Plan, TCRTA may submit a Measure R Program Supplement to Cooperative Agreement for eligible transit services in the Cities of Dinuba and Tulare in the amount of \$287,500.

Staff has prepared the attached Program Supplement and Attachment "A" to allow the TCRTA to receive Measure R Transit operating assistance for services provided in the Cities of Dinuba and Tulare. Attachment "A" identifies the eligible Measure R transit services operated in the Cities of Dinuba and Tulare.

It is recommended that the Board:

1. Approve the draft Resolution in support of the Program Supplement to Cooperative Agreement; and
2. Authorize the Chair and Executive Director to execute the Program Supplement; and
3. Authorize staff to forward the executed Program Supplement to TCAG for approval.

ATTACHMENT:

1. Draft Resolution
2. Draft Measure R Program Supplement

RESOLUTION #NO. 2021-_____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
TULARE COUNTY REGIONAL TRANSIT AGENCY AFFIRMING AND APPROVING THE SUPPORT OF
THE BOARD OF DIRECTORS FOR THE MEASURE R PROGRAM SUPPLEMENT TO COOPERATIVE
AGREEMENT FOR TULARE COUNTY REGIONAL TRANSIT AGENCY TRANSIT PROGRAM**

WHEREAS, the Tulare County Regional Transit Agency Transit is eligible to receive Measure R Transit funding for eligible transit services; and

WHEREAS, the Tulare County Association of Governments (TCAG) is requesting that the Tulare County Regional Transit Agency approve and submit a Program Supplement to Cooperative Agreement that will allow the Tulare County Regional Transit Agency to receive Measure R Transit Funds for the City of Dinuba and the City of Tulare Operating Expenses for Fiscal Year 2021/2022 in the amount of \$285,000;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the Tulare County Regional Transit Agency does hereby affirm and approve support of the Measure R Program Supplement to Cooperative Agreement for the Tulare County Regional Transit Agency Transit Program, and authorizes the Board Chair and Executive Director to execute the Program Supplement, and any other related documents as may be required.

PASSED, ADOPTED AND APPROVED this 27th day of September, 2021.

TULARE COUNTY REGIONAL TRANSIT AGENCY

Jose Sigala, Chair

Richard Tree, Executive Director

MEASURE R PROGRAM SUPPLEMENT TO COOPERATIVE AGREEMENT

AUTHORITY Agreement No. [REDACTED]

This Program Supplement (Program Supplement) is made and entered into on [REDACTED], by and between the Tulare County Regional Transit Agency (SPONSOR) and the Tulare County Association of Governments, acting as the Local Transportation Authority (AUTHORITY).

This Program Supplement hereby incorporates the “Measure R Cooperative Agreement” for Measure R Expenditures which was entered into between the SPONSOR and AUTHORITY on May 29, 2007 and is subject to all terms and conditions thereof.

This Program Supplement is executed under authority of Resolution No. 2021-_____, dated September 27, 2021.

This program Supplement is sought for the Measure R Transit distribution as outlined in the expenditure plan on Table 5 and Table 5a. This funding is to expand or enhance public transit programs that address the transit dependent population. Other uses include: new routes to enhance existing transit service, low emission buses, night and weekend service, bus shelters and other capital improvements, safer access to public transit services. Specific Transit Enhancement Program highlights and implementing guidelines are also described in the Expenditure Plan under Appendix B.

There is a maintenance of effort requirement that begins with the base year 2006. See Appendix A , Item 17 of the Expenditure Plan for requirements of a potential waiver of the Maintenance of Effort.

Operations, costs, and schedule are incorporated herein as attachment “A” and agreed upon by SPONSOR and AUTHORITY.

Covenants of SPONSOR (as applicable)

- 1.1 This Program Supplement agrees that it will only proceed with work authorized for specific phase(s) with written “Authorization to Proceed” or AUTHORITY action and will not proceed with future phase(s) of this project(s) prior to receiving a written “Authorization to Proceed” or AUTHORITY action.
- 1.2 The SPONSOR will advertise, award, and administer the project(s) in accordance with SPONSOR standards.
- 1.3 Award information shall be submitted by the SPONSOR to the AUTHORITY within 60 days after the project contract award.
- 1.4 Failure to submit award information in accordance with section 1.3 will cause a delay (without interest or penalties) in AUTHORITY processing invoices for the construction phase.

Leave the Authority agreement No. and entered into date blank. This will be filled out by TCAG

1.5 If no costs have been invoiced for a six-month period, SPONSOR agrees to submit for each phase a written explanation of the absence of Project(s) activity along with target billing date and target billing amount.

Authority Agreement No. _____

IN WITNESS WHEREOF, the undersigned Parties have executed this Program Supplement on the day and year first written above.

COUNTY OF TULARE TRANSPORTATION AUTHORITY

By: _____
Authority Executive Director

Attest: _____
Authority Finance Director

Tulare County Regional Transit Agency

By: _____
Jose Sigala, Board Chair

Attest: _____
Richard Tree, Executive Director

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AGENDA ITEM VI C

September 27, 2021

Prepared by Richard Tree, TCRTA Staff

SUBJECT:

Action: Recommend the Purchase of Electric Shuttle Vans for State of Good Repair Project

DISCUSSION:

The Tulare County Regional Transit Agency has received approximately \$291,027 in FY 2021-2022 State of Good Repair (SGR) funding for an eligible capital project. At this time, TCRTA is not eligible to perform the project until the Agency completes its annual Transportation Development Act (TDA) audit at the end of the fiscal year.

On August 16, 2021, the Board approved the FY 2021-2022 State of Good Repair project to purchase battery-electric vans to operate the regional On-Demand service. The Board also authorized the City of Porterville to perform the project on behalf of the TCRTA.

To assist Porterville in the procurement, staff requested quotes available vendors that produce a battery-electric “sprinter style” van. Sprinter style vans are a medium-duty vehicle that is preferred for operating on-demand services because of their smaller size.

The California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP), part of California Climate Investments, provides vouchers to help lower the cost of zero-emission vehicles and accelerate commercialization.

Staff received the following quotes for battery-electric shuttle vans:

Vendor	Base Price per Vehicle	Estimated HVIP Voucher	Net Price per Vehicle
Lightning eMotors	\$152,764	(\$50,000)	\$102,764
GreenPower Motor Company	\$163,150	(\$69,000)	\$94,150

It is recommended that the Board:

1. Recommend the purchase of three GreenPower Motor Company battery-electric shuttle vans at a total cost of \$298,235.72; and
2. Authorize staff to provide assistance to the City of Porterville in the procurement of the vehicles and the management of the project.

ATTACHMENT:

1. GreenPower Quote

TO
Porterville Transit

Attn: Richard I. Tree, Executive Director
 Address: 210 N. Church St. Ste. B
 Visalia, CA 93291
 Cell: (559) 972-3407
 Office: (559) 623-0452
 Email: rtree@tularecapg.ca.gov

FROM

GreenPower Motor Company Inc.
 90 W Poplar Ave.
 Porterville, CA 92357

SALES INFORMATION

Date of Quote: 9/14/2021
 Reference: CA HVIP
 GP Representative: Ryne Shetterly
Ryne@GreenPowerMotor.com

DELIVERY / LEAD TIME

180 days from receipt of order

PAYMENT INFORMATION

Payment due upon vehicle delivery

NOTES

Sales tax based on the pre-voucher vehicle price and reflects CA 1716 Tax Exemption for Zero Emission Transit Buses.

Purchaser agrees to CA HVIP program rules including registering and operating the vehicle in CA for three years. Purchaser agrees to HAMS activation including SIM card cellular and portal fees.

Thank you for your business!



info@greenpowermotor.com



GreenPowerMotor.com



(909) 308-0960

DESCRIPTION OF VEHICLE(S)

Year	Model	Configuration	Description	Motor	Battery Size
2021	EV Star	Side ADA	25', Class 4 Passenger Van, 7 Seats + 1 Wheelchair Securement Positions	TM4 Prestolite	118 kWh

OPTIONS

Apollo HD Camera System (1 Exterior +3 Interior), Upgraded Aluminum Wheels, No fold up seats

CHARGING

J1772 DCFC & Level 2 (CCS)

DESCRIPTION	QTY	BASE PRICE	EXT. AMOUNT
GP 2021 EV Star Side ADA Electric Passenger Shuttle Non Buy America	3	\$ 155,600.00	\$ 466,800.00
ADA Equipment - Non-Taxable	3	\$ 4,300.00	\$ 12,900.00
Option: Battery Thermal Management System	3	\$ 3,250.00	\$ 9,750.00
CA HVIP Class 4 Base Voucher: \$60,000 per vehicle	3	\$ (69,000.00)	\$ (207,000.00)
Delivery & Special Fees			
Vehicle Delivery (No Charge)			\$ -
This quote is subject to the GP Terms and Conditions of Sale			
	Taxable Amount		\$ 476,550.00
	Subtotal		\$ 282,450.00
	Sales Tax 3.31%		\$ 15,785.72
	Total Quote		\$ 298,235.72

Customer Signature & Date

AGENDA ITEM VI D

September 27, 2021

Prepared by Richard Tree, TCRTA Staff

SUBJECT:

Discussion: Cal-ITP Contactless Fare Payment Demonstration Project Update

DISCUSSION:

At the Board meeting of March 15, 2021, the Board authorized the Executive Director to execute a non-binding agreement between the TCRTA and Cal-ITP, in which the TCRTA agrees to begin updating its trip planning information system to Real-Time General Transit Feed Specification (GTFS-RT) and upgrading its fare system to allow for acceptance of EMV contactless payments.

Cal-ITP agreed to provide technical assistance to support a successful implementation for both GTFS-RT and EMV contactless payments. Cal-ITP also established a procurement mechanism so that the TCRTA can procure the necessary components for enabling EMV contactless payments through cooperative purchases in the Cal-ITP Mobility Marketplace.

On April 14, 2021, TCRTA member agencies met with Cal-ITP staff to begin pursuing compliance with the GTFS guidelines. TCAG has been assisting member agencies and Visalia Transit to ensure the GTFS files are up to date, accurate, and compliant.

Over the past 6 months, TCAG, TCRTA, and Visalia Transit have continued to work with Cal-ITP on a potential demonstration project. Cal-ITP has successfully secured a project sponsor that will provide the EMV contactless reader, at no cost to the transit providers, and perform the necessary merchant services. During the project planning, all of the transit providers expressed interest in participating in the project to improve county-wide coordination. To improve county-wide mobility, TCAG has also been assisting with merging the individual member agency GTFS feed into a single TCRTA feed. Which is expected to improve trip-planning and transfers across all TCRTA services.

On September 8, 2021, the City of Visalia informed staff that they will not be participating in the demonstration project.

Staff is continuing to work Cal-ITP in the planning of the project. Several topics will be discussed in the October Technical Advisory Committee meeting. Topics such as draft agreements, fare structure modifications, and updated project costs. TCRTA and Cal-ITP has set a goal for the deployment of the demonstration project on January 1, 2022.

ATTACHMENT:

1. Cal-ITP Status Update Presentation

TCRTA Update

September 2021



Data Assessment Results

Agency	GTFS Static	GTFS RT	Notes
Dinuba Area Transit	✓	✗	<ul style="list-style-type: none"> No GTFS RT Good GRaaS candidate
Porterville Transit	✓	✗	<ul style="list-style-type: none"> Non-standard RT produced by RouteMatch Potential GRaaS candidate, depending on CAD/AVL integration needs
Tulare County	✗	✗	<ul style="list-style-type: none"> Bishop Peak does not publish a public feed Potential GRaaS candidate
Tulare Intermodal	✓	✓	<ul style="list-style-type: none"> GTFS RT produced by GMV Meets Cal-ITP GTFS RT guidelines
Visalia Transit	✓	✓	<ul style="list-style-type: none"> GTFS RT produced by GMV Meets Cal-ITP GTFS RT guidelines

Vendor Update

RouteMatch

- Not using standard GTFS format
- Speaking with Cal-ITP but no timeline on compliance

Bishop Peak

- Not yet engaged by Cal-ITP
- Feed are not public so cannot perform full assessment

GMV

- Compliant with Cal-ITP GTFS RT Guidelines
- Direct communication between vendor and Cal-ITP team



Two Approaches

Option 1

Provide GRaaS for all agencies
Create a combined static GTFS
feed for all agencies

Option 2

Provide GRaaS for Dinuba
Other TCRTA routes keep vendors,
with options for GRaaS if vendors
remain uncompliant
Maintain separate static GTFS feed



Demo Devices

Apple iPad
(with AT&T FirstNet)

Samsung Galaxy Tab S5e
(with Verizon)



Discussion



Questions

Are you looking to mount the devices or keep them in a pocket/storage area?

Do you want/need cases?

You mentioned 'locked' power – do you want to try to bundle this with other accessories?

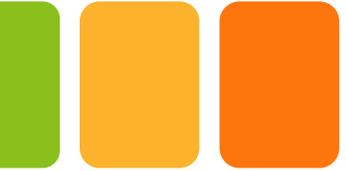
What cell service provider is best for your area?

Do you have pre-existing devices on any of the buses? If yes, are you looking to purchase the same type for the ones without?





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Director's Report

September 2021





Implementation Update

- Federal Transit Administration (Grantee)
 - Title VI Plan (In Review)
 - Paratransit Plan (Work In Progress)





Implementation Update

- MOU with County of Tulare
- MOU with City of Porterville
- Third-Party Contractor (Joint RFP)





Regional Planning

- TCAG Assistance
 - Associate Regional Planner
 - Short Range Transit Plan (Lite)
 - Zero-Emission Bus Rollout Plan
 - Branding & Marketing

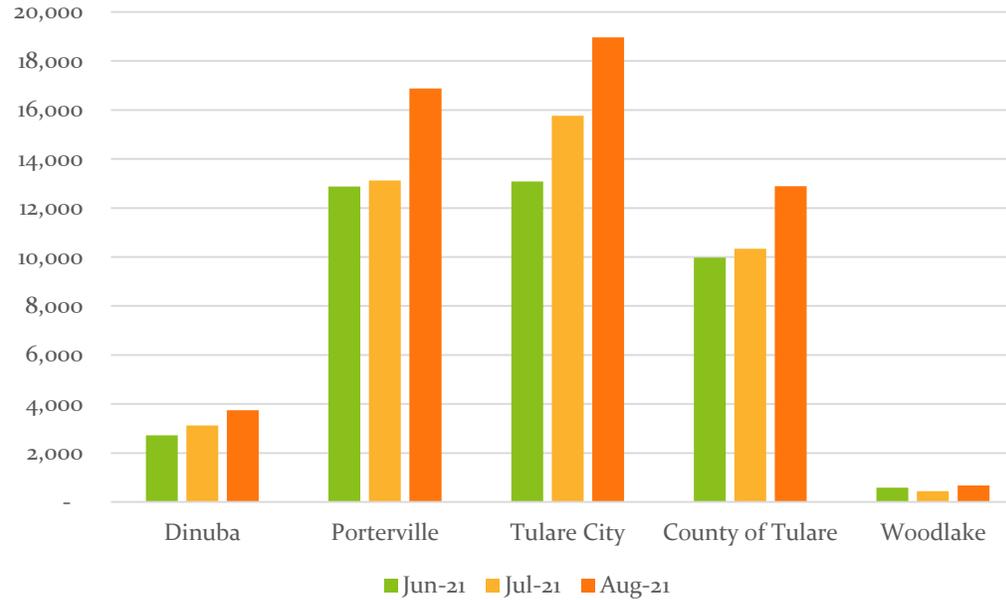


Fare Free 4 All

FARE FREE 4 ALL
TCRТА
Ride for free - all day, every day!

beginning
JULY 1, 2021

FREE RIDES on TCaT, TIME, Dinuba Transit, Porterville Transit and Woodlake Transit all day, every day during regular service hours.





Funding Opportunities

- FTA - \$2.2 Billion for Pandemic-Associated Needs
- FTA - \$410 Million for Buses and Bus Facilities Program
- CalSTA - \$1 Billion Transit & Intercity Rail Program



Tule River Indian Tribe of California

- Seeking assistance to administer Tribal Transit Program
- MOU or TCRTA Membership

