

AGREEMENT

This Agreement is made as of this 6th day of January, 2023 by and between the Ventura County Transportation Commission, a public entity, created pursuant to the laws of the State of California, hereinafter referred to as “VCTC” and Urban Transportation Associates, Inc., (“UTA”) with offices at 4240 Airport Road, Suite 212, Cincinnati, Ohio 45226, hereinafter referred to as “Contractor.” Both parties may be referred to as Parties.

RECITALS

WHEREAS, VCTC currently has Automated Passenger Counter (APC) systems on board the VCTC buses provided by UTA purchased through a joint procurement with Gold Coast Transit

WHEREAS, VCTC intends to enter into this Agreement with Contractor to supply APC systems on additional VCTC buses, provide for repair of some existing APC systems, and provide ongoing maintenance of the APC systems on VCTC buses.

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties thereto as follows:

1. CONTRACT DOCUMENTS:

The complete Agreement between the parties shall consist of the following component parts, to wit:

1. This Agreement;
2. Exhibit A- Contractor's Proposals to provide and install Automatic Passenger Counter (APC) systems on seven (7) MCI transit vehicles, diagnose problems and repair or replace existing APC infrastructure on transit buses and provide VCTC with three (3) years of APC hardware maintenance, administrative support, reference files setup and quality control, analytical support, and NTD certification assistance;
3. Exhibit B - VCTC FTA Requirements;
4. Exhibit C – Cost Proposal

This Agreement and the other exhibits mentioned above in this Section, which are incorporated by reference, constitute the complete Agreement between the parties and is collectively referred to as “Contract Documents.” In the event of any conflict between any of the provisions of the Contract Documents, (including Exhibits), the provision that requires the highest level of performance from Contractor for VCTC’s benefit shall prevail.

2. SCOPE OF SERVICES

A. The Scope of Services includes Contractor providing and installing Automatic Passenger Counter (APC) systems on seven (7) MCI transit buses, diagnosing problems and repairing or replacing existing APC infrastructure on transit buses, and providing VCTC with three (3) years of APC hardware maintenance, administrative support, reference files setup and quality control, analytical support and NTD certification assistance (hereafter referred to as “Project”) as more thoroughly described in the Contractor’s Proposal, (Exhibit A), in compliance with the Federal Transit Administration Regulations (Exhibit B) and the Contractor’s Cost Proposal (Exhibit C) all in accordance with the Contract Documents.

B. The Contractor will be responsible for all work performed under the terms of this Agreement for the Project to the extent provided by law.

C. VCTC shall not be held liable or responsible for the maintenance and/or safety of the Contractor’s equipment or supplies placed upon VCTC’s property in accordance with this Agreement. The Contractor acknowledges that it assumes full responsibility for any loss or damage to its equipment and supplies.

D. Any materials, equipment or work found to be damaged or defective shall be repaired, replaced or corrected by the Contractor hereunder without additional cost to VCTC.

E. Contractor shall be responsible for paying any applicable sales, use, and other taxes which are applicable to services, equipment and materials associated with this Project. VCTC’s financial obligation shall be limited to the Contract Price outlined in Section 4 of this Agreement.

3. TERM:

This Agreement shall commence on the Effective Date and shall continue until January 6, 2026. Contractor is responsible for commencing work on the Project no more than thirty (30) days from VCTC’s “Notice of Proceed,” and shall complete all work for the Project on or before the expiration of the term on January 6, 2023 all in strict accordance with the Contract Documents.

4. CONTRACT PRICE:

The amount payable to Contractor under this Agreement shall not exceed \$102,397 (One Hundred and Two Thousand Three Hundred and Ninety Seven Dollars) for all services, equipment, materials and supplies, inclusive of installation costs, warranties and labor in accordance with Exhibit C.

5. **PAYMENTS:**

A. One hundred percent (100%) of the Contract Price set forth in Section 4 for the Project furnished and delivered pursuant to the Agreement will be paid to the Contractor within thirty (30) days after official acceptance by VCTC provided that no claims against the retained funds (i.e., stop notices) have been filed.

B. Contractor shall invoice VCTC quarterly for the work completed. Work completed shall be documented in a report prepared by Contractor and submitted along with the invoice for the work. Contractor shall also furnish such other information as may be requested by VCTC to substantiate the validity of an invoice. VCTC has the final decision for work completed in approving partial payments

C. Contractor shall submit invoices to VCTC's Accounts Payable Office in duplicate. Each invoice shall include the following information:

1. Invoice No.;
2. Supporting documentation;
3. Unit and total prices by line item number;
4. Current total (gross) invoice amount, current retention amount and current net invoice amount;
5. Previous amount(s) invoiced and amount of remaining project budget;
6. Certification of payments to subcontractors/suppliers as applicable;
7. Project Status Report; a separate narrative of progress made since the previous report (as specified in paragraph B above); and
8. Invoice for the month of June (fiscal year end) to be submitted within one week from June 30.

VCTC shall remit payment within thirty (30) calendar days after acceptance and approval of invoice and supporting documentation. Payments will be based upon actual completion and VCTC's acceptance of each Project event. If VCTC determines that an invoice does not comply with the above requirements, the Contractor shall be notified of the issue(s) within seven (7) days of VCTC's receipt of the invoice.

VCTC reserves the right to withhold payments in the event of Contractor's performance being materially non-compliant with the Agreement. Contractor's final invoice shall be clearly marked "FINAL."

6. WAIVERS:

A waiver of any of the conditions or provisions of the entire Agreement between the parties hereto shall not be considered or deemed to be a waiver of any other condition or provision of said Agreement or a waiver of the same condition at a future time.

7. INSURANCE REQUIREMENTS:

A. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

1. Minimum Coverages (as applicable) - Insurance coverage shall be with limits not less than the following:

a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

c. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

B. If the contractor maintains broader coverage and/or higher limits than the minimums shown above, VCTC requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

C. Other Insurance Provisions

1. The insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Additional Insured Status: VCTC, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available,

through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

b. Primary Coverage: For any claims related to this contract, the Contractor's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects VCTC, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VCTC, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

c. Umbrella or Excess Policy: The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

d. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to VCTC.

e. Waiver of Subrogation: Contractor hereby grants to VCTC a waiver of any right to subrogation which any insurer of said Contractor may acquire against VCTC by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not VCTC has received a waiver of subrogation endorsement from the insurer.

f. Self-Insured Retentions: Self-insured retentions must be declared to and approved by VCTC. VCTC may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or VCTC. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by VCTC. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. VCTC may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated

Loss Adjustment Expenses, will satisfy the SIR or deductible. VCTC reserves the right to obtain a copy of any policies and endorsements for verification.

g. Acceptability of Insurers: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to VCTC.

h. Verification of Coverage: Contractor shall furnish VCTC with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by VCTC before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. VCTC reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. VCTC reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

i. Special Risks or Circumstances: VCTC reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

8. SOFTWARE LICENSE AND UPDATES:

A. The hardware procured and installed hereunder may be accompanied by computer software copyrighted by the Contractor or its subcontractor(s). The Contractor or its subcontractor(s) grant VCTC a perpetual, paid-up, non-exclusive, non-transferable license to use any such software. VCTC shall be placed on the Contractor's regular mailing list to receive all announcements, including updates and upgrades to any software furnished under this Agreement; this shall include application software, system software, and software which the Contractor develops for this Project. "Updates" are those enhancements to the software that the Contractor generally makes available as part of the annual maintenance program. "Upgrades" are any new feature or major enhancement of the software that the Contractor markets and licenses for additional fees separately from the updates.

For one year or during the warranty period, whichever is longer, any software updates and/or upgrades which become available and are applicable to the functionality of the supplied software on this Project shall be provided and installed to the VCTC's system within a mutually agreed upon timeframe. For one year or during the warranty period, whichever is longer, solutions to problems with the Contractor-supplied software hereunder, whether discovered and corrected on this Project or elsewhere, shall be documented and supplied to the VCTC without additional charge. After one year or during the warranty period, whichever is longer, the VCTC shall have the option of

purchasing future upgrades at fair market price. The Contractor shall also provide announcements pertaining to Contractor-produced software ten years after Final System Acceptance and shall include announcements pertaining to software produced by third-party suppliers during the warranty period.

B. Any software provided under this Agreement is proprietary and title and ownership to the Software remains with the Contractor and its subcontractors. VCTC agrees: (1) to take reasonable steps to maintain the Contractor's rights in the Software; (2) not to sell, transfer, publish, display, disclose, or make the Software or any copies available to third parties except that VCTC may disclose the Software to designated federal representatives, under a nondisclosure agreement if requested by Contractor, (3) not to use or allow the Software to be used, either directly or indirectly, for the benefit of any other person or entity, and (4) not to use the Software on any equipment other than the designated equipment on which the Software was originally installed, or such upgrades or substitutions as the VCTC may, from time to time, install, without the Contractor's written consent.

C. In the event Contractor fails to continue support of the APC system under the provisions of this Agreement and does not provide for such support by a third party, Contractor agrees to deposit any Contractor-written application software source code in an existing third party escrow account to enable VCTC to continue operation and maintenance of the APC system. In such event, the VCTC agrees to maintain the confidentiality of the source code.

D. The Contractor shall incorporate the above provisions into all subcontracted agreements issued by Contractor to fulfill its obligations under this Agreement.

9. COMPLIANCE WITH FEDERAL REQUIREMENTS:

The Contractor shall comply with all Federal requirements described in Exhibit B or as may be amended by the Federal government from time to time.

10. TIME IS OF THE ESSENCE:

Time is of the essence on this Agreement.

11. INDEMNITY:

To the fullest extent permitted by law, Contractor will defend, indemnify and hold harmless the Ventura County Transportation Commission, the County of Ventura, the City of Camarillo, the City of Fillmore, the City of Moorpark, the City of Oxnard, the City of San Buenaventura, the City of Santa Paula, the City of Simi Valley, the City of Thousand Oaks, the City of Carpinteria, the City of Santa Barbara, the City of Goleta, the County of Santa Barbara, the Santa Barbara County Association of Governments; the State of California, the Trustees of California State University and the employees, officers and agents of each of them (the "VCTC Group") from any and all liability costs,

damages or expenses, including attorneys' fees, arising out of or incurred in connection with the Contractor and its employees', agents', and subcontractors' acts or omissions in the performance of the services provided pursuant to this Agreement, and agrees at its own cost, expense and risk to defend, with legal counsel acceptable to VCTC, any and all resulting actions, suits or other legal proceedings brought or instituted against the VCTC Group arising out of its performance of this Agreement, and to pay and satisfy any resulting judgments, claims, damages and costs.

Contractor also agrees to defend, with legal counsel acceptable to VCTC, and pay the entire cost of defending any claim or suit whenever or wherever made or brought against the VCTC Group based upon an infringement or alleged infringement of such letters patent, or any other intellectual property claims, and to indemnify and save harmless the VCTC Group from and against any and all liability, damage, loss or injury adjudged or sustained in any such claim or suit, or adjudged or sustained by reason of the equipment to be furnished hereunder constituting an infringement of any letters patent or adjudged or sustained by reason of inability of the VCTC Group to use said equipment because of any infringement or alleged infringement of any letters patent.

12. ASSIGNMENT PROHIBITED:

The Contractor may not assign or subcontract its rights or obligations under the Agreement without prior written permission of VCTC, and no such assignment or subcontract will be effective until approved in writing by VCTC. Notwithstanding the foregoing, Contractor may assign its right to receive the payments from VCTC without such consent; however, VCTC shall not be under any obligation to pay any third party unless Contractor and/or its assignee have given VCTC at least thirty (30) days' notice of such assignment.

13. SUCCESSORS AND ASSIGNS:

Subject to any provision under this Agreement restricting assignment or subcontracting by Contractor, the provisions of this Agreement shall be binding upon and insure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties to this Agreement.

14. EQUIPMENT DELIVERY:

All equipment provided under this Agreement shall be delivered to the Ventura County Transportation Commission, or at such other location that VCTC may so designate, in first class condition, complete and ready for operation, and the Contractor shall assume all responsibility and risk of loss incident to said delivery.

15. FORCE MAJEURE:

A. Contractor shall not be charged, nor shall VCTC demand from Contractor, damages because of failure in providing the services indicated in this Agreement due to unforeseeable causes beyond the control and without the fault or negligence of Contractor. Such causes of excusable delay may include acts of public enemy, fires, floods, epidemic, quarantine, restrictions, freight embargoes, public road closures, but in every case the delay is excusable only for so long as, and to the extent, that the excusable delay continues.

B. Contractor shall be entitled to no compensation for any service, the performance of which is excused pursuant to this Section.

C. Whenever Contractor has knowledge that any actual or potential force majeure may delay or prevent performance of this Agreement, Contractor in a timely manner, shall notify VCTC of the fact, and thereafter shall report to VCTC all relevant information then known to Contractor, and shall continue to so report.

16. TRAINING:

The Contractor shall provide system user and maintenance training as set forth in Exhibits.

17. MANUALS:

The Contractor shall provide system operation and maintenance manuals prior to project acceptance.

18. AUDIT AND INSPECTION OF RECORDS:

The Contractor shall permit the authorized representative of VCTC to inspect and audit all data and records of the Contractor and any subcontractor relating to the performance under this Agreement from the date of the Agreement through and until the expiration of three (3) years after completion of the Agreement. The inspection and audit provided in this section does not include an audit of the manufacturer's cost and/or profit, with the exception of single proposal or sole source situations.

19. TERMINATION OF AGREEMENT:

A. Termination for Convenience

1. This Agreement may be terminated by VCTC in accordance with this clause in whole, or in part, whenever VCTC determines that such termination is in its best interest upon with 30 days' written notice to Contractor. Any such termination shall be affected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective.

2. After receipt of a notice of termination, and except as otherwise directed by VCTC, the Contractor shall:
 - a. Stop work under the Agreement on the date and to the extent specified in the notice of termination;
 - b. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
 - c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
 - d. Assign to VCTC, in the manner, at the time, and to the extent directed by VCTC, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case VCTC shall have the right, in its discretion to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontract, with the approval and ratification of VCTC, to the extent that may be required, which approval or ratification shall be final for all the purposes of this clause;
 - f. Transfer title to VCTC and deliver in the manner, at the time, and to the extent, if any, directed by VCTC, the fabricated or un-fabricated parts, works in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to VCTC;
 - g. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by VCTC, any property of the types referred to above, provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by VCTC, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by VCTC to the Contractor under this Agreement or shall otherwise be credited to the price or cost of the work covered by this Agreement or paid in such other manner as VCTC may direct;

- h. Complete performance of such part of the work as shall not have been terminated by the notice of termination; and,
- i. Take such action as may be necessary, or as VCTC may direct, for the protection or preservation of the property related to this Agreement which is in the possession of the Contractor and in which VCTC has or may acquire an interest.

B. Termination for Default

- 1. VCTC may, by written notice of default to the Contractor, terminate the whole or any part of this Agreement, if the Contractor fails to make delivery of the equipment or to perform the services in the manner or within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as VCTC may authorize in writing) after receipt of notice from VCTC specifying such failure.
- 2. If the Agreement is terminated in whole or in part for default, VCTC may procure, upon such terms and in such manner as VCTC may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to VCTC for any excess costs for such similar supplies or services, and shall continue the performance of this Agreement to the extent not terminated under the provisions of this clause.
- 3. Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- 4. Payment for completed equipment delivered to and accepted by VCTC shall be at the contract price. VCTC may withhold from Contractor amounts otherwise due the Contractor for such completed equipment if VCTC determines it to be necessary to protect VCTC against loss because of outstanding liens or claims of former lien holders.
- 5. If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default

under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for convenience of VCTC.

6. The rights and remedies of VCTC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity, or under this Agreement.

20. APC MAINTENANCE GUARANTEE

Repairs that are not associated with or attributable to vandalism but are associated with component failure shall be guaranteed for at least one hundred eighty (180) days (6 months) after the last Contractor APC maintenance corrective action. In the event the repaired component fails again within 90 days, Contractor agrees to repair or replace the component at no further expense to VCTC. VCTC recognizes that there may be instances of unusual or extreme circumstances where multiple conditions or factors are contributing to the component failure. Contractor will be responsible for notifying VCTC of such unusual or extreme circumstances. In such instances, the ninety (90) day period may be deferred by mutual consent of VCTC and Contractor.

21. DISPUTES:

A. Disputes arising in the performance of the Agreement, which are not resolved by agreement of the Parties, shall be decided in writing by the authorized representative of VCTC's Executive Director. This decision shall be final and conclusive unless within fifteen (15) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. 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 Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

B. Unless otherwise directed by VCTC, Contractor shall continue performance under the Agreement while matters in dispute are being resolved.

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

D. Unless the Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between VCTC and the Contractor arising out of or relating to the Agreement or its breach will be decided by mediation, or in a court of competent jurisdiction within the State and District in which VCTC is located.

E. The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder 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 VCTC, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

F. The rights afforded to VCTC under this Section shall be in addition to any other rights provided by law or set forth in these Contract Documents. VCTC may exercise any or all of such rights which individually or conjunctively will totally compensate VCTC for the damages suffered by VCTC resulting from the default of the Contractor.

G. In the event that VCTC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by VCTC shall not limit VCTC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

22. OWNERSHIP OF REPORTS AND DOCUMENTS:

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of VCTC, or if deemed appropriate by VCTC, electronic versions of originals may be accepted. Copies may be made for Contractor's records but shall not be furnished to others without written authorization from VCTC. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by VCTC.

23. ATTORNEYS FEES: If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

24. SEVERABILITY: If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of

any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

25. **NO IMPLIED WAIVER OF BREACH.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

26. **NOTICES.**

Any written notice to Contractor shall be sent to:

**Thomas Kowalski
Urban Transportation Associates, Inc..
4240 Airport Road, Ste. 212
Cincinnati, OH 45226
Fax: (513) 961-0132**

Any written notice to VCTC shall be sent to:

**Martin Erickson, Executive Director
Ventura County Transportation Commission
751 E Daily Drive, Ste. 420 Camarillo, CA 93010
Fax: (805) 642-4860**

27. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
28. **GOVERNING LAW.** This Agreement will be governed by and in accordance with the domestic laws of the State of California with no regard to the choice of law doctrine. Contractor shall comply with all California State laws, regulations, and local ordinances applicable to the performance of the work for this Project, including, but not limited to the provisions of Labor Code Section 1720(a)(1), which may be applicable to public works projects.

--Signatures on the following page--

IN WITNESS WHEREOF the parties have executed these presents in several counterparts as of the day and year first above written.

VENTURA COUNTY TRANSPORTATION COMMISSION

BY: _____
Martin Erickson, Executive Director Date

APPROVED AS TO FORM

BY: _____
Steve Mattas, General Counsel

ATTEST:

BY: _____
Secretary of the Commission

CONTRACTOR

BY: _____
Thomas Kowalski Date
Urban Transportation Associates, Inc.

CERTIFICATION

PURSUANT TO LABOR CODE SECTION 1861

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

DATED _____

By _____
(Signature of Authorized Official)

(Printed Name)

(Title of Authorized Official)

5263417.1

EXHIBIT A - CONTRACTOR'S PROPOSAL



Urban Transportation Associates, Inc.

4240 Airport Road
Cincinnati, Ohio 45226

Tel 513.961.0099
Fax 513.961.0132
www.utatransit.net

DATE: 12/12/22

TO: Matt Miller, VCTC

FROM: Mike Kowalski, UTA

Cell – 707.834.2625

Email: mike.kowalski@utatransit.net

RE: Quotation #2022121201 - UTA Cost Proposal for APC Installation on (7) MCI Vehicles

This is a quote for installing a UTA stand-alone system with Hella APSB overhead sensors on (7) MCI vehicles (326, 333, 334, 335, 983, 986 and 988).

Notes:

1. Delivery: Lead time is 6-8 weeks ARO
2. Costs Include One (1) Year Warranty – New Parts & Labor



Urban Transportation Associates, Inc.

4240 Airport Road
Cincinnati, Ohio 45226

Tel 513.961.0099
Fax 513.961.0132
www.utatransit.net

DATE: 12/12/22

TO: Matt Miller, VCTC

FROM: Mike Kowalski, UTA

Cell – 707.834.2625

Email: mike.kowalski@utatransit.net

RE: Quotation #2022121202 – UTA APC System Maintenance

This is a quote for performing maintenance work on all vehicles in the APC fleet that are currently not sending data with good counts and GPS. Based on some prior investigative work performed by a UTA technician in 2021, we know that (7) vehicles need CPU replacements (307, 309, 310, 311, 312, 313 and 314). The equipment and labor for those (7) vehicles are itemized in lines 1 and 2 of the cost estimate below.

The current APC hardware diagnostic report is showing potential APC malfunctions that would require maintenance work on an additional (9) vehicles. Since none of the problems on these additional vehicles have been diagnosed, the exact parts and labor cost for repairs is unknown. In the table below a “Low End” and “High End” cost estimate has been developed for these additional vehicles (highlighted rows 3 and 4 in the table below). An example of how the price might vary is: if a bus isn’t sending data, this could be caused by something as simple as a blown fuse or an unplugged cable, requiring little or no parts costs. However, it could also require a new CPU with at a cost of \$1,500 per CPU.

It is UTA’s preference to bill all of the maintenance work being proposed on a time and materials basis. The cost estimate outlines the range in which such costs might fall.

Notes:

1. Delivery: Lead time is 6-8 weeks ARO
2. Costs Include One (1) Year Warranty – New Parts & Labor



Urban Transportation Associates, Inc.

4240 Airport Road
Cincinnati, Ohio 45226

Tel 513.961.0099
Fax 513.961.0132
www.utatransit.net

DATE: 12/27/22
TO: Matt Miller, VCTC
FROM: Mike Kowalski, UTA
Cell – 707.834.2625
Email: mike.kowalski@utatransit.net
RE: Quotation #2022122701 – UTA APC Support Proposal

Presented below is a cost for Urban Transportation Associates (UTA) to assist VCTC with APC hardware maintenance, data processing, NTD certification and ad-hoc reporting associated with your Automatic Passenger Counting (APC) system. All costs will be billed according to time and materials expended. This proposal includes estimated annual costs for the next three years (3% increase per year).

1. Administrative Support (Diagnostics & Maintenance Review)

UTA staff will review/share APC diagnostics on a monthly basis to ensure high APC data yield from VCTC's APC system.

Administrative Quality Control

After one week of post schedule change APC data collection, UTA will execute a number of APC Administrative Control analyses that will identify any inconsistencies/anomalies in the APC data that require resolution. Examples of these analyses include:

- Sampling Status - Check for missing Routes
- Trip SOL/EOL Matching - Check for SOL/EOL anomalies
- Segment Contiguity - Check for missing Time Points
- Not Identified Bus Stops – Check for missing Bus Stop geo-coding

The Sampling Status review of route/trip sampling comprehensiveness will take place once per month to ensure consistent comprehensive samples for monthly reporting. From this APC Data Quality Review, UTA will make any necessary revisions to the schedule and geo-coding reference files, and reprocess the set of APC data collected since the start of the schedule period.

Note

The cost estimate assumes (4) schedule changes and/or stop updates per year. The Schedule and Geo-coding files review cost estimate assumes that the input data is provided in the format currently being used (i.e. GTFS).



2. Reference File Setup and Quality Control

Reference File Setup

Every time there is a change in schedules and/or stop/time point locations, such information needs to be set up in a specified UTA format to be used for data processing. For VCTC, the stop and schedule information will be in GTFS format with necessary supplements (stop_times.txt and deadhead information) as per past practice. However, it is important that this information be sent to UTA and/or UTA notified when a change takes place to the stop/schedule information. UTA will provide 5-10 day turnaround from the time that any new schedules and geo-coded stops are provided to UTA to the time that the data processing setup is complete. This process will also involve quality control checks to identify any anomalies in the schedule and stop reference data contained in the GTFS data.

Route Idiosyncrasies Identification/Setup

As needed, UTA will execute the setup and any applicable modifications to APC algorithms to reflect unusual service operating conditions. Factors such as construction, special events, customer requests, etc may require modification to standard APC software procedures. UTA and VCTC staff will collaboratively identify the operational condition and, if appropriate, UTA will adapt the APC software to accommodate the unusual operating condition.

3. Analytical Support

Ad-Hoc APC Reporting

UTA will provide support to meet ad-hoc reporting requirements that fall outside the standard APC Reporting Menu. Examples include: APC data exports requested from outside organizations (consultants, MPO's, etc), special requests from senior management and/or local political leaders, NTD audits, and other non-standard requests.

APC Information Utilization Training

UTA will provide training to VCTC staff on the 'best-practices' observed by UTA with other UTA APC users on the application of APC-generated information in areas that improve VCTC service productivity and/or quality. Included in this category is the training of new VCTC staff that may be involved with VCTC's APC system.

NTD Certification

UTA will assist VCTC with NTD certification. UTA is able to perform all tasks associated with NTD certification other than the manual passenger counts. This includes performing the APC v Manual comparisons, performing any necessary data processing software updates and drafting a proposal document.

4. Data Backup and Archiving Support

This refers to UTA's support to archive old APC data files to ensure uninterrupted APC processing and data availability for analytical needs.



5. Hardware Maintenance

Because there is no staff at VCTC or RATPDev that is training on performing APC maintenance, UTA strongly recommends contracting with UTA for on-site, annual APC maintenance to be performed at least once annually. A cost estimate for a single trip per year, along with replacement part cost estimates, are provided in the table above.

APC Performance Monitoring

Currently, UTA has remote access into the APC Processing server on the VCTC network. This allows UTA to review the APC Diagnostic reports on a daily basis. Each morning at 03:45 AM, UTA's APC Diagnostic software applies a number of diagnostic algorithms to the raw APC data in order to obtain a reliable assessment of APC data quality and quantity. The APC-equipped buses with maintenance needs are identified. UTA will assume primary responsibility for the review of the APC Diagnostics and the subsequent identification of buses that require APC maintenance.

APC Data Yield

UTA will provide the labor and materials that will allow VCTC to maintain a satisfactory APC Data Yield for the term of the contract. APC Data Yield is determined by the ratio of Valid Data Days and the Total Chronological Days in a given period. The term 'satisfactory APC Data Yield' will be defined as providing a statistically valid sampling of all Weekday VCTC revenue service each monthly period. Generally speaking a desirable APC Data Yield is above 80%.

An example relative to APC Data Yield: A fleet of 30 APC-equipped buses for a 30 day period will generate a maximum of 900 data-days. If 1 bus has a malfunctioning APC Passenger Counting Sensor and 1 bus has malfunctioning GPS receiver, the number of Valid Data Days would be 810 $(30 \text{ total buses} - (2 \text{ malfunctioning buses})) \times (30 \text{ days})$. The overall Data Yield for this period is 90%.

APC Maintenance Response Time

If the overall APC Data Yield approaches an unsatisfactory level, UTA will dispatch the appropriate number of APC technicians (typically one) to address the APC maintenance needs and return the APC Data Yield above the satisfactory APC Data Yield threshold. This will typically result in 1-2 maintenance trips per year.

In order to minimize impacts on revenue service operations, APC maintenance activities will be performed primarily at off peak times (evenings, weekends, mid-day yard layovers, etc).

Typically, UTA will provide a minimum of 24 hour notice prior to the beginning of the maintenance activities. The notification will be provided in verbal, e-mail and/or fax modes.

Chronic APC Failures/CPU Replacement

In the event that a particular APC component exhibits a consistent failure rate, UTA will provide a complete replacement for the subject component. The cost of replacement parts can vary and are not included in the proposal.



Urban Transportation Associates, Inc.

4240 Airport Road
Cincinnati, Ohio 45226

Tel 513.961.0099
Fax 513.961.0132
www.utatransit.net

Limitations – APC Maintenance Agreement

This APC Maintenance agreement covers all APC malfunctions that result from normal transit operations. APC failures of high frequency and magnitude attributable to unusual vandalism, gross negligence, and/or acts of nature will not be included in the APC Maintenance Agreement. UTA and VCTC will negotiate the remedy of such unusual conditions.

APC Maintenance Documentation

Within three (3) business days of UTA APC Maintenance activity at VCTC, UTA will summarize the APC Maintenance efforts in an Excel file that contains: Date, Bus Number, Time of Day, Problem Reported, Diagnosis, and Corrective Action. This information will be provided via e-mail to VCTC.

EXHIBIT B – VCTC FTA REQUIREMENTS

FTA Contract Clauses

No Obligation by the Federal Government

The VCTC and the Contractor acknowledge and agree that, notwithstanding any occurrence by the Federal Government in or approval of this solicitation or award of this 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 VCTC, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or 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

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. And U.S. Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of this 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 this 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.

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.

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.

Access to Records

The Contractor agrees to provide VCTC, the FTA Administrator, the Comptroller General of the United States or of 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 and conducting audits, inspections, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 CFR 633.1.7, to provide the FTA Administrator or his or her authorized representatives, including any Project Management Oversight (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 in 49 U.S.C. 5307, 5309 or 5311. 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.

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 the Contractor agrees to maintain such books, records, account and reports until the VCTC, 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.

Federal Changes

The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the Ventura County Transportation Commission (VCTC) and FTA, as they may be amended or promulgated from time to time during the term of this contract. Failure by the Contractor to so comply shall constitute a material breach of this contract. In the event any such changes significantly affect the cost or the schedule to perform the work, the Contractor shall be entitled to submit a claim for an equitable adjustment under the applicable provisions of this contract.

Termination

Termination for Convenience - The VCTC, 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.

Termination for Default [Breach or Cause] - 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 VCTC 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 VCTC 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 VCTC, 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.

Opportunity to Cure (General Provision) - The VCTC 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 VCTC's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from VCTC setting forth the nature of said breach or default, VCTC 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 VCTC from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

Title VI Of The Civil Rights Act Of 1964

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), and subcontractors agree as follows:

- A. Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination.** In accordance with Title VI of the Civil Rights act, as amended, 42 U.S.C. 2000d section 3 03 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 laws 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.
- C. Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Contract:
 - 1. Race, Color, Creed, National Origin, Sex** – In accordance with title VII of the Civil Rights Act, as amended, 42 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (USDOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246 Relating to Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 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 for which this Contract work is being performed. 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 of 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.

2. **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 laws at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.
3. **Disabilities** – In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “ Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Immigration and Naturalization Act of 1986** – In connection with the execution of this Contract, the Contractor must comply with all aspects of the federal Immigration and Naturalization Act of 1986.

- D. Solicitations for Subcontractors, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
- E. Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to City or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- F. Sanctions for Noncompliance.** In the event of the Contractor’s noncompliance with nondiscrimination provisions of this contract, City shall impose contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Contractor under the contract until the Contractor complies; and/or
 2. cancellation, termination, or suspension of the contract, in whole or in part.

- G. Subcontracts.** 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.

Disadvantaged Business Enterprises

The Ventura County Transportation Commission (VCTC) has established a DBE Program pursuant to 49 C.F.R. Part 26, which applies to this Agreement. The requirements and procedures of VCTC's DBE Program are hereby incorporated by reference into this Agreement. Failure by any party to this Agreement to carry out VCTC's DBE Program procedures and requirements or applicable requirements of 49 C.F.R. Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement, or such other appropriate administrative remedy. Each party to this Agreement shall ensure that compliance with VCTC's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement.

CONTRACTOR's failure to make good faith efforts to comply with VCTC's DBE Program shall be considered a material breach of this AGREEMENT and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. Part 26.107.

No later than Thirty (30) working days after receiving payment of retention from City for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, CONTRACTOR shall make full payment to its subcontractors of all compensation due and owing under the relevant subcontract agreement, unless excused by City for good cause pursuant to provisions of Section 1.1 below.

No later than Thirty (30) days after receiving payment of retention from City for work satisfactorily performed by any of its subcontractors for services rendered arising out of or related to this Agreement, CONTRACTOR shall also make full payment to its subcontractors of all retentions withheld by it pursuant to the relevant subcontract agreement, unless excused by City for good cause pursuant to provisions of Section 5.1 below.

There shall be no substitution of any DBE subcontractors subsequent to award of this Contract without the written approval of the City's DBE Officer.

Incorporation of Federal Transit Administration (FTA) Terms

The Contractor shall take such action with respect to any subcontract or procurement as VCTC or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request VCTC, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Debarment and Suspension

- A.** The Contractor shall include in each subcontract exceeding \$25,000, regardless of tier, a clause requiring each lower tiered subcontractor to provide the certification set forth in paragraph B of this section. Each subcontract, regardless of tier, shall contain a provision that the subcontractor shall knowingly enter into any lower

tier subcontract exceeding \$25,000 with a person who is disbarred, suspended or declared ineligible from obtaining federal assistance funds. If a proposed subcontractor is unable to certify to the statements in the following certification, the Contractor shall promptly notify VCTC and provide all applicable documentation.

B. Each subcontractor with a subcontract exceeding \$25,000 shall certify as follows:

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Primary Participant (applicant for an FTA grant or cooperative agreement, or Potential Contractor for a major third party contract), certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency, -
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, - violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (APPLICATION FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT), _____

CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature of Contractor's Authorized Official

Date

Typed Name and Title of Contractor's Authorized Official

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: 1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and,

2 The classification is utilized in the area by the construction industry; and 3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and 4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [*insert name of grantee*] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [*insert name of grantee*] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly

rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [*insert name of grantee*] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the

contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) **Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be

paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue

of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Work Hours And Safety Standards Act

Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; Liability For Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen, and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

Withholding For Unpaid Wages And Liquidated Damages. The (write the name of the grantee or recipient) shall upon its own action or upon written request of an authorized representative of the department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 non-construction contracts should also have the following provision:)

Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions thereof of the types described in section [1\(a\)\(2\)\(B\)](#) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under

29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(This section is applicable to construction contracts only)

The Contractor agrees to comply with section 107 of the Contract Work Hours and safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

Subcontracts – The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

Transit Employees Protective Act

The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. 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.

2. 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.
3. 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.

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.

Federal Privacy Act

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:

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.

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.

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.

Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

National Intelligent Transportation Systems Architecture and Standards

The Recipient agrees to: (1) Conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), as amended by MAP-21, unless it obtains an exemption from those requirements, and (2) Except as the Federal Government determines otherwise in writing, follow: (a) FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455, January 8, 2001, and (b) Other applicable Federal guidance.

Access Requirements For Persons With Disabilities (ADA)

The Recipient agrees to comply with the requirements of 49 U.S.C. § 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Recipient also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto. In addition, the Recipient agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) 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;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Any implementing requirements FTA may issue.

State and Local Government Laws/Regulations

To the extent required under Federal law, the State, as the Recipient, agrees to provide the following information about FTA funding for State Programs or Projects: a. Types of Information. The State will provide information including: (1) Identification of FTA as the Federal agency providing the Federal funds for the Program or Project, (2) The Catalog of Federal Domestic Assistance Number of the Program from which the Federal funding for the Program or Project is authorized, and (3) The amount of Federal funds FTA has provided for the Program or Project, and b. Documents. The State will provide the information required under this provision in the following documents: (1) Requests for proposals, (2) Solicitations, (3) Grant or cooperative agreement applications, (4) Forms, (5) Notifications, (6) Press releases, and (7) Other publications.

EXHIBIT C - COST PROPOSAL

1. This is a quote for installing a UTA stand-alone system with Hella APSB overhead sensors on (7) MCI vehicles (326, 333, 334, 335, 983, 986 and 988).

Item	Cost
Model 31 APC CPU	\$1,500
Cable, Interface Harness	\$325
Sensor, APC, Hella + Bracket	\$875
Cable - WLAN Antenna	\$98
Cable - GPS Antenna	\$98
Cable - Cell Antenna	\$98
Cable, 35' Ethernet Cable	\$49
Antenna (GPS+WLAN)	\$195
Equipment Cost per Bus	\$3,043
On-Site Installation	\$675
Equipment and Labor Cost per Bus	\$3,718
Bus Qty	7
Installation Equipment and Labor Subtotal	\$26,026.00
Tax (7.25%)	\$1,544
Travel/Accommodation/Meal Expenses	\$4,530
Total Cost	\$32,100

2. This is a quote for performing maintenance work on all vehicles in the APC fleet that are currently not sending data with good counts and GPS. Based on some prior investigative work performed by a UTA technician in 2021, we know that (7) vehicles need CPU replacements (307, 309, 310, 311, 312, 313 and 314). The equipment and labor for those (7) vehicles are itemized in lines 1 and 2 of the cost estimate below.

Item	Low End Cost Estimate	High End Cost Estimate
1 - Replacement CPUs for 307, 309, 310, 311, 312, 313 and 314	\$10,500	\$10,500
2 - Labor to Replace CPUs for 307, 309, 310, 311, 312, 313 and 314	\$700	\$700
3 - Replacement Parts for Undiagnosed Vehicles	\$0	\$9,500
4 - Maintenance Labor on Undiagnosed Vehicles	\$450	\$900
Tax (8.75%)	\$919	\$1,750
Travel/Accommodation/Meal Expenses	\$3,762	\$3,762
Total Cost	\$16,331	\$27,112

3. Presented below is a cost for Urban Transportation Associates (UTA) to assist VCTC with APC hardware maintenance, data processing, NTD certification and ad-hoc reporting associated with your Automatic Passenger Counting (APC) system. All costs will be billed according to time and materials expended. This proposal includes estimated annual costs for the next three years (3% increase per year).

Item	Frequency of work	Itemized Hours	Annual Hours	Annual Cost Estimate Year 1	Annual Cost Estimate Year 2	Annual Cost Estimate Year 3
Hardware Maintenance (1 trip per year) Labor+Travel+Accommodation	Annually			\$4,405	\$4,537	\$4,673
Hardware Maintenance: Replacement Parts (\$100/bus)(36 buses)				\$3,600	\$3,708	\$3,819
Administrative Support: Diagnostics & Maintenance Review	Monthly	0.25	3	\$300	\$309	\$318
Reference Files Setup and Quality Control: Schedule and Geo-coding files setup	~4x per year	4	16	\$1,600	\$1,648	\$1,697
Analytical Support: Analytics Reporting	Monthly	2	24	\$2,400	\$2,472	\$2,546
NTD Certification Assistance	Triennial		25	\$2,500		\$2,652
Total				\$14,805	\$12,674	\$15,706

The total cost of the three items presented in this cost proposal is not to exceed \$102,397.