



## **GOODS AND SERVICES SUPPLY AGREEMENT**

UTA CONTRACT #24-03879

Brake Caliper Overhaul – S70 Light Rail Vehicles

THIS GOODS AND NON-PROFESSIONAL SERVICES SUPPLY AGREEMENT (“Contract”) is entered into and made effective as of the date of last signature below. (“Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and Wabtec Passenger Transit, (the “Contractor”).

### **RECITALS**

WHEREAS, on October 29, 2024, UTA received competitive proposals to provide Power Truck Brake Caliper for UTA’s S70 light Rail Vehicles and (as applicable) all associated hardware, software, tools, installation services, commissioning and testing services, training and documentation (the “Goods and Services”) according to the terms, conditions and specifications prepared by UTA in 24-03879 (the “RFP”); and

WHEREAS, UTA wishes to procure the Goods and Services according to the terms, conditions and specifications listed in the RFP (as subsequently amended through negotiation by the parties); and

WHEREAS, the Wabtec Passenger Transit Proposal dated October 29, 2024, submitted by the Contractor in response to the RFP (“Contractor’s Proposal”) was deemed to be the most advantageous to UTA; and

WHEREAS, Contractor is willing to furnish the Goods and Services according to the terms, conditions and specifications of the Contract.

### **AGREEMENT**

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

#### **1. GOOD AND SERVICES TO BE PROVIDED BY CONTRACTOR**

Contractor hereby agrees to furnish and deliver the Goods and/or Services in accordance with the Contract as described in Exhibit A (Scope of Work) (including performing any installation, testing commissioning and other Services described in the Contract).

#### **2. TERM**

This Contract shall commence as of the Effective Date. The Contract shall remain in full force and effect until all Goods have been delivered and all Services have been performed in accordance with the Contract

(as reasonably determined by UTA). Contractor shall deliver all Goods and perform all Services no later than December 31, 2029. This guaranteed completion date may be extended if Contractor and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Contractor under the Contract shall at all times be subject to and conditioned upon the provisions of the Contract.

### **3. COMPENSATION AND FEES**

UTA shall pay Contractor in accordance with the payment milestones or other terms described in Exhibit B. If Exhibit B does not specify any milestones or other payment provisions, then payment shall be invoiced after the Goods have been delivered and the Services have been performed. In no event shall advance payments be made.

### **4. INCORPORATED DOCUMENTS**

- a. The following documents hereinafter listed in chronological order, with most recent document taking precedence over any conflicting provisions contained in prior documents (where applicable), are hereby incorporated into the Contract by reference and made a part hereof:
  1. The terms and conditions of this Goods and Services Supply Agreement (including any exhibits and attachments hereto).
  2. Contractor's Proposal including, without limitation, all federal certifications (as applicable);
  3. UTA's RFP including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Goods and Services;
- b. The above-referenced documents are made as fully a part of the Contract as if hereto attached or herein repeated. The Contract (including the documents listed above) constitute the complete contract between the parties.

### **5. ORDER OF PRECEDENCE**

The Order of Precedence for this contract is as follows:

1. UTA Contract including all attachments
2. UTA Terms and Conditions
3. Contractor's Bid or Proposal including proposed terms or conditions
4. UTA Solicitation Terms.

### **6. LAWS AND REGULATIONS**

Contractor and any and all Goods and/or Services furnished under the Contract will comply fully with all applicable Federal and State laws and regulations, including those related to safety and environmental protection. Contractor shall also comply with all applicable licensure and certification requirements.

### **7. INSPECTION, DELIVERY AND TRANSFER OF TITLE**

- a. Upon UTA's request, UTA's representative shall be provided access to Contractor's facilities to obtain information on production progress and to make inspections during the

manufacturing or assembly process. Contractor will make reasonable efforts to obtain, for UTA, access to subcontractor facilities for the purposes described above. If the specifications include pre-shipment inspection requirements, Goods shall not be shipped until UTA or its designee has inspected the Goods, and authorized Contractor to proceed with the shipment.

- b. Delivery of the Goods is a substantial and material consideration under the Contract. Unless otherwise specifically set forth in the pricing schedule: (i) Contractor shall be solely responsible for the delivery of the Goods FOB to the delivery point specified in the Contract (or otherwise designated by UTA) and all costs related thereto are included in the pricing; and (ii) Contractor shall retain all liabilities and risk of loss with respect to the Goods until the Goods are delivered to, and accepted by, UTA.
- c. After delivery, the Goods shall be subject to inspection, testing and acceptance by UTA, including any testing or commissioning process described in the specifications. UTA shall have the right to reject any Goods or Services that are defective or do not conform to the specifications or other Contract requirements. Goods or Services rejected shall be replaced, repaired or re-performed so as to conform to the Contract (and to UTA's reasonable satisfaction). If Contractor is unable or refuses to correct such Goods within a time deemed reasonable by UTA, then UTA may cancel the order in whole or in part. Any inspection and testing performed by UTA shall be solely for the benefit of UTA. Neither UTA's inspection of the production processes, production progress and/or Goods or Services (nor its failure to inspect) shall relieve Contractor of its obligations to fulfill the requirements of the Contract or be construed as acceptance by UTA.
- d. Contractor warrants that title to all Goods covered by an invoice for payment will pass to UTA no later than the time of payment. Contractor further warrants that upon submittal of an invoice for payment, all Goods and/or Services for which invoices for payment have been previously issued and payments received from UTA shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor or any subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided equipment, materials, and labor related to the equipment and/or work for which payment is being requested.

## 8. **INVOICING PROCEDURES**

- a. Contractor shall invoice UTA after achievement of contractual milestones or delivery of all Goods and satisfactory performance of all Services or in accordance with an approved progress or periodic billing schedule. In order to timely process invoices, Contractor shall include the following information on each invoice:
  - i. Contractor Name
  - ii. Unique Invoice Number
  - iii. PO Number
  - iv. Invoice Date
  - v. Detailed Description of Charges
  - vi. Total Dollar Amount Due
- b. To be considered for payment, each invoice must set forth a specific description of the Work performed, deliverable(s) provided or other event(s) triggering entitlement to payment pursuant to Section 3 Compensation and Fees. Each invoice must provide supporting documentation demonstrating the Contractor's entitlement to payment as described above.
- c. All invoices must be approved by the Agency's PM.

Invoices meeting the requirements set forth in this Section shall then be submitted to Accounts Payable at ap@rideuta.com for processing and payment.

- d. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Software or Services. Approval by UTA shall not be unreasonably withheld. UTA shall also have the right to offset (against payments) amounts reasonably reflecting the value of any claim which UTA has against Contractor under the Contract. Payment for all invoice amounts not specifically disapproved or offset by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal to UTA Project Manager. Invoices not submitted electronically shall be paid thirty (30) calendar days from date of receipt by UTA's accounting department. No payment will constitute an acceptance of any Work that fails to comply with the Contract Documents.

#### 9. **WARRANTY OF GOODS AND SERVICES**

- a. The Contractor warrants the Goods supplied to be free from defect in workmanship, materials used, integrity, and deterioration of the materials in all UTA service environments. The duration of the Warranty period shall be two (2) years. Contractor warrants that all Goods and Services shall be in compliance with applicable federal, state, and local laws and regulations including, without limitation, those related to safety and environmental protection.
- b. The Contractor further warrants, for a period of five (5) years, that the Goods supplied shall not have any defect in design, workmanship and materials: (i) of the same type and (ii) of the same Goods (or part of component there), which causes a failure rate of more than ten per cent (10%) of the entire population of such Good(s) supplied hereunder.
- c. During the applicable warranty period, any Goods of part thereof that fails will be removed by UTA and returned to the Contractor for a failure analysis. The Contractor must reimburse UTA for cost of the replacement of these items, including shipping, if such failure was covered by the warranty.
- d. Any such item that fails within the applicable warranty period must be either repaired or replaced by Contractor and returned to UTA.
- e. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to the Contract unless otherwise specified and mutually agreed upon in the Contract. In general, Contractor warrants that: (1) the Good will comply with the Contractor's Proposal, (2) the Goods will be suitable for the ordinary purposes for which such items are used, (3) the Goods will be suitable for any special purposes set forth in the Contractor's Proposal or the Contract for which UTA has relied on Contractor's skill or judgment to consider when it advised UTA about the Good, (4) the Goods have been properly designed and manufactured, and (5) the Goods are free of significant defects or unusual problems about which UTA has not been warned. Nothing in this warranty will be construed to limit any rights or remedies UTA may otherwise have under the Contract. Contractor's obligations under this Section 9 shall not apply to any Goods, Services or part thereof, that: (a) is normally consumed in operation; (b) is not properly stored, installed, used, maintained or repaired, or is modified, other than pursuant to Contractor's instructions manuals or approval; or (c) has been subjected to any other kind of misuse, detrimental exposure outside of its intended use, or has been involved in an accident.
- f. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY; IN PARTICULAR, ANY IMPLIED OR STATUTORY WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY  
DISCLAIMED.

**10. OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT**

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Contractor and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Goods and Services. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables include or incorporate preexisting intellectual property of Contractor, Contractor hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA's use, operation and maintenance of UTA's assets. The scope of the license shall be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's contractors, agent, officers, directors, employees, joint owners, affiliates and Contractors; provided however, that such license shall not be construed to permit the reproduction, modification, improvement or manufacture of any item using any such preexisting intellectual property, all such rights remaining exclusively and solely with Contractor.

**11. GENERAL INDEMNIFICATION**

Contractor shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs (hereinafter referred to collectively as "claims") related to bodily injury, including death, or loss or damage to tangible or intangible property, to the extent such claims arise out of the acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of the failure of such Contractor to conform to federal, state, and local laws and regulations. If an employee of Contractor, a subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnatee, Contractor's indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers' compensation or disability acts. The indemnity and defense obligations of Contractor above shall not apply to the extent that any claims arise out of the acts or omissions of UTA or the Indemnitees.

**Contractor shall not be liable to UTA or any Indemnatee for any consequential, incidental, indirect or special damages including, but not limited to, lost profits, lost revenue, downtime costs, loss of use or lost opportunity, whether due to breach of warranty, breach of contract, negligence or otherwise, and regardless of whether seller has been advised of the possibility of such damages except with regard to: (i) Contractor's obligation to indemnify UTA or any Indemnatee with respect to a third party claim for bodily injury or property damage, and (ii) intellectual property infringement by Contractor under Section 13.**

**Contractor’s maximum liability for any damages, costs, expenses or fees related to the Good or Services provided hereunder shall in no event exceed two hundred percent (200%) of the total purchase price for all such Goods and Services.**

12. **INSURANCE REQUIREMENTS**

**Standard Insurance Requirements**

The Utah Transit Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage limits of liability as Stated below. An excess liability policy or umbrella liability policy may be used to meet the liability requirements provided that the required coverages are included as an underlying policy.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$7,000,000
- Products – Completed Operations Aggregate \$2,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$2,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$2,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.
  - b. This requirement shall not apply when a contractor or subcontractor is exempt under UCA 34A-2-103, AND when such contractor or subcontractor executes the appropriate waiver form.
- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include the following provisions:
1. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. The Contractor shall provide such notices directly to (Utah Transit Authority agency Representative's Name & Address).
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an “A.M. Best” rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized person.
- All certificates are to be sent to Utah Transit Authority, and emailed to Utahta@ebix.com, and approved by the Utah Transit Authority before work commences. The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- . The Utah Transit Authority reserves the right to require complete, certified copies of all insurance policies required by this Contract when required by the court or to investigate a claim.
- F. **SUBCONTRACTORS:** Contractors’ certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall be \$1,000,000 per occurrence / \$2,000,000 aggregate. Sub-contractors maintaining separate insurance shall name Utah Transit

Authority as an additional insured on their policy. Utah Transit Authority must be scheduled as an additional insured on any sub-contractor policies.

- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the UTA Legal Services, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

13. **OTHER INDEMNITIES**

- a. Contractor shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all claims of any kind or nature whatsoever on account of infringement relating to Contractor's performance under the Contract. If notified promptly in writing and given authority, information and assistance, Contractor shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Contractor shall pay all damages and costs awarded therein against UTA due to such breach. In case any Good or Service is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under the Contract, Contractor shall, at its expense and through mutual agreement between UTA and Contractor, either procure for UTA any necessary intellectual property rights, or modify Contractor's Goods and Services such that the claimed infringement is eliminated.
- b. Contractor shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or claims made or filed against UTA on account of any Goods or Services furnished by subcontractors of any tier; and (ii) keep UTA property free and clear of all liens or claims arising in conjunction with any Goods or Services furnished under the Contract by Contractor or its subcontractors of any tier. If any lien arising out of the Contract is filed in conjunction with any Goods or Services furnished under the Contract, Contractor, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Contractor fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim is made directly against UTA arising out of non-payment to any subcontractor, Contractor shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Contractor fails to do so, Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.
- c. Contractor will defend, indemnify and hold UTA, its officers, agents and employees harmless from liability of any kind or nature, arising from Contractor's use of any copyrighted or un-copyrighted composition, trade secret, patented or un-patented invention, article or appliance furnished or used in the performance of the Contract.

14. **INDEPENDENT CONTRACTOR**

The parties agree that Contractor, in the carrying out of its duties hereunder, is an independent contractor and that neither Contractor nor any of its employees is or are agents, servants or employees of UTA. Neither Contractor nor any of Contractor's employees shall be eligible for any workers compensation insurance, pension, health coverage, or fringe benefits which apply to UTA's employees. Neither federal, state, nor local income tax nor payroll tax of any kind shall be withheld



or paid by UTA on behalf of Contractor or the employees of Contractor. Contractor acknowledges that it shall be solely responsible for payment of all payrolls, income and other taxes generally applicable to independent contractors.

15. **STANDARD OF CARE.**

Contractor shall perform any Services to be provided under the Contract in a good and workmanlike manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated independent contractors (including, as applicable, professional standards of care).

16. **USE OF SUBCONTRACTORS**

- a. Contractor shall give advance written notification to UTA of any proposed subcontract (not indicated in Contractor's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subcontractors, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such subcontractor without the prior written approval of UTA.
- c. Contractor shall be solely responsible for making payments to subcontractors, and such payments shall be made within thirty (30) days after Contractor receives corresponding payments from UTA.
- d. Contractor shall be responsible for and direct all Work performed by subcontractors.

Contractor agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Contractor further agrees that all subcontracts shall comply with all applicable laws.

17. **CONTRACTOR SAFETY COMPLIANCE**

Contractor, including its employees, subcontractors, authorized agents, and representatives, shall comply with all UTA and industry safety standards, NATE, OSHA, EPA and all other State and Federal regulations, rules and guidelines pertaining to safety and environmental management, and will be solely responsible for any fines, citations or penalties it may receive or cause UTA to receive pursuant to this Contract. Each employee, contractor and subcontractor must be trained in UTA environmental and Safety Management principles. UTA shall provide a copy of such UTA EMS and Safety Management principles to the Contractor. Contractor acknowledges that its Goods and Services might affect UTA's environmental obligations. A partial list of activities, products or Services deemed as have a potential environmental effect is available at the UTA website [www.rideuta.com](http://www.rideuta.com). Upon request by UTA, Contractor shall complete and return a *Contractor Activity Checklist*. If UTA determines that the Goods and/or Services under the Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA.

18. **ENVIRONMENTAL RESPONSIBILITY**

Contractor acknowledges that its Goods and/or Services might affect UTA's ability to maintain environmental obligations. A partial list of activities, products or Services deemed as have a potential environmental effect is available at the UTA website [www.rideuta.com](http://www.rideuta.com). Upon request by

UTA, Contractor shall complete and return a *Contractor Activity Checklist*. If UTA determines that the Goods and/or Services under the Contract has the potential to impact the environment, UTA may require Contractor to submit additional environmental documents. Contractor shall provide one set of the appropriate safety data sheet(s) (SDS) and container label(s) upon delivery of a hazardous material to UTA.

19. **ASSIGNMENT OF CONTRACT**

Contractor shall not assign any of its rights or responsibilities, nor delegate its obligations, under this Contract or any part hereof without the prior written consent of UTA, and any attempted transfer in violation of this restriction shall be void.

20. **SUSPENSION OF WORK**

- a. UTA may, at any time, by written order to Contractor, require Contractor to suspend, delay, or interrupt all or any part of the Work called for by this Contract. Any such order shall be specifically identified as a "Suspension of Work Order" issued pursuant to this Article. Upon receipt of such an order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of further costs allocable to the Work covered by the order during the period of Work stoppage, which shall not exceed ninety (90) days.
- b. If a Suspension of Work Order issued under this Article is canceled, Contractor shall resume Work as mutually agreed to in writing by the parties hereto.
- c. If a Suspension of Work Order is not canceled within such ninety (90) day period, and Contractor does not agree to extend the Suspension of Work Order, and the Work covered by such order shall be deemed terminated for the convenience of UTA, and all reasonable costs incurred as a result of the Suspension of Work Order shall be considered in determined negotiating the termination for convenience costs under Section 21a.
- d. If the Suspension of Work causes an increase in Contractor's cost or time to perform the Work, UTA's Project Manager or designee shall make an equitable adjustment to compensate Contractor for the additional costs or time and modify this Contract by Change Order.

21. **TERMINATION**

- a. **FOR CONVENIENCE:** UTA shall have the right to terminate the Contract at any time by providing written notice to Contractor. If the Contract is terminated for convenience, UTA shall pay Contractor: (i) in full for Goods delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subcontractor termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Contractor shall promptly submit a termination claim to UTA. If Contractor has any property in its possession belonging to UTA, Contractor will account for the same and dispose of it in the manner UTA directs.
- b. **FOR DEFAULT:** If Contractor (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subcontractors or suppliers; or (f) fails to comply with any of its

material obligations under the Contract, UTA may, in its discretion, after first giving Contractor ten (10) business days written notice to cure such default:

1. Terminate the Contract (in whole or in part) for default and obtain the Goods and Services using other contractors or UTA's own forces, in which event Contractor shall be liable for all incremental costs so incurred by UTA;
2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or

Except to the extent limited by the Contract, pursue other remedies available at law.

- c. **CONTRACTOR'S POST TERMINATION OBLIGATIONS** : Upon receipt of a termination notice as provided above, Contractor shall (i) immediately discontinue all work affected (unless the notice directs otherwise); and (ii) deliver to UTA all data, drawings and other deliverables, whether completed or in process. Contractor shall also remit a final invoice for all services performed and expenses incurred in full accordance with the terms and conditions of the Contract up to the effective date of termination. UTA shall calculate termination damages payable under the Contract, shall offset such damages against Contractor's final invoice, and shall invoice Contractor for any additional amounts payable by Contractor (to the extent termination damages exceed the invoice). All rights and remedies provided in this Article are cumulative and not exclusive. If UTA terminates the Contract for any reason, Contractor shall remain available, for a period not exceeding 90 days, to UTA to respond to any questions or concerns that UTA may have regarding the Goods and Services furnished by Contractor prior to termination.

## 22. **CHANGES**

- a. UTA's Project Manager or designee may, at any time, by written order designated or indicated to be a Change Order, direct changes in the Work including, but not limited to, changes:
  - A. In the Scope of Work Services;
  - B. In the method or manner of performance of the Work; or
  - C. In the schedule or completion dates applicable to the Work.

To the extent that any change in Work directed by UTA causes an actual and demonstrable impact to: (i) Contractor's cost of performing the work; or (ii) the time required for the Work, then (in either case) the Change Order shall include an equitable adjustment to this Contract to make Contractor whole with respect to the impacts of such change.

A change in the Work may only be directed by UTA through a written Change Order or (alternatively) UTA's expressed, written authorization directing Contractor to proceed pending negotiation of a Change Order. Any changes to this Contract undertaken by Contractor without such written authority shall be at Contractor's sole risk. Contractor shall not be entitled to rely on any other manner or method of direction.

- b. Contractor shall also be entitled to an equitable adjustment to address the actual and demonstrable impacts of "constructive" changes in the Work if: (i) subsequent to the Effective Date of this Contract, there is a material change with respect to any requirement set forth in this Contract; (ii) subsequent to the Effective Date of this Contract, a change in any law or regulation, or any new law or regulation, takes effect having an impact on the Goods or Services provided, including without limitation, applicable tariffs, or (iii) other conditions exist or actions are taken by UTA which materially modify the magnitude, character or complexity of the Work from what should have been reasonably assumed by Contractor based on the information included in (or referenced by) this Contract. In order to be

eligible for equitable relief for “constructive” changes in Work, Contractor must give UTA’s Project Manager or designee written notice stating:

- A. The date, circumstances, and source of the change; and
- B. That Contractor regards the identified item as a change in Work giving rise to an adjustment in this Contract.

Contractor must provide notice of a “constructive” change and assert its right to an equitable adjustment under this Section within ten (10) days after Contractor becomes aware (or reasonably should have become aware) of the facts and circumstances giving rise to the “constructive” change. Contractor’s failure to provide timely written notice as provided above shall constitute a waiver of Contractor’s rights with respect to such claim.

- c. As soon as practicable, but in no event longer than 30 days after providing notice, Contractor must provide UTA with information and documentation reasonably demonstrating the actual cost and schedule impacts associated with any change in Work. Equitable adjustments will be made via Change Order. Any dispute regarding the Contractor’s entitlement to an equitable adjustment (or the extent of any such equitable adjustment) shall be resolved in accordance with Article 20 of this Contract.

23. **INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS**

Contractor shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (or any other provision of the Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Contractor shall also retain other books and records related to the performance, quality or management of the Contract and/or Contractor’s compliance with the Contract. Records shall be retained by Contractor for a period of at least six (6) years, or until any audit initiated within that six-year period has been completed (whichever is later). During this six-year period, such records shall be made available at all reasonable times for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. Copies of requested records shall be furnished to UTA or designated audit parties upon request. Contractor agrees that it shall flow-down (as a matter of written contract) these records requirements to all subcontractors utilized in the performance of the Contract at any tier.

24. **FINDINGS CONFIDENTIAL**

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Contractor or subcontractor under this Contract are considered confidential and shall not be made available to any person, organization, or entity by Contractor without consent in writing from UTA. If confidential information is released to any third-party without UTA’s written consent as described above, contractor shall notify UTA of the data breach within 10 days and provide its plan for immediate mitigation of the breach for review and approval by UTA.

- a. It is hereby agreed that the following information is not considered to be confidential:
  - A. Information already in the public domain.
  - B. Information disclosed to Contractor by a third-party who is not under a confidentiality obligation.

- C. Information developed by or in the custody of Contractor before entering into this Contract.
- D. Information developed by Contractor through its work with other clients; and
- E. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

25. **PUBLIC INFORMATION.**

Contractor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor's response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

26. **PROJECT MANAGER**

UTA's Project Manager for the Contract is Sharanjit Saini, or designee. All questions and correspondence relating to the technical aspects of the Contract should be directed to UTA's Project Manager at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-1955

27. **CONTRACT ADMINISTRATOR**

UTA's Contract Administrator for the Contract is Jackie Marra, or designee. All questions and correspondence relating to the contractual aspects of the Contract should be directed to UTA's Grants & Contracts Administrator at UTA offices located at 669 West 200 South, Salt Lake City, Utah 84101, office phone (801) 287-3059.

28. **CONFLICT OF INTEREST**

Contractor represents that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of UTA to secure favorable treatment with respect to being awarded the Contract. No member, officer, or employee of UTA during their tenure or one year thereafter shall have any interest, direct or indirect, in the Contract or the proceeds thereof.

29. **NOTICES OR DEMANDS**

- a. Any and all notices, demands or other communications required hereunder to be given by one party to the other shall be given in writing and may be electronically delivered, personally delivered, mailed by US Mail, postage prepaid, or sent by overnight courier service and addressed to such party as follows:

If to UTA:  
Utah Transit Authority  
ATTN: Jackie Marra  
669 West 200 South  
Salt Lake City, UT 84101  
[jmara@rideuta.com](mailto:jmara@rideuta.com)

If to Contractor:  
Wabtec  
Attn: Barry Fong  
30 Isabella Street  
Pittsburgh, PA 15212  
[barry.fong@wabtec.com](mailto:barry.fong@wabtec.com)

b. Either party may change the address at which such party desires to receive written notice of such change to any other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

### 30. **CLAIMS/DISPUTE RESOLUTION**

- a. "Claim" means any disputes between UTA and the Contractor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 20. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- b. Unless otherwise directed by UTA in writing, Contractor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.
- c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
- d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

<b>Level of Authority</b>	<b>Time Limit</b>
UTA's Project Manager, Sharanjit Saini/Wabtec's Project Manager, Chistopher Melton	Five calendar days
UTA's Manager of Capital Vehicles, Kyle Stockley/Wabtec's Western Region Manager, Barry Fong	Five calendar days
UTA's Chief Capital Services Officer, Dave Hancock/ Wabtec's VP Business Development, Kevin Masterson	Five calendar days

Unless otherwise directed by UTA's Project Manager, Contractor shall diligently continue performance under this Contract while matters in dispute are being resolved. If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, then either party may commence formal mediation under the Juris Arbitration and Mediation (JAMS) process using a mutually agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

### 31. **GOVERNING LAW**

The validity, interpretation and performance of the Contract shall be governed by the laws of the State of Utah, without regard to its law on the conflict of laws. Any dispute arising out of the Contract that cannot be solved to the mutual agreement of the parties shall be brought in a court of competent jurisdiction in Salt Lake County, State of Utah. Contractor consents to the jurisdiction of such courts.

32. **COSTS AND ATTORNEY FEES.**

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal

33. **SEVERABILITY**

Any provision of the Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Contract.

34. **AMENDMENTS**

Any amendment to the Contract must be in writing and executed by the authorized representatives of each party.

35. **FORCE MAJEURE**

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

36. **NO THIRD-PARTY BENEFICIARIES**

The parties enter into the Contract for the sole benefit of the parties, in exclusion of any third-party, and no third-party beneficiary is intended or created by the execution of the Contract.

37. **ENTIRE AGREEMENT**

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto.

38. **COUNTERPARTS**

This Contract may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Contract may be detached from any counterpart and reattached to any other counterpart hereof. The electronic transmission of a signed original of the Contract or any counterpart hereof and the electronic retransmission of any signed copy hereof shall be the same as delivery of an original.

39. **NONWAIVER**

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

40. **SALES TAX EXEMPT**

Purchases of certain materials are exempt from Utah sales tax. UTA will provide a sales tax exemption certificate to Contractor upon request. UTA will not pay Contractor for sales taxes for exempt purchases, and such taxes should not be included in Contractor's Application for Payment.

41. **UTAH ANTI-BOYCOTT OF ISRAEL ACT**

Contractor agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

42. **SURVIVAL**

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 7, 9, 10, 11, 12, 13, 15, 17, 18, 19, 21, 23, 24, 25, 30, 31, 32, and 40.

IN WITNESS WHEREOF, the parties hereto have caused the Contract to be executed by officers duly authorized to execute the same as of the date of last signature below.

**UTAH TRANSIT AUTHORITY:**

By \_\_\_\_\_  
Jay Fox  
Executive Director

By \_\_\_\_\_  
Dave Hancock  
Chief Capital Services Officer

Approved as to Legal Form:

DocuSigned by:  
By Mike Bell  
70E33A415BA44F6...  
Mike Bell  
UTA Legal Counsel

**WABTEC PASSENGER TRANSIT:**

Signed by:  
By Brandon Shafer  
F7DQCD35CF95414...  
Brandon Shafer  
VP Americas



## Exhibit A

### Scope of Work

#### **General Overview**

Contractor to supply Utah Transit Authority (UTA) overhaul kits for Power Truck Brake Calipers UTA's Siemens S70 Light Rail Vehicles (LRV's).

1. UTA has in operation 77 Siemens S70 Light Rail Vehicles (LRVs) fitted with TecTran power truck brake calipers.
2. Each LRV is equipped with two power trucks, and four power truck brake calipers per power truck.

The overhaul is planned to be conducted by UTA personnel utilizing UTA's existing brake shop overhaul equipment and test bench. The calipers are planned to be removed from and installed onto the vehicle and tested by UTA personnel

#### **Scope of Work**

1. The Scope of Work is to provide the replacement parts for the overhaul of the Power Truck Brake Calipers used on UTA's Siemens S70 Light Rail Vehicles. The parts must meet or exceed,
  - a. The OEM specifications,
  - b. The specifications as stated in this document, and
  - c. The specifications as may be called out in the maintenance manuals.
2. Overhaul Parts for Siemens S70 Power Truck Brake Calipers - The Contractor shall provide Overhaul Kits in the quantities listed below. The base overhaul kit is defined as "Kit A". The contents of the kits are designed as follows:
  - a. Kit A (as listed in "Table 1 – S70 Power Truck Brake Caliper Kit A") is designed to include all components required to complete the overhaul and installation of one S70 power truck brake caliper. Kit A requires the following:
    - The parts for each Power Truck Brake Caliper unit shall be packaged in kits separately.
    - Each package shall contain all the required parts to completely overhaul and install one Power Truck Brake Caliper unit. All parts shall be labeled with Part Numbers.
    - Parts delivered individually shall not be accepted by UTA and shall be returned to vendor to put them in kits as required by the requirements set in this section.
3. If any discrepancies are identified in the "Kit A" bill of materials that may prevent UTA from accomplishing the overhaul of the power truck brake calipers, the Contractor shall bring it to the attention of UTA at the earliest opportunity including during the proposal phase.
4. UTA reserves the right to modify the contents and quantities of "Kit A" components during any of the milestone purchases.

*Table 1 – S70 Power Truck Brake Caliper Kit A*

<b>Item Number</b>	<b>Part Number</b>	<b>Description</b>	<b>QTY</b>	<b>Notes</b>
1.	TTP720-165	Spring, 0.72” dia x 1” L	1	
2.	TT15515	Pad Holder Screw, 1-3/8-18	4	
3.	TTP321-06	Hairpin Cotter	2	
4.	TT16145	Pad Holder Pin asy., Lower, 1.28” OD Groove (Includes #5-8)	1	
5.	TT15514	Threaded Ring	1	Ref, Component of #4
6.	TT15516	Shaft, Pad Holder	1	Ref, Component of #4
7.	TT15531	Spring	1	Ref, Component of #4
8.	TT16144	Spacer Ring 1.28" OD Groove	2	Ref, Component of #4
9.	TT15508	Guide Pin, Tapered	2	
10.	TTP867-43	Set Screw, M6x1 x 16 L	2	
11.	TTP934-50	Hose Clamp, 7 x 65 mm	8	
12.	TT15506	Boot, Guide Pin, Single Pleat	2	
13.	TT15506-2	Boot, Guide Pin, Double Pleat	2	
14.	TT15534	Bleeder asy. (Includes #15-19)	2	
15.	TT14718	Bleeder Screw	2	Ref, Component of #14
16.	TT14756	Bleeder Cap	2	Ref, Component of #14
17.	TT15533	Bleeder Body	2	Ref, Component of #14
18.	TTP200-32	O-ring, 0.21” ID	2	Ref, Component of #14
19.	TTP200-169	O-ring, 0.36” ID	2	Ref, Component of #14
20.	TT16306	Boot, Actuator	1	
21.	TT16307	Clamp Ring, Tabbed	1	
22.	TT16249	Tag Washer	2	
23.	TTP200-343	O-ring, 1.487” ID	1	
24.	TTP501-74	Retaining Ring, Internal, Spiral type 2.74”	1	
25.	TT15934	Cover, Cutout	1	
26.	TTP113-17	Wiper Seal	1	
27.	TTP200-115	O-ring, 2.61” ID	1	
28.	TTP769-41	Roll Pin, 0.156” dia x 9/16” L	2	
29.	TT15933	Cutout Screw	1	
30.	TTP200-26	O-ring, 0.489” ID	1	
31.	TT15497	Clock Spring	1	
32.	TTP769-25	Roll Pin, 1/8” dia x 3/8” L	1	

*Table 1 – S70 Power Truck Brake Caliper Kit A*

<b>Item Number</b>	<b>Part Number</b>	<b>Description</b>	<b>QTY</b>	<b>Notes</b>
33.	TT15634	End Cap, Piston	1	
34.	TTP720-164	Spring, 0.19” dia x 0.69” L	8	
35.	TT15628	Male Spline	1	
36.	TT15632	Bearing Race, 1.575” ID	2	
37.	TTP148-09	Needle Bearing, 1.575” ID	1	
38.	TT16248	Spindle-Face Gear asy. (Includes #39-46)	1	
39.	TT15489	Spindle	1	Ref, Component of #38
40.	TT15492	Face Gear	1	Ref, Component of #38
41.	TT15974	Spacer	1	Ref, Component of #38
42.	TT15975	Spring, 0.78” OD x 0.875 L	1	Ref, Component of #38
43.	TTP147-31	Bearing Race, Inner, 0.5” ID	1	Ref, Component of #38
44.	TTP148-14	Needle Bearing, 0.5” ID	1	Ref, Component of #38
45.	TT15659	Bearing Race, Outer, 0.5” ID, Modified	1	Ref, Component of #38
46.	TT15658	Lock Ring, 0.42” ID	1	Ref, Component of #38
47.	TT15487	Ram asy.	1	
48.	TTP103-24	Wear Ring	1	
49.	TT15478	Friction Ring Spring	1	
50.	TT15627	Friction Ring 2pc Set	1	
51.	TT15498	Seal Cap	1	
52.	TTP200-311	O-ring, 2.8 ID	1	
53.	TTP113-15	Wiper Seal, 1.873	1	
54.	TT15477	End Cap, Adjustable	1	
55.	TTP200-210	O-ring, 5.24” ID	1	
56.	TT15479	Disc Spring, Belleville	9	
57.	TT15536	Lock Ring	1	
58.	TT15566	Piston Stop	1	
59.	TT15482	End Cap, Double Cut	1	
60.	TT15537	Key	3	
61.	TTP200-332	O-Ring, 112mm ID	1	
62.	TT15491	MR Piston	1	
63.	TTP101-03	T-Seal (3 pc), 3.25 ID	1	
64.	TTP101-24	T-Seal (3 pc), 4.375 ID	1	
65.	TT15481	Piston, Service	1	
66.	TTP121-08	U-cup Seal, small	1	
67.	TTP121-17	U-cup Seal, large	1	
68.	TTP122-09	Rod Seal (2 pc), Small	1	

*Table 1 – S70 Power Truck Brake Caliper Kit A*

<b>Item Number</b>	<b>Part Number</b>	<b>Description</b>	<b>QTY</b>	<b>Notes</b>
69.	TTP122-10	Rod Seal (2 pc), Large	1	
70.	1-61411	Screw, Push Rod	2	
71.	TTP200-21	O-ring, 0.739" ID	2	
72.	TT16135	Tab Washer	2	
73.	TTP150-02	Lube Fitting, Elbow, 1/8" NPT	2	
74.	TTP595-02	Cap, Lube	2	
75.	1-61306	Push Rod	1	
76.	1-61312	Screw, Shoulder	1	
77.	TT15963	Wear Plate	1	
78.	TT15969	Boot, Push Rod	1	
79.	TTP700-66	Disc Spring, 0.787" OD	3	
80.	TT15968	Pad Holder Pin asy., Upper, 1.37" OD Groove (Includes #81-84)	1	
81.	TT15514	Threaded Ring	1	Ref, Component of #80
82.	TT15516	Shaft	1	Ref, Component of #80
83.	TT15531	Spring	1	Ref, Component of #80
84.	TT15517	Spacer Ring 1.37" OD Groove	2	Ref, Component of #80
85.	TTP769-40	Roll Pin	2	
86.	TTP720-165	Spring, 0.72" dia x 1" L	1	
87.	TT15520	Pivot Rod, 6.5" L	1	
88.	TT16141	Washer, Rubber, 1.69 ID x 0.083 thick	2	
89.	TT16127	End Cap, 1-3/4-20 Thread	2	
90.	TTP200-58	O-ring, 1.864" ID	2	
91.	TTP603-07	Plug w/ O-ring, 7/8-14	2	
92.	TTP720-151	Spring, 0.48" dia x 1" L	2	
93.	TT15519	Pin, Hanger	2	
94.	TT15527	Spacer, 1.24 OD x 0.125 thick	2	
95.	TTP501-44	Retaining Ring, Internal, Spiral type, 1.33"	2	
96.	TT16129	Bushing, Pivot Rod, 1.18" ID	2	
97.	TTP132-02	Wiper Seal, 1.18"	2	
98.	TT16138	Bushing, Hanger Arm Pin, 0.75 ID	2	
99.	TTP133-02	Wiper Seal, 0.75"	2	
100.	TT15499	Bushing, Guide Pin, 1.5" ID	4	
101.	TTP867-42	Set Screw, M4x0.7 x 8 L	4	
102.	TTP150-04	Lube Fitting, 1/4"-28	2	
103.	TTP595-02	Cap, Lube	2	

<i>Table 1 – S70 Power Truck Brake Caliper Kit A</i>				
<b>Item Number</b>	<b>Part Number</b>	<b>Description</b>	<b>QTY</b>	<b>Notes</b>
104.	TT15525	Pivot Arm asy. (Includes #105-109)	1	
105.	TT15503	Pivot Arm	1	Ref, Component of #104
106.	TT16136	Bushing, Pivot Arm, 1.18" ID	2	Ref, Component of #104
107.	TT16137	Bushing, Pivot Arm, 0.708" ID	2	Ref, Component of #104
108.	TTP132-02	Wiper Seal, 1.18"	2	Ref, Component of #104
109.	TTP193-01	Wiper Seal, 0.706	2	Ref, Component of #104
110.	TTP1040-01	Sealing Washer, 1.1" ID	2	
111.	TTP593-03	Plug, Flush Pipe, 1/4 NPT	2	
112.	TT16262	Spacer, 0.4 ID x 0.19 thick	2	
113.	TT15518	Pin, Hanger Arm	2	
114.	TT15962	Hanger Arm	2	
115.	TT16128	End Cap, 1-3/16-20	2	
116.	TTP200-346	O-ring, Teflon, 1.242 ID	2	
117.	TT15521	Backplate Rod, 5.18" L	1	
118.	TT15524	Backplate asy. (Includes #119-123)	1	
119.	TT15505	Backplate	1	Ref, Component of #118
120.	TT16130	Bushing, Backplate, 0.709" ID	2	Ref, Component of #118
121.	TTP193-01	Wiper Seal, 0.706	2	Ref, Component of #118
122.	TT16423	Bushing, Backplate, 0.375" ID	2	Ref, Component of #118
123.	TTP193-02	Wiper Seal, 0.375	2	Ref, Component of #118

Prior to the shipment of Production Order 1, the following must be satisfied for a minimum of 10 calipers:

- a. Pass first article inspection
- b. Successful caliper overhaul;
- c. Pass bench testing;
- d. Be installed onto an LRV and pass routine testing; and
- e. Operate problem free for a minimum of two months in revenue service.

### **Shipment**

The Contractor shall deliver materials to UTA's Jordan River Rail Service Center (JRRSC) warehouse at 2264 S 900 W, Salt Lake City, Utah 84119, unless otherwise advised by UTA.

All shipping costs shall be the responsibility of the Contractor. Any damage incurred in shipping the units to UTA is the sole responsibility of the Contractor.

## 5. Non-OEM Parts and UTA Approved Equals

- i. UTA is the only authority that can approve an alternative part, product, or component. Any request proposing alternative(s) must be made in writing for UTA review and approval. Contractor shall not proceed on the proposed alternative(s) until UTA has provided a written approval. Requests for approval of proposed alternative(s) must contain the following information at a minimum:
  - Dimensional characteristics to match the OEM part;
  - Testing results; and
  - Material characteristics.
  - For the parts in this document, there are currently no approved equals.

## 6. Test Requirements

- i. All parts must be tested and certified by the Contractor on the test reports to confirm that they meet the required specifications. All tests are subject to UTA review and approval. In the event of a conflict of specification, precedent shall be subject to UTA review and approval and generally be in the order of:
  - a. OEM requirements.
  - b. This Specification.
  - c. Industry best practices.
- ii. All required test personnel, tools and equipment must be the responsibility of the Contractor. All work and testing must be performed with calibrated tools and instrumentation with the understanding that some equipment may not require calibration. The calibration certificates must be held at the Contractor's site and made available to UTA upon request.
- iii. All final inspection and test data, data analysis, and test results must be sent, in their original form, to UTA.
- iv. UTA will not accept delivery of the supplied items without the completed test documents demonstrating all test have passed and materials meet specifications.

## 7. Quality Requirements

- i. The Contractor must have a Quality Assurance Program in place throughout the time period of the purchase of parts.
- ii. The Contractor must perform all work required by its QA Program and conduct regular quality program audits. The Contractor's QA Program shall be in compliance with the requirements of this Contract.
- iii. The Contractor shall prepare and submit a project-specific Quality Assurance test and inspection plan for UTA review and comment.

## 8. Quantity

The Contractor must provide a complete overhaul kit for the S70 Power Truck Brake Caliper Overhaul in the quantities listed below:

<i>Table 2 - Order Quantity Totals</i>	
Description	Kit "A" Base Overhaul Kits
S70 Power Truck Brake Caliper Qualification Order	$77*2*4 + 74^1 = 690$

<i>Table 3 - Kit A Order Schedule</i>		
Description	Kit "A" Base Overhaul Kits	Desired Delivery Date <sup>2</sup>
S70 Power Truck Brake Caliper Qualification Order	68	ASAP, 2025
S70 Power Truck Brake Caliper Production Order 1	122	2025
S70 Power Truck Brake Caliper Production Order 2	190	2026
S70 Power Truck Brake Caliper Production Order 3	190	2027
S70 Power Truck Brake Caliper Production Order 4	120	2028

## 9. Project Requirements

- a. Documentation - Prior to the commencement of work the Contractor shall submit the following documentation in a UTA approved format:

- 1) Project Schedule [CDRL 01] NTP + 30 days
- 2) Quality Assurance, Test, and Inspection Plan [CDRL 02] NTP + 30 days
- 3) First Article Inspection Plan [CDRL 03] NTP + 60 days
- 4) Pre-shipment Inspection and Test Procedures [CDRL 04] NTP + 60 days
- 5) Shipping preparation and securement procedures NTP + 60 days  
[CDRL 05]
- 6) Inspection and Test Reports [CDRL 06] 5 days prior to Shipment to UTA

<sup>1</sup> Overhaul kits to cover the overhaul of spare calipers plus spare kits

<sup>2</sup> Exact delivery dates to be provided by Contractor, delivery and invoicing to UTA must fall within the calendar year listed

**b. CDRL List**

CDRL#	Title
01	Project Schedule
02	Quality Assurance, Test, and Inspection Plan
03	First Article Inspection Plan
04	Pre-shipment Inspection and Test Procedures
05	Shipping preparation and securement procedures
06	Final Inspection and Test Data



Exhibit B

Price

Description	Cost Per Kit	Quantities	Total Cost
Overhaul Kits (Kit A)	18,966	690	\$13,086,540

Milestone payments

Milestone#	Description	Kit "A" Base Overhaul Kits	Price	Deleivery Dates
1	S70 Power Truck Brake Caliper Qualification Order	68	\$1,289,688.00	ASAP, 2025
2	S70 Power Truck Brake Caliper Production Order 1	122	\$2,313,852.00	2025
3	S70 Power Truck Brake Caliper Production Order 2	190	\$3,603,540.00	2026
4	S70 Power Truck Brake Caliper Production Order 3	190	\$3,603,540.00	2027
5	S70 Power Truck Brake Caliper Production Order 4	120	\$2,275,920.00	2028

The above is a fixed lump sum price sum price

Exhibit B Continued

The parts listed below are not included in the base overhaul Kit, and can be ordered as needed. UTA will issue a separate purchase order and require a separate requisition.

Quantities below are estimates only.

Part Number	Description	2024 Qty	2024 Price	Extended Price	2025 Qty	2025 Price	Extended Price	2026 Qty	2026 Price	Extended Price	2027 Qty	2027 Price	Extended Price	2028 Qty	2028 Price	Extended Price
TT15529	Mount caliper	2	\$ 509.34	\$ 1,018.68	4	\$ 522.07	\$ 2,088.28	6	\$ 535.12	\$ 3,210.72	6	\$ 548.50	\$ 3,291.00	4	\$ 562.21	\$ 2,248.84
TTP325-67	Dowel pin 16mmx40	15	\$ 8.99	\$ 134.85	30	\$ 9.21	\$ 276.30	40	\$ 9.44	\$ 377.60	40	\$ 9.68	\$ 387.20	30	\$ 9.92	\$ 297.60
TT15499	guide pin	15	\$ 12.60	\$ 189.00	30	\$ 12.92	\$ 387.60	40	\$ 13.24	\$ 529.60	40	\$ 13.57	\$ 542.80	30	\$ 13.91	\$ 417.30
TT15536	lock ring	50	\$ 23.50	\$ 1,175.00			\$ -			\$ -			\$ -			\$ -
TT15475	actuator housing	2	\$ 1,274.72	\$ 2,549.44	2	\$1,306.59	\$ 2,613.18	4	\$ 1,339.25	\$ 5,357.00	4	\$ 1,372.73	\$ 5,490.92	3	\$ 1,407.05	\$ 4,221.15
TTP325-68	dowel solid 12 X30	15	\$ 3.74	\$ 56.10	30	\$ 3.83	\$ 114.90	40	\$ 3.93	\$ 157.20	40	\$ 4.03	\$ 161.20	30	\$ 4.13	\$ 123.90
TT15485	caliper body	1	\$ 6,571.20	\$ 6,571.20	1	\$6,735.48	\$ 6,735.48	2	\$6,903.87	\$ 13,807.74	2	\$ 7,076.47	\$ 14,152.94	2	\$ 7,253.38	\$ 14,506.76
TT15959	Caliper mounting kit	68	\$ 278.30	\$ 18,924.40	122	\$ 285.26	\$34,801.72	190	\$ 292.39	\$ 55,554.10	190	\$ 299.70	\$ 56,943.00	60	\$ 307.19	\$ 18,431.40
TTP799-04	Bolt M24X3 X90	6	\$ 45.35	\$ 272.10	12	\$ 46.48	\$ 557.76	20	\$ 47.64	\$ 952.80	20	\$ 48.83	\$ 976.60	6	\$ 50.05	\$ 300.30
TTP166-21	Washer flat 24MM	6	\$ 4.36	\$ 26.16	12	\$ 4.47	\$ 53.64	20	\$ 4.58	\$ 91.60	20	\$ 4.69	\$ 93.80	6	\$ 4.81	\$ 28.86
<b>Total</b>				<b>\$ 30,916.93</b>			<b>\$47,628.86</b>			<b>\$ 80,038.36</b>			<b>\$ 82,039.46</b>			<b>\$ 40,576.11</b>

Part Number	Description	LeadTime
TT15529	Mount caliper	250 Days
TTP325-67	Dowel pin 16mmx40	90 Days
TT15499	guide pin	90 Days
TT15536	lock ring	140 Days
TT15475	actuator housing	190 Days
TTP325-68	dowel solid 12 X30	90 Days
TT15485	caliper body	150 Days
TT15959	Caliper mounting kit	90 Days
TTP799-04	Bolt M24X3 X90	90 Days
TTP166-21	Washer flat 24MM	90 Days

## ACCESS TO RECORDS AND REPORTS

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records. (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.
4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

## AMERICANS WITH DISABILITIES ACT(ADA)

The contractor 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, 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 to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

## BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

## CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381.
- b. to furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## CHANGES TO FEDERAL REQUIREMENTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act, "49 C.F. R. Part 21 and any implementing requirement FTA may issue.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the

Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA."

## DEBARMENT AND SUSPENSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## DISADVANTAGED BUSINESS ENTERPRISE (DBE)

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## 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 (42 U.S.C. § 6201).

## EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action,

including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **FLY AMERICA**

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **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. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.



## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

- a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
1. Procure or obtain;
  2. Extend or renew a contract to procure or obtain; or
  3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
    - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c. See Public Law 115-232, section 889 for additional information.
- d. See also § 200.471.

## **PROMPT PAYMENT**

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

## **RESTRICTIONS ON LOBBYING**

### **Conditions on use of funds.**

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

### **Certification and disclosure.**

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

**Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.**

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

**Shall file a certification, and a disclosure form, if required, to the next tier above.**

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **SIMPLIFIED ACQUISITION THRESHOLD**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

## **SOLID WASTES (RECOVERED MATERIALS)**

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents:

- (1) applications for federal assistance,
- (2) requests for proposals or solicitations,
- (3) forms,
- (4) notifications,
- (5) press releases,
- (6) other publications.

## TERMINATION

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only 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 Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, 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 Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency 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 Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency 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 (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

### Termination for Default (Transportation Services)

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

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

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

### Termination for Default (Construction)

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

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency 's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

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

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

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

#### Termination for Convenience or Default (Cost-Type Contracts)

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

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

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **VIOLATION AND BREACH OF CONTRACT**

### **Disputes:**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. 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 agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

### **Performance during Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

### **Claims for Damages:**

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

### **Remedies:**

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

### **Rights and Remedies:**

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **OTHER RECOMMENDED CONTRACT REQUIREMENTS**

## **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

## **SEVERABILITY**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## **TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

(a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;

(b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or

(c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.