

AGENDA ITEM 1 F
Consent Item

MEMORANDUM

DATE: September 5, 2024

TO: El Dorado County Transit Authority

FROM: Brian James, Executive Director

SUBJECT: Sacramento Area Council of Governments Subrecipient Agreement

REQUESTED ACTION:
BY MOTION,

Authorize the El Dorado County Transit Authority and the Executive Director to execute a subrecipient agreement with the Sacramento Area Council of Governments for the California Integrated Travel Project

BACKGROUND

In February 2022, the El Dorado County Transit Authority (El Dorado Transit) applied for Transit and Intercity Rail Capital Program (TIRCP) funds in a partnership with Sacramento Regional Transit, Sacramento Area Council of Governments (SACOG), the Capitol Corridor Joint Powers Authority (CCJPA), and other local transit providers. The region was successful in its application and was awarded nearly \$2.2 million to purchase, install, and implement the California Integrated Travel Project (Cal-ITP) supported contactless payment equipment and services on bus fleets throughout the region. The full funding amount was allocated to the region at the California Transportation Commission meeting held in December 2023. The allocation requires El Dorado Transit to enter into a subrecipient agreement with SACOG to receive the allocated funds for the project.

Transit demand and ridership patterns have changed significantly in recent years. In an effort to increase ridership and make it easier for community members to ride transit, expanding contactless payments should be implemented.

This project will continue the expansion of El Dorado Transit's fare payment options for customers, allowing them to purchase fare at the time of boarding the bus using contactless payment technologies. The convenience of paying a fare with an existing contactless enabled credit card, Google Wallet, Apple Pay, or other digital payment, will simplify the fare payment process, speed up boardings, and therefore improve El Dorado Transit's on-time performance.

DISCUSSION

The draft subrecipient agreement with SACOG in Exhibit A will direct \$123,000 to El Dorado Transit to purchase and install the necessary equipment from Kuba Inc. to outfit El Dorado Transit's entire vehicle fleet. Staff is requesting that the Board authorize El Dorado Transit and the Executive Director to execute contract with SACOG for Payment Acceptance Device Hardware and Transit Processor Services as presented.

FISCAL IMPACT

The hardware purchasing fees of \$123,000 that are associated with this project will be paid for with TIRCP funds that were awarded in 2022 and will be provided to El Dorado Transit through the attached subrecipient agreement with SACOG.

**SACRAMENTO AREA COUNCIL OF GOVERNMENTS
SUBRECIPIENT AGREEMENT**

**with
EL DORADO COUNTY TRANSIT AUTHORITY**

**For the
Cal-ITP Implementation Project**

THIS SUBRECIPIENT AGREEMENT is made and entered into effective on _____, by and between the **SACRAMENTO AREA COUNCIL OF GOVERNMENTS**, a California joint powers agency ("SACOG") and the **EL DORADO COUNTY TRANSIT AUTHORITY** ("Subrecipient").

RECITALS

WHEREAS, SACOG has been awarded Transit and Intercity Rail Capital Program ("TIRCP") funds administered through the California Department of Transportation ("Caltrans"), to implement and support the Sacramento Region Cal-ITP Implementation Project ("Project"); and

WHEREAS, SACOG has awarded Subrecipient funding, on a reimbursable basis, for the Project; and

WHEREAS, Subrecipient is eligible to apply for and receive Federal and State financial assistance as a public body corporate and politic of the State of California; and

WHEREAS, the Subrecipient is a Subrecipient of State funds programmed in SACOG's annual Overall Work Program (OWP), administered by and through SACOG. The SACOG annual OWP is part of an agreement with the State of California Department of Transportation (State or Caltrans), which includes the Overall Work Program Agreement (OWPA) and Master Fund Transfer Agreement (MFTA). Together, the OWP, the OWPA and MFTA set forth the terms and conditions under which these funds are to be expended by SACOG and its Subrecipients; and

WHEREAS, the parties wish to enter into this Subrecipient Agreement ("Agreement") to document the terms and conditions of SACOG's funding of the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Scope of Work: Subrecipient will fully perform all work necessary to complete the Project as identified in **Exhibit "A"** (Scope of Work), which includes the tasks to be performed by Subrecipient as well as Project deliverables, timeline and budget. Any proposed amendment to Exhibit "A" must be agreed to in advance by the parties pursuant to a written amendment in accordance with Section 12 and is subject to approval by any other State agency having jurisdiction.

a. Scope of Responsibilities.

- (1) Subrecipient is responsible for the complete performance of the work described in Exhibit A, including the grant-funded and any in-kind match work, in accordance with the budget constraints described in

Exhibit A as reflected in the adopted SACOG OWP.

- (2) Subrecipient affirms that all work identified in Exhibit A has been competitively procured consistent with all applicable rules and guidelines, including the Caltrans Local Assistance Procedures Manual.
 - (3) Subrecipient's Project Manager will coordinate all work described in the Exhibit A with the SACOG Project Managers identified under each work element listed in Exhibit A. SACOG is not obligated to make payments to Subrecipient until Subrecipient Project Manager has carried out the applicable responsibilities described in this Agreement.
- b. Personnel. Subrecipient may hire personnel to perform the work described in Exhibit A, only if the employees have salaries that do not vary on the basis of funds received from SACOG.
- c. Materials to be Furnished to Subrecipient.
- (1) SACOG must, if applicable, provide Subrecipient with a right to use (without charge by SACOG) information, data, reports, records and maps that are in possession of or readily available to SACOG for the purposes of carrying out work under this Agreement. However, SACOG's proprietary information or otherwise confidential or privileged materials will not be provided to Subrecipient, unless authorized by SACOG's legal counsel, except as provided under the Public Records Act and other state and federal laws.
 - 2) At the option of SACOG and if allowable under State grant requirements, SACOG may, if applicable to the Project scope of work, procure equipment, software, or other materials for use by Subrecipient, only for purposes of carrying out work described under this Agreement. Subrecipient agrees to comply with all license agreements for software or other materials procured by SACOG for use by Subrecipient.

2. Time of Performance and Approval Final Costs:

- a. Subrecipient will commence work upon the effective date of this Agreement and will complete work as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work.

Subrecipient will provide written progress reports to SACOG monthly in format approved by SACOG and shall communicate any delays in Project performance to SACOG immediately.

Subrecipient will follow, and require its contractors to follow, the timeline identified in Exhibit A. If a substantive change to the identified timeline is desired, Subrecipient's Project Manager will provide an immediate written request for approval to the SACOG Project Manager, including the reasons for the requested change. Approval by the SACOG Project Manager will not be unreasonably withheld.

- b. All work will be completed by Subrecipient. This Agreement will expire on **December 6, 2026** unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties, which written agreement is subject to approval Caltrans, or any other State agency having jurisdiction. Failure to complete the Project by December 6, 2026 will not affect Subrecipient's ability to seek reimbursement under this Agreement for all work performed on the Project up to December 6, 2026. Any work remaining on the Project as of December 7, 2026, will be completed by Subrecipient using funds secured from other sources.
 - c. The services provided pursuant to this Agreement will begin upon issuance of a Notice to Proceed by SACOG to the Subrecipient and continue until completion, but not later than the date identified in subsection (b) above.
 - d. SACOG will use the cost estimate information provided to allocate funds to other subrecipient transit operators based on the hardware costs respective to each transit operator. Any remaining funds available after deducting the hardware costs will be allocated to SacRT for Project deliverables as described in Exhibit A to this Agreement, Scope of Work.
3. Compliance with Laws: Subrecipient will comply with all applicable State, and local laws, codes, ordinances, regulations, orders, circulars, and directives, associated with the funding provided to Subrecipient in this Agreement. Further, Subrecipient will require the appropriate debarment certification form from all Subrecipient contractors and Subrecipient certifies that it will not knowingly enter into any transaction with a contractor, subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State agency.
4. Funding Amount: Subject to Section 2(d) above, the amount to be paid to Subrecipient under this Agreement will not exceed **One Hundred Twenty-Three Thousand Dollars (\$123,000)**, unless agreed to in advance by the parties pursuant to a written amendment. In no instance will SACOG be liable for any payments or costs for work in excess of this amount, nor for any unauthorized or ineligible costs.
5. Reporting and Payment:
- a. On a quarterly basis, Subrecipient will provide SACOG with both a written report on the progress made on the Scope of Work (Exhibit "A") and an invoice for reimbursement pursuant to Subsection 5.b. below. Invoices for contractual work completed through June 30 of a fiscal year must be submitted by July 30. Subrecipient must submit written invoices via email to the SACOG Project Manager designated in this Agreement.
 - b. Payments to Subrecipient hereunder will be made in arrears. Subrecipient will submit a detailed and properly documented invoice on its letterhead for reimbursement not more often than quarterly, which invoice will include the following: (i) a description of the work performed, (ii) a detailed accounting of costs incurred, and (iii) evidence that Subrecipient has already incurred costs for the Project using eligible, non-Federal funds in the amount of the Local Match. Attached as **Exhibit C** is SACOG's matrix of required supporting documentation for subrecipient invoices.

- c. Subrecipient is not entitled to reimbursement of indirect costs unless a copy of an applicable, approved indirect cost plan has been received by SACOG prior to submittal of the first invoice from Subrecipient. Indirect cost rates must be submitted annually in accordance with Caltrans requirements.
- d. Subrecipient will be notified within ten (10) business days following receipt of its invoice by SACOG of any circumstances or data identified by SACOG in Subrecipient's invoice that would cause withholding of approval and subsequent payment. Subrecipient's invoice will include documentation of reimbursable expenses and billed items sufficient for SACOG, in its opinion, to substantiate billings. SACOG reserves the right to withhold payment of disputed amounts.
- e. SACOG will make payments in accordance with California Department of Transportation ("Caltrans") reimbursement requirements. Subrecipient must provide all supporting invoice documentation required by Caltrans. Under no circumstances will SACOG be required to pay any amounts greater than the amount reimbursed by Caltrans.
- f. Subrecipient must comply with, and require its subcontractors to comply with, the requirements for non-State employee travel and subsistence (per diem) expenses found in the California Department of Transportation ("Caltrans") Travel Guide, Non-State Employee Travel (referencing the current California Department of Personnel Administration rules) at the following link: <https://travelpocketguide.dot.ca.gov/>. Lodging rates must not exceed rates authorized to be paid non-State employees unless written verification is supplied that such rates are not commercially available to Contractor and/or its subcontractors at the time and location required as specified in the Caltrans Travel Guide Exception Process.
- h. Subrecipient and its contractors and subcontractors must establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) which segregates and accumulates reasonable, allowable, and allocable costs and matching funds for work elements by line item and produces quarterly reports which clearly identify reimbursable costs and other expenditures and provide support for all invoices sent to SACOG.
- i. Any costs for which payment has been made to Subrecipient that are determined by subsequent audit to be unallowable under State regulations is subject to repayment by Subrecipient to SACOG within thirty (30) days of the Subrecipient receiving notice of final audit findings. If Subrecipient fails to return disallowed cost to SACOG within thirty (30) days, SACOG is authorized to withhold payments due to Subrecipient from other SACOG-administered programs.
- j. Subrecipient and its contractors and subcontractors shall comply with

Caltrans' Local Assistance Procedures Manual
(at http://www.dot.ca.gov/hq/Local_Programs/lam/lam.htm);

California Public Contract Code, Sections 10300 to 10334, and 10335 to 10381;
and all other applicable State statutes, regulations, and guidelines or additional
restrictions, limitations, conditions, or any statute enacted by the state

legislature or adopted by the California Transportation Commission that may affect the provisions, terms, or funding of the Project in any manner.

- k. All costs charged to this Agreement by Subrecipient must be supported by properly executed payrolls showing labor (wage) rates per hour, and if applicable, copies of Internal Revenue Service W-2 or 1099 Forms, or both; time records, including timesheets or time cards signed by the employee and approved by the supervisor; and invoices and vouchers, evidencing in proper detail the nature of the charges. These costs must comply with the cost principles cited above in this Section of the Agreement.
- l. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, will contain all of the provisions of Subsections 5(f) through 5(k) above. Subrecipient agrees to furnish documentation to SACOG to support this requirement that its agreements with a contractor contain the required provisions.
6. TIRCP Compliance: For purposes of this Agreement, Subrecipient must comply with all applicable requirements of the TIRCP Master Agreement and all Program Supplements for State-Funded Transit Projects.
7. Independent Contractor: Subrecipient, and the agents and employees of Subrecipient, in the performance of this Agreement, will act as and be independent contractors and not officers or employees or agents of SACOG. Subrecipient, its officers, employees, agents, and subcontractors, if any, will have no power to bind or commit SACOG to any decision or course of action, and will not represent to any person or business that they have such power. Subrecipient has and will retain the right to exercise full control of the supervision of the work and over the employment, direction, compensation and discharge of all persons assisting Subrecipient in the performance of work funded by this Agreement. Subrecipient will be solely responsible for all matters relating to the payment of its employees and contractors including, but not limited to, compliance with all laws, statutes, and regulations governing such matters.
8. Termination:
 - a. Either party may terminate this Agreement for any reason, with or without cause, at any time, by giving the other party fifteen (15) days' written notice. The notice will be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to the other party at the address indicated in Section 17 below.
 - b. If either party issues a notice of termination, SACOG will reimburse Subrecipient for work actually performed and costs incurred up to the effective date of the notice of termination, subject to the limitations in Section 6 and less any compensation to SACOG for damages suffered as a result of Subrecipient's failure to comply with the terms of this Agreement.
 - c. Subrecipient will have the right to terminate this Agreement in the event SACOG is unable to make required payments, including, without limitation, a failure of Caltrans to appropriate funds. In such event, Subrecipient will provide SACOG with seven (7) days' written notice of termination. The notice will be deemed served and effective on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to SACOG at the address indicated in Section 17.

SACOG will make payment to Subrecipient through the date of termination, subject to the provisions of Section 6 above.

9. Assignment: The parties understand that SACOG entered into this Agreement based on the Project proposed by Subrecipient. Therefore, without the prior express written consent of SACOG, this Agreement is not assignable by Subrecipient either in whole or in part.

10. Binding Agreement: This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.

11. Time: Time is of the essence in this Agreement and the parties will follow the timeline set forth in the scope of work (Exhibit "A"), unless modified pursuant to Section 12.

12. Amendments: No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, will be binding on any of the parties hereto.

13. Contractors and Subcontractors: Subrecipient will be fully responsible for all work performed by its contractors and subcontractors.

a. SACOG reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement.

b. Any contract or subcontract to be funded in whole or in part using funds provided under this Agreement will require the contractor and its subcontractors, if any, to:

(1) Comply with applicable State and Federal law requirements that pertain to, among other things, labor standards, Non-Discrimination, the Americans with Disabilities Act, and Equal Employment Opportunity, the Drug-Free Workplace Act.

(2) Maintain at least the minimum State-required Workers' Compensation Insurance for those employees who will perform the work or any part of it.

(3) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged by Subrecipient or any subcontractor in performing work associated with this Agreement or any part of it.

(4) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of three (3) years from the date of termination of this Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.

(5) Permit SACOG and/or its representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.

14. Indemnity: Subrecipient specifically agrees to indemnify, defend, and hold harmless SACOG, its directors, officers, members, agents, and employees (collectively the "Indemnitees") from and against any and all actions, claims, demands, losses, costs, expenses, including reasonable attorneys' fees and costs, damages, and liabilities (collectively "Losses") arising out of or in any way connected with the performance of this Agreement, excepting only Losses caused by the sole, active negligence or willful misconduct of an Indemnitee. Subrecipient must pay all costs and expenses that may be incurred by SACOG in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section will survive the expiration, termination, or assignment of this Agreement.

15. Audit, Retention and Inspection of Records:

- a. SACOG or its designee, including but not limited to any State or Federal agency, will have the right to review, obtain, copy, and audit all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to performance of this Agreement, including any Records in the possession of any contractors or subcontractors. The Records include all records of employment, employment advertisements, employment application forms, and other pertinent employment data, as well as any records pertaining to compliance with Public Contract Code Sections 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, Section 2500, *et seq.* (when applicable) and other matters connected with the performance of the contract pursuant to Government Code Section 8546.7.
- b. Subrecipient agrees to provide SACOG or its designee, the State, the California State Auditor or any duly authorized representative of the State with any relevant information requested and will permit SACOG or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such Records for the purpose of determining compliance with any applicable State laws and regulations. Subrecipient further agrees to maintain such Records for a period of three (3) years after final payment under the Agreement or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
- c. If directed by SACOG upon expiration of this Agreement, Subrecipient will cause copies of all Records relevant to the Scope of Work to be delivered to SACOG as depository.

16. Project Managers: SACOG's Project Manager for this Agreement is **Chris Dougherty**, unless SACOG otherwise informs Subrecipient. With the exception of notice of termination sent by certified mail pursuant to Section 8 above, any notice, report, or other communication required by this Agreement will be mailed by first-class mail to the SACOG Project Manager at the following address:

Chris Dougherty Senior Analyst
Sacramento Area Council of Governments
1415 L Street, Suite 300
Sacramento, CA 95814
916-319-5193
cdougherty@sacog.org

Subrecipient's Project Manager for this Agreement is Brian James. No substitution of Subrecipient's Project Manager is permitted without prior written agreement by SACOG, which agreement will not be unreasonably withheld. With the exception of notice of termination sent by certified mail pursuant to Section 8 above, any notice, report, or other communication to Subrecipient required by this Agreement will be mailed by first-class mail to:

Brian James, Executive Director
El Dorado County Transit Authority
6565 Commerce Way, Diamond Springs, CA 95619
530-642-5383 Ext. 210
bjames@eldoradotransit.com

17. Successors: This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.

18. Waivers: No waiver of any breach of this Agreement will be held to be a waiver of any prior or subsequent breach. The failure of SACOG to enforce at any time the provisions of this Agreement or to require at any time performance by Subrecipient of these provisions, will in no way be construed to be a waiver of such provisions nor to affect the validity of this Agreement or the right of SACOG to enforce these provisions.

19. Litigation: Subrecipient will notify SACOG immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or SACOG, and will take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of SACOG.

20. Americans with Disabilities Act (ADA) of 1990; Accessibility: By signing this Agreement, Subrecipient assures SACOG that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA including, but not limited to, those found within the Code of Federal Regulations, Title 49, parts 27, 37, and 38. Subrecipient also agrees that it will award no construction contract unless its plans and specifications for such facilities conform to the provisions of California Government Code Sections 4450 and 4454, if applicable.

21. Compliance with Non-discrimination and Equal Employment Opportunity Laws: It is SACOG's policy to comply with State and Federal laws and regulations including Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990 (ADA) and other Federal discrimination laws and regulations, (including 49 CFR Part 21 through Appendix C, 23 CFR part 200, 23 CFR part 230, 49 U.S.C. 5332, 42 U.S.C. 12101, *et seq.*, and the Title VI Assurance executed by California under 23 U.S.C. 324 and 29 U.S.C. 794), as well as the Unruh Civil Rights Act of 1959, the California Fair Employment and Housing Act (Government Code Section 12990, *et seq.*), and other California State discrimination laws and regulations. SACOG does not discriminate against any employee or applicant for employment because of race, religion (including religious dress and grooming practices) color, national origin, (includes use and possession of a driver's license issued to persons unable to prove their presence in the United States is authorized under federal law), ancestry, disability, (including physical and mental, including HIV and AIDS) medical condition, (including genetic characteristics, cancer or a record or history of cancer), military or veteran status, marital status, sex/gender (includes pregnancy, childbirth, breastfeeding, and/or related medical conditions), age (40 and above), gender identity, gender expression, or sexual orientation pursuant to Sections 12940 *et seq.* of the Government Code. SACOG prohibits discrimination by its employees, subrecipients, contractors and consultants.

Subrecipient hereby certifies, under penalty of perjury under the laws of California, that it complies with, and that Subrecipient will require that its contractors and subcontractors comply with, the following non-discrimination and equal opportunity laws. Any failure by Subrecipient to comply with these provisions shall constitute a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SACOG may deem appropriate.

- a. Subrecipient and its contractors and subcontractors will comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d, *et seq.*, with U.S. D.O.T. regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. Part 21, and with any applicable implementing Federal directives that may be issued. Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person shall, on the basis of race, color, ancestry, national origin, religion, religious creed, sex, age, gender identity, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- b. Subrecipient and its contractors and subcontractors will comply with all applicable equal employment opportunity (EEO) provisions of 42 U.S.C. § 2000e, implementing Federal regulations, and any applicable implementing Federal directives that may be issued. Subrecipient and its contractors and subcontractors must ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.
- c. Subrecipient and its contractors and subcontractors will act in accordance with Title VI and will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, gender expression, age or marital status and shall comply with **Exhibit D**, "Fair Employment Practices Addendum" and **Exhibit E**, "Non-Discrimination Assurances" attached hereto and incorporated herein by this reference. Subrecipient and its contractors and subcontractors will further ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment, including the improper denial of family and medical care leave and pregnancy disability leave. Subrecipient and its contractors and subcontractors will comply with all applicable Federal and State employment laws and regulations including, without limitation, the provisions of the California Fair Employment and Housing Act (Government Code § 12900, *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, *et seq.*), as well as Title 2, California Code of Regulations, Section 8103. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Subrecipient and its contractors and subcontractors will give written notice of their obligations under this clause to

labor organizations with which they have a collective bargaining or other agreement.

- d. Subrecipient and its subcontractors will also comply with the Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age, Section 324 of Title 23 U.S.C., prohibiting discrimination based on gender, and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.
- e. Subrecipient, with regard to the work performed by it during the Agreement, will act in accordance with Title VI. Specifically, Subrecipient will not discriminate on the basis of race, color, ancestry, national origin, religion, religious creed, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- f. Subrecipient and its contractors will include the provisions of this Section 21 in all contracts to perform work funded under this Agreement. Subrecipient will take such action with respect to any such contract as SACOG may direct as a means of enforcing such provisions, including sanctions for noncompliance.
- g. Sanctions for Noncompliance: In the event of Subrecipient's noncompliance with the nondiscrimination provisions of this Agreement, SACOG shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - (1) Withholding of payments to Subrecipient under this Agreement until Subrecipient complies, and/or
 - (2) Cancellation, termination or suspension of the Agreement, in whole or in part.

22. Drug-Free Certification: By signing this Agreement, Subrecipient hereby certifies under penalty of perjury under the laws of the State of California that Subrecipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, *et seq.*) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or the organization's policy of maintaining a drug-free workplace;
 - (3) Any available counseling, rehabilitation, and employee assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee of Subrecipient who works under this Agreement will:
 - (1) Receive a copy of Subrecipient's Drug-Free Workplace Policy Statement; and
 - (2) Agree to abide by the terms of Subrecipient's Statement as a condition of employment on this Agreement.

23. Union Organizing: By signing this Agreement, Subrecipient hereby acknowledges the applicability of Government Code § 16645 through §16649 to this Agreement, excluding § 16645.2 and § 16645.7.

- a. Subrecipient will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.
- b. Subrecipient will not meet with employees or supervisors on SACOG or State property if the purpose of the meeting is to assist, promote, or deter union organizing, unless the property is equally available to the general public for meetings.

24. Prohibition of Expending State or Federal Funds for Lobbying:

- a. Subrecipient certifies, to the best of his or her knowledge or belief, that:
 - (1) No State or Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. This certification is a material representation of fact upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- c. Subrecipient also agrees by signing this Agreement that he or she will require that the language of this certification be included in all lower tier contracts and subcontracts.

25. Prevailing Wage and Labor Requirements: If Subrecipient awards any construction contracts utilizing Federal funds under this Agreement, Subrecipient agrees to comply with all pertinent statutes, rules and regulations promulgated by the Federal government including, but not limited to, (i) prevailing wage requirements of the Davis Bacon Act (40 U.S.C. § 3141 and if applicable 40 U.S.C. §276a, *et seq.*) and related regulations (29 CFR Part 5); (ii) anti-kick back and payroll records requirements of the Copeland "Anti-Kickback" Act (40 U.S.C. §276c and 18 U.S.C. §874) and related regulations (29 CFR Part 3); and (iii) workweek computation and overtime requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*) and related regulations (29 CFR Part 5).

26. Non-Liability of SACOG: SACOG will not be liable to Subrecipient or any third party for any claim for loss of profits or consequential damages. Further, SACOG will not be liable to Subrecipient or any third party for any loss, cost, claim or damage, either direct or consequential, allegedly arising from a delay in performance or failure to perform under this Agreement.

27. Debarment Responsibilities: Subrecipient agrees that it will comply with the provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or placement in ineligibility status.

28. Costs and Attorneys' Fees: If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

29. Governing Law and Choice of Forum: This Agreement will be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement will be brought in the Superior Court of Sacramento County.

30. Integration: This Agreement represents the entire understanding of SACOG and Subrecipient as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 12.

31. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

32. Headings: The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.

33. Authority: Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.

34. Ownership; Permission: Subrecipient represents and warrants that all materials used in the performance of the Project work, including, without limitation, all computer software materials and all written materials are either produced and owned by Subrecipient or that all required permissions and license agreements have been obtained and paid for by Subrecipient. Subrecipient will defend, indemnify and hold harmless SACOG and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.

35. Counterparts: This Agreement may be executed in multiple counterparts, each of which will constitute an original, and all of which taken together will constitute one and the same instrument.

36. Amendments Required by Federal or State Agencies: If Caltrans, or any other State agency having jurisdiction, requires a change to the terms of this Agreement, the parties will amend this Agreement as necessary, or will terminate it immediately.

37. Ambiguities: The parties have each carefully reviewed this Subrecipient Agreement and have agreed to each term and condition herein. No ambiguity will be construed against either party.

38. Press Releases: Each party will obtain other party's prior written approval of any press releases, or other public outreach materials, that include any reference to such other party or such other party's logo.

39. Clean Air Act: Subrecipient shall ensure that it: (A) will not use any violating facilities; (B) will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;" (C) will report violations of use of prohibited facilities to FTA; and (D) will comply with the inspection and other requirements of the Clean Air Act, as amended (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251- 1387). Subrecipient agrees to report each Clean Air requirement violation to SACOG and understands and agrees that SACOG will, in turn, report each Clean Air requirement violation as required to assure notification to FTA and the appropriate EPA Regional Office. Subrecipient also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

40. Disputes: Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be submitted in writing to a committee consisting of SACOG's Contracts Administrator and General Counsel. This Committee may consider the written information or additional verbal information submitted by Subrecipient at the request of the Committee. A determination shall be made by the Committee within ten (10) business days. In the event that Subrecipient disputes the Committee's determination, Subrecipient may request review by SACOG's Executive Director of unresolved claims or disputes, other than audit, not later than thirty (30) days after completion of all work under the Agreement. The Subrecipient's request for review must be submitted in writing. Neither the pendency of a dispute, nor its consideration by the Committee, will excuse Subrecipient from full and timely performance in accordance with this Agreement.

41. Rebates, Kickbacks, or Other Unlawful Consideration: Subrecipient warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any SACOG employee. For breach or violation of this warranty, SACOG shall have the right, in its discretion: to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

42. State Prevailing Wage Rates: If the Scope of Work is for a public works project pursuant to California Labor Code Section 1720, *et seq.*, including surveying work, then the following provisions apply:

- a. Subrecipient must comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

Contract #: CT240033
Funding Source: Transit and Intercity
Rail Capital Program (TIRCP/State)
Account Set: SAC219-PASS THROUGH-TIRCP

- b. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, must contain all of the provisions of this Section.

- c. When prevailing wages apply to the services described in the Scope of Work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.”

Contract #: CT240033
Funding Source: Transit and Intercity
Rail Capital Program (TIRCP/State)
Account Set: SAC219-PASS THROUGH-TIRCP

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT AS OF
THE DATE FIRST APPEARING ABOVE:

**SACRAMENTO AREA COUNCIL OF
GOVERNMENTS**

**EL DORADO COUNTY TRANSIT
DISTRICT**

JAMES CORLESS
Executive Director

BRIAN JAMES
Executive Director

APPROVED AS TO FORM:

SLOAN SAKAI YEUNG & WONG, LLP
Legal Counsel to SACOG

RECOMMENDED BY:

ATTEST:

CHRIS DOUGHERTY
Senior Analyst

JULIE PETERSEN
Finance Manager

EXHIBIT A

Scope of Work and Budget

Background

As part of a larger submittal of the Sacramento Valley Station Transit Center: Priority Projects TIRCP Application, SACOG has been awarded \$2.18 Million Dollars to allocate to Yolo County Transportation District, Yuba-Sutter Transit Authority, City of Roseville Transit, Sacramento Regional Transit, El Dorado Transit, Placer County Transit, and County of Sacramento's SCT Link ("Transit Operators") for the purchase and installation of contactless Europay, Mastercard, and Visa (EMV) readers. EMV readers will serve to enable contactless bank cards and mobile wallets as payment on public transportation in the region.

Approach

Awarded funds will be distributed by SACOG via Subrecipient Agreements with each of the Transit Operators for hardware and software purchases. Subrecipient Agreements will allow for the purchase and implementation of EMV hardware and payment processing software and necessary communications equipment where needed. Each Transit Operator will execute individual subcontracts with the selected vendor(s) for purchase of equipment and implementation. Additionally, SacRT plans to subcontract with an account-based ticketing system vendor to be used by the consortium of Transit Operators.

Allocations of funds for hardware to each Transit Operator are based on calculation of final cost estimates. The final cost estimates were developed in partnership with the Transit Operators and the hardware vendor in June 2024.

Final costs include a contingency budget of 10% of the total hardware costs. If there are any remaining funds, SACOG will work with the Transit Operators to amend those funds to the SacRT agreement for the purchase of the account-based ticketing system vendor. Otherwise, each Subrecipient Agreement will include a not-to-exceed amount based on what was requested at the California Transportation Commission.

Estimated Allocations

Total expenditures for the 7 transit operators shall not exceed \$2,180,000.

Scope of Work

Subrecipient will purchase and install contactless EMV readers and payment processing software coordinated with the California Integrated Travel Project (Cal-ITP) on bus vehicles to allow fares to be collected through contactless bank cards and mobile wallets. If there are not currently on-board bus communications or wi-fi hardware, this may include the purchase and installation of devices needed to fully support the EMV readers.

Budget

The amount to be paid to Subrecipient under this Agreement shall not exceed **One Hundred Twenty-Three Thousand Dollars (\$123,000)**, unless expressly authorized in writing by the SACOG Executive Director or designee. Subrecipient must submit final Project hardware costs to SACOG as soon as possible after execution of this Agreement, but no later than **November 30, 2024**.

Timeline

All funds must be expended no later than **December 6, 2026**.

Contract #: CT240033
Funding Source: Transit and Intercity
Rail Capital Program (TIRCP/State)
Account Set: SAC219-PASS THROUGH-TIRCP

EXHIBIT B

(INTENTIONALLY OMITTED)

EXHIBIT C SACOG REQUIRED SUPPORTING DOCUMENTATION FOR INVOICES

Sacramento Area Council of Governments Required Supporting Documentation for Contractor, Sub-Contractor, Sub-Recipient Invoices

Type of Expense	Required Supporting Documentation for <u>SACOG</u> Invoices/Expense Reimbursements	Required Supporting Documentation for <u>Sub-Recipient</u> Invoices	Required Supporting Documentation for <u>Contractor/Sub-Contractor</u> Invoices
Labor Costs	Approved timesheets	<input type="checkbox"/> Approved timesheets and/or itemized financial/payroll system report providing: + names + dates + hours worked toward specific tasks/ deliverables + hourly rate + benefits + overhead	<input type="checkbox"/> Approved timesheets and/or itemized financial/payroll system report providing: + names + dates + hours worked toward specific tasks/ deliverables + hourly rate + benefits + overhead
Travel Costs	<input type="checkbox"/> Travel request approval/details and appropriate documentation for type of travel expense below:	<input type="checkbox"/> Travel request approval/details and appropriate documentation for type of travel expense below:	<input type="checkbox"/> Travel request approval/details and appropriate documentation for type of travel expense below:
Mileage	<input type="checkbox"/> Date, miles driven, addresses traveled from and to, purpose of travel. <input type="checkbox"/> Map preferred.	<input type="checkbox"/> Date, miles driven, addresses traveled from and to, purpose of travel. <input type="checkbox"/> Map preferred.	<input type="checkbox"/> Date, miles driven, addresses traveled from and to, purpose of travel. <input type="checkbox"/> Map preferred.
Meals, Incidentals, Transportation & Lodging	<input type="checkbox"/> Itemized receipts for all meals/incidentals. Will only reimburse up to state per diem rates . <input type="checkbox"/> If any charges are for more than one person, names of all parties and purpose of charge must be provided.	<input type="checkbox"/> Itemized receipts for all meals/incidentals. Will only reimburse up to state per diem rates . <input type="checkbox"/> If any charges are for more than one person, names of all parties and purpose of charge must be provided.	<input type="checkbox"/> Itemized receipts for all meals/incidentals. Will only reimburse up to state per diem rates . <input type="checkbox"/> If any charges are for more than one person, names of all parties and purpose of charge must be provided.
Indirect/Overhead Charge	Rate matches current approved rate	<input type="checkbox"/> Approval of indirect rate from cognizant agency	<input type="checkbox"/> Approval of indirect/overhead rate from cognizant agency
Proof of Payment	Proof of Payment	<input type="checkbox"/> Copy of cancelled check showing proof of cleared payment	<input type="checkbox"/> Copy of cancelled check showing proof of cleared payment
Meetings Related Expenses	<input type="checkbox"/> Purpose of meeting, agenda, list of attendees. Typically not eligible for grant reimbursement.	<input type="checkbox"/> Purpose of meeting, agenda, list of attendees. Typically not eligible for grant reimbursement.	<input type="checkbox"/> Purpose of meeting, agenda, list of attendees. Typically not eligible for grant reimbursement.
Other Expenses	<input type="checkbox"/> Detailed receipts	<input type="checkbox"/> Detailed receipts	<input type="checkbox"/> Detailed receipts
In-Kind/Match	N/A - Accounting function	<input type="checkbox"/> Documentation supporting in-kind or other match. <input type="checkbox"/> If staff time is used for match, follow "labor costs" documentation requirements. <input type="checkbox"/> If other costs are used, follow the rules for other types of expenses and provide details on procurement process used. In order to be allowable for match, any costs incurred must have been procured following same rules SACOG is subject to based on type of grant funding. <input type="checkbox"/> If providing actual funds, identify what type of funds are being provided (local, state, federal, federal aid) and/or source of funds (granting agency.)	<input type="checkbox"/> Documentation supporting in-kind or other match. <input type="checkbox"/> If staff time is used for match, follow "labor costs" documentation requirements. <input type="checkbox"/> If other costs are used, follow the rules for other types of expenses. <input type="checkbox"/> If providing actual funds, identify what type of funds are being provided (local, state, federal, federal aid) and/or source of funds (granting agency.)

EXHIBIT D
FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, the El Dorado County Transit Authority will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care, pregnancy leave, or disability leave. ADMINISTRATION AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. 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. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY's contractors and all subcontractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for purposes of investigation to ascertain compliance with the Fair Employment section of this AGREEMENT.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment provision, STATE shall have the right to terminate this AGREEMENT either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any monies due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

EXHIBIT E
NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, a condition to receiving any Federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42, U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964" (collectively hereinafter referred to as the REGULATIONS), the Federally-aid Highway Act of 1973, and other pertinent directives, to and that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation, ADMINISTERING AGENCY HEREBY GIVES ASSURANCES THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this AGREEMENT. This Assurance is required by subsection 21.7(a)(1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to the Federal-Assisted Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsection 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the Federal-Assisted Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix 1 to Exhibit A of this Assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix 2 to Exhibit B of this Assurance shall be included a s covenant running with the land, in any deed affecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal finance assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix 3 to Exhibit C and Appendix 4 to Exhibit D of the Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix 3 to Exhibit C:

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix 4 to Exhibit D:

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this Assurance obligates ADMINISTERING AGENCY for the period during which federal financing assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of personal property or real property or interest therein, or structures, or improvements thereon, in which case the Assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. The ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he/she delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the AGREEMENT.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE-assisted contract or in the administration on its DBE Program or the requirement of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of STATE-assisted contracts. ADMINISTERING AGENCY's DBE Race-Neutral Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out is approved DBE Race-Neutral Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases refer the matter for enforcement under 18 U.S.C 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31 U.S.C. 3801 et seq.).

Contract #: CT240033
Funding Source: Transit and Intercity
Rail Capital Program (TIRCP/State)
Account Set: SAC219-PASS THROUGH-TIRCP

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX 1 TO EXHIBIT E

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agree as follows:

1. Compliance with Regulations: ADMINISTERING AGENCY shall comply with the REGULATIONS relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the REGULATIONS), which are incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. Solicitations for Sub-agreements, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements or materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this AGREEMENT and the REGULATION relative to nondiscrimination on the grounds of race, color, or national origin.
4. Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or Federal Highway Administration (FHWA) to in pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY as in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.
5. Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this AGREEMENT, STATE shall impose such AGREEMENT sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to ADMINISTERING AGENCY under the AGREEMENT within a reasonable period of time, not to exceed ninety (90) days; and/or
 - (b) cancellation, termination or suspension of the AGREEMENT, in whole or in part.
6. Incorporation of Provision: ADMINISTERING AGENCY shall include the provisions of paragraphs 1 through 6 in every sub-agreement, including procurements of materials and leases of equipment unless exempt by the REGULATIONS or directives issues pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions,

Contract #: CT240033
Funding Source: Transit and Intercity
Rail Capital Program (TIRCP/State)
Account Set: SAC219-PASS THROUGH-TIRCP

including sanctions for noncompliance provided; however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of the STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX 2 TO EXHIBIT E

The following clauses shall be included in any and all deeds affecting or recording the transfer of PROJECT real property; structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOT, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the Project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with, and in compliance with, Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remiss, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said and described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject; however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land to itself, its successors and assigns.

1. That no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereto conveyed(;) (and)¹

2. That ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

3. That in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed².

¹ Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

² Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX 3 TO EXHIBIT E

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

APPENDIX 4 TO EXHIBIT E

The following shall be included in all deeds, licenses, leases, permits, or similar agreements extended into by the ADMINISTARTING AGENCY.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself/herself, his/her personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

1. No person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;
2. That in construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination; and
3. That the (grantee, licensee, permittee, etc.), shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.), and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.), had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.