

TRANSFER AGREEMENT BETWEEN THE SOUTH TAHOE AREA TRANSIT AUTHORITY AND COUNTY OF EL DORADO REGARDING THE OPERATION AND FUNDING OF BLUEGO ONCALL DEMAND RESPONSIVE TRANSIT SERVICES

This Transfer Agreement ("Agreement") is entered into this 21 day of October, 2008, by and between the South Tahoe Area Transit Authority, a Nevada non-profit corporation ("STATA"), and the County of El Dorado, a political subdivision of the State of California ("County"), on the terms and provisions set forth below.

RECITALS

A. STATA was created by various public and private entities pursuant to a written agreement entitled *Participation Agreement to Implement a Coordinated Transit System at South Lake Tahoe* (the "Participation Agreement") dated as of May 1, 1998, as amended for the purposes of managing, operating and maintaining a public transit service that is coordinated on the South Shore of Lake Tahoe under the brand name ("BlueGO").

B. The County has operated a demand responsive transit system called BlueGO OnCall ("BlueGO OnCall") in the unincorporated area of the County shown on Exhibit 1 (marked "BlueGO Rider's Guide"), incorporated herein as though fully set forth, as a member of STATA since its inception in 1991.

C. STATA desires to combine BlueGO OnCall services provided by County with BlueGO OnCall services provided by the City of South Lake Tahoe to its incorporated area, such that said services will be provided by a single entity, STATA, thus benefiting County residents within the BlueGO service area by encouraging the use of public transportation, reducing traffic congestion and pollution, and eliminating duplicative services provided by both member entities.

E. To ensure continued BlueGO OnCall service to the unincorporated area served by the County, County desires to transfer the administration and operation of its transit program to STATA, and to designate certain County Transportation Development Act funds from County's apportionment area and FTA Section 5311 funds allocated to County for that purpose.

F. The implementation of this Agreement is supported by the Participation Agreement, the requirements of the Transportation Development Act (TDA) and the Tahoe Regional Planning Agency's Regional Plan and Regional Transportation Plan.

G. The parties intend that the effective date of the transfer of services to STATA under this Agreement shall be November 1, 2008 ("Effective Date"). STATA warrants and represents that on the Effective Date of the transfer under this Agreement, STATA will have the necessary arrangements and agreements in place to immediately provide the services under this Agreement without interruption.

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NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, the parties agree as follows:

AGREEMENT

1. Incorporation of Recitals

The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.

2. Continued Provision of Service to County

On the Effective Date (November 1, 2008), STATA shall provide BlueGO OnCall demand responsive service on behalf of County under the terms and conditions in existence on the date of execution of this Agreement, as set out in the existent version of the "BlueGO Rider's Guide," attached hereto as Exhibit 1. STATA shall not reduce the levels of BlueGO OnCall provided in the County as established on July 1, 2008 and shown in Exhibit 1 unless approval is granted by the El Dorado County Board of Supervisors. STATA shall be obligated to operate BlueGO OnCall primarily with available State and Federal funding allocated as set forth in Section 4 herein, together with fares collected. Notwithstanding any provision herein to the contrary, County shall not be obligated to fund the BlueGO OnCall services provided by STATA hereunder from any other funds or revenues, including but not limited to, the County General Fund.

(a) Routes and Service Boundaries

BlueGO OnCall shall continue to operate within the City limits of the City of South Lake Tahoe and the surrounding unincorporated County areas within the BlueGO service area as shown in Exhibit 2, marked "BlueGO Existing Bus Routes/Service Areas", incorporated herein as though fully set forth. Service will operate with a minimum of two vehicles 24 hours per day, seven days a week.

(b) Hours of Operation

BlueGO OnCall shall continue to operate seven days a week, 24 hours per day. Service for Special Needs passengers, as certified by the El Dorado County Department of Human Services, will continue to operate between 8:00 am and 7:00 pm, Monday through Friday and 8:00 am to 5:00 pm on Saturday and Sunday as set out in Exhibit 1.

(c) Fares

The fares currently provided for in Exhibit 1 will be established by action of STATA Board of Directors. STATA shall keep all fares collected on BlueGO OnCall and shall provide County a list of fares charged on BlueGO OnCall. County shall sell BlueGO OnCall 10-ride passes at its County Center through the Department of Human Services as a convenience to its residents. County shall have the ability to provide input related to the modification of the fare structure.

(d) Policies

The existing policies of the BlueGO OnCall service shall remain in full force and effect, including service being accessible to persons with disabilities as required by law.

(e) Special Needs & Paratransit Camera System

STATA shall provide at no cost to County for the duration of this Agreement, a camera system to be used by the El Dorado County Department of Human Services to develop an identification system for special needs clients certified by the County and for paratransit clients certified by STATA. The camera system shall be installed by County to the County's specifications on County owned equipment at County's own cost.

3. STATA Oversight and Discretion; Short-Range Transit Plan

Except as set forth in Section 2 hereinabove, STATA shall have sole discretion in and sole responsibility for day-to-day management of BlueGO OnCall, including but not limited to managing and altering service plans, routes, policies, schedules, fares, personnel matters, maintenance, repair and insuring all vehicles, and all other aspects of the BlueGO OnCall. Such discretion and authority shall include determining which vehicles are utilized. STATA shall notify County of any changes made to the terms and conditions of the BlueGO OnCall, including any changes to the BlueGO Rider's Guide.

STATA shall also be responsible for complying with all federal and state requirements, including reporting requirements, of the National Transit Database ("NTD"), the California Department of Transportation ("Caltrans"), the Federal Transit Administration ("FTA"), and the Tahoe Regional Planning Agency ("TRPA").

STATA shall provide a monthly report on the performance of BlueGO OnCall tracking ridership from the point of origin, revenue service hours, revenue service miles and any other information reasonably required by the County and shall submit the reports to the County no later than the 15th day of the month following service.

In accordance with the planning regulations established by TRPA and FTA, STATA in conjunction with TRPA shall prepare a short range transit plan ("Short Range Transit Plan"). STATA shall work cooperatively with County to include County's comments in the Short Range Transit Plan as it relates to service within County. STATA shall provide County with the final Short Range Transit Plan documents no later than 30 days from adoption by STATA.

4. Funding

STATA will claim available Transportation Development Act ("TDA") funds from County's apportionment area through the annual TDA Claim process, administered by TRPA. Each April, STATA will meet with County to establish the BlueGO OnCall operating budget for the upcoming fiscal year beginning July 1.

County agrees that STATA is eligible to claim TDA funds from County's TDA apportionment area and FTA Section 5311 funds allocated to the County for the primary purpose of operating BlueGO OnCall in the unincorporated County areas and within the City limits of South Lake Tahoe within the BlueGO service area. In addition STATA is eligible to claim County's residual 07/08 TDA funds of approximately \$90,000 over the first three years of this Agreement in equal

annual installments to supplement annual allocations. Any remaining County TDA funds claimed by STATA that are not applied towards BlueGO OnCall will be used to support transit services operated by STATA that benefits and serves County residents. The County retains the right to receive TDA Article 8 funds per Public Utilities Code (PUC), Transportation Development Act, Sections 99401 and 99401.5.

STATA shall provide an annual not to exceed amount of \$10,000.00 to County upon receipt of a detailed invoice to cover costs associated with the processing of special needs passengers using BlueGO OnCall, to be received by County no later than June 30 of that fiscal year. Any increase above this amount shall be jointly negotiated between STATA and County.

STATA shall provide an annual not to exceed amount of \$5,000.00 to County upon receipt of a detailed invoice to cover costs associated with overhead related to transit planning activities including, but not limited to attending STATA and Tahoe Transportation District Board of Directors Meeting and other transit duties, to be received no later than June 30 of that fiscal year.

5. Funding for New Vehicles

STATA desires to acquire two new 2008 Ford Starcraft Allstar transit vehicles that will be used primarily for the BlueGO OnCall system to be used primarily in the service area serving unincorporated areas of South Lake Tahoe in El Dorado County. STATA intends to utilize grant funding awarded to Tahoe Transportation District under the Fiscal Year 2007 Federal Transit Administration Bus Replacement Program in the sum of \$23,688.00 to acquire the transit vehicles. As part of the grant requirements, a local match is required. County has agreed to commit its allocated Proposition 1B funds in an amount not-to-exceed \$126,465.00 for the sole purpose of acquiring the new transit vehicles described hereinabove so long as said vehicles are utilized solely for the BlueGO OnCall program and within the unincorporated area of El Dorado County. Title to the new transit vehicles shall be taken in the name of STATA. STATA will invoice County the matching sum amount upon acceptance of the vehicles by STATA and the Tahoe Transportation District. County will remit the invoiced amount, up to but not to exceed the sum of \$126,465.00 within 30 days of receipt of the STATA invoice.

6. Transportation Development Act and Federal Transit Administration Requirements

On the Effective Date, STATA assumes all liability and sole responsibility associated with being the transit operator for the BlueGO OnCall services, formerly provided by the County, including, but not limited to: farebox recovery ratio requirements, TDA financial audits, TDA performance audits, State Controller's Reports, FTA certifications and any other regulatory requirements necessary to be a transit operator. STATA shall be responsible for ensuring that these vehicles are insured, registered, repaired and maintained and that any necessary requirements associated with reporting information about these vehicles are performed in a timely manner. STATA further assumes sole responsibility for any disallowed costs that may result from an audit. STATA shall be subject to annual California Highway Patrol Certification requirements defined in Section 99251 of the PUC. Evidence of compliance with Section 99251 shall be provided to County by STATA within 30 days of completion of the inspection. Should this Agreement be terminated pursuant to Section 15, STATA shall relinquish these vehicles in good working order consistent with age and mileage back to the County for use in its BlueGO OnCall service.

7. Audits and Compliance with Laws

STATA shall comply with all applicable federal, state, and local laws and regulations, including those associated with the TDA and FTA as they pertain to the provision of public transit service. STATA shall further comply with all applicable federal funding agency requirements, including all of the provisions of Exhibit 3 hereto, marked "Federal Funding Agency Requirements", incorporated herein and made by reference a part hereof as though fully set forth in its entirety.

County, or its agents, shall have the right to monitor and audit all work performed under this Agreement. County will notify STATA in writing within thirty (30) days of completion of any audit and of any potential exception(s) discovered during such examination.

8. Assignment of Assets

County shall transfer its transit vehicles described hereinbelow used on BlueGO OnCall to STATA. STATA shall be responsible for ensuring that these vehicles are insured, registered and repaired and maintained and that any necessary requirements associated with reporting information about these vehicles are performed in a timely manner. County owned vehicles transferred to STATA shall primarily be used on BlueGO OnCall services operated by STATA serving the unincorporated county areas. Should this Agreement be terminated pursuant to Section 15, STATA shall relinquish the vehicles as defined below or their comparable replacement in good working order consistent with age and mileage back to the County for use in its BlueGO OnCall service.

The existing transit vehicles to be transferred, "as-is, where-is," to STATA are the following:

Vehicle Name	VIN
2005, Ford El Dorado National Aerotech w/bike rack	1FDXE45M14HB10674
2004, Ford El Dorado National Aerotech with bike rack and mobile radio	1FDXE45M04HB10679

9. Term

This Agreement shall commence on the Effective Date (November 1, 2008), and shall continue in full force and effect as long as the BlueGO OnCall service is provided by STATA on behalf of County or until the Agreement is otherwise terminated as provided herein.

10. Contract Administration

County designates Robert S. Slater, Deputy Director, Engineering, Tahoe Engineering & West Slope Construction, Department of Transportation or successor to administer this Agreement. STATA designates John Andoh, BlueGO Transit Administrator to administer this Agreement.

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11. Marketing

General, ongoing marketing activities regarding the provision of BlueGO OnCall pursuant to this Agreement, including promotional materials and printed schedules, will be developed jointly by STATA and County. County shall display marketing materials about BlueGO OnCall within its South Lake Tahoe facilities. County shall install bus stop signs within its jurisdictional boundaries as may be recommended by STATA and which are subsequently approved by the County for any fixed or flex route that STATA might operate in the County. STATA will ensure that BlueGO OnCall is marketed to County residents and visitors efficiently.

12. Notice

Any notice or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective, as follows:

- (a) By personal delivery, effective upon receipt by the addressee;
- (b) By facsimile, effective upon receipt by the addressee, so long as a copy is provided by certified U.S. mail, return receipt requested, postmarked the same day as the facsimile; or
- (c) By certified mail, return receipt requested, upon receipt or refusal.

If to County: County of El Dorado
 Attn: Bob Slater, Deputy Director, Engineering
 924B Emerald Bay Road
 South Lake Tahoe, CA 96150
 Telephone: (530) 573-7900
 FAX: (530) 541-7049
 Email: bslater@co.el-dorado.ca.us

With a copy to: County of El Dorado County
 Attn: Alfred Knotts, Principal Planner
 924B Emerald Bay Road
 South Lake Tahoe, CA 96150
 Telephone: (530) 573-7921
 FAX: (530) 541-7049
 Email: aknotts@co.el-dorado.ca.us

If to STATA: South Tahoe Area Transit Authority
 Attn: John Andoh, BlueGO Transit Administrator
 128 Market Street
 P. O. Box 5310
 Stateline, NV 89449
 Telephone: (775) 589-5284
 FAX: (775) 558-4527
 Email: jandoh@trpa.org

Either party may change its address or contact person by giving written notice to the other party.

13. Amendment

This Agreement may be amended only by the written consent of STATA and the County. Said amendment(s) shall become effective only when in writing and fully executed by duly authorized representatives of the parties herein.

14. Indemnification

To the fullest extent allowed by law, STATA shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or in any way relate to STATA'S performance under this Agreement, or STATA's, its officers, agents, employees, volunteers, representatives, contractors and subcontractors, funding, operation, maintenance and/or repair of BlueGO OnCall services/vehicles. This duty of STATA includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778 and shall survive the expiration or termination of this Agreement.

County shall defend, indemnify, and hold the STATA harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description including attorneys fees and costs incurred, brought for, or on account of injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or arise from the County's actions in transferring the designated funds under this Agreement. This duty of the County to indemnify and save STATA harmless includes the duties to defend set forth in California Civil Code section 2778, and shall survive the expiration or termination of this Agreement.

Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

15. Termination

This Agreement may be terminated by either party for any reason upon 180 days written notice to the other party. Upon termination, STATA shall return all County assets including vehicles that were transferred for use on BlueGO OnCall pursuant to Section 8 as well as new vehicles acquired pursuant to the provisions of Section 5 herein and relinquish any necessary files and unexpended County funds claimed for BlueGO OnCall. All rights related to STATA claiming TDA, FTA and other funds allocated to the County shall be terminated and the County will resume its role and obligation as a transit operator. County shall notify TRPA upon notice to terminate the Agreement.

16. Applicable Law; Venue

This Agreement shall be construed in accordance with the law of the State of California, and venue for any action under this Agreement shall be in El Dorado County, South Lake Tahoe Division, California.

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17. Severability

If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

18. Independent Entity/Liability

STATA is and shall be at all times, deemed independent and shall be wholly responsible for its acts and the acts of their employees, associates and contractors in connection with this Agreement.

19. Insurance

STATA shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that STATA maintains insurance that meets the following requirements:

- (a) Full Workers' Compensation and Employers' Liability Insurance covering all employees of STATA as required by law in the State of California.
- (b) Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- (c) Automobile Liability Insurance of not less than \$5,000,000 is required for this Agreement.
- (d) In the event STATA is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- (e) STATA shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- (f) The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- (g) STATA agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, STATA shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event STATA fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and STATA agrees that no work or services shall be performed prior to the giving of such approval.
- (h) The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.
 - (i) STATA's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of STATA's insurance and shall not contribute with it.
 - (j) Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or STATA shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
 - (k) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.
 - (l) The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
 - (m) STATA's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
 - (n) In the event STATA cannot provide an occurrence policy, STATA shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
 - (o) The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

20. Assignment

Neither this Agreement, nor any part thereof may be assigned by STATA without the express written approval of County.

21. Entire Agreement

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties as it relates to the transfer of BlueGO OnCall, and they incorporate or supersede all prior written or oral agreements or understandings.


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21. Authorized Signatures

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

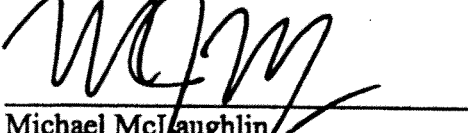
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written above. This Agreement shall become effective on the Effective Date (November 1, 2008).

SOUTH TAHOE AREA TRANSIT AUTHORITY

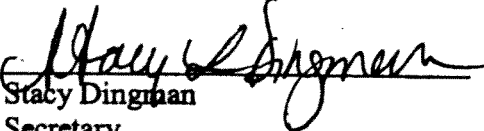

Nancy McDermid
President

Date: 10/16/08


APPROVED AS TO FORM:


Michael McLaughlin
STATA Legal Counsel

ATTEST:


Stacy Dingman
Secretary

COUNTY OF EL DORADO


RON BRIGGS FIRST VICE-CHAIRMAN
Board of Supervisors
"County"

Date: 10/21/08

ATTEST:

Suzanne Allen de Sanchez
Acting Clerk of the Board of Supervisors


Deputy Clerk

EXHIBIT 1



"The Tahoe BlueGO Partnership provides safe, friendly, convenient, and innovative transit solutions, enhancing the quality of life for our resort community."

(530) 541-7149

TDD/TTY:711

www.bluego.org



A SERVICE OF THE
SOUTH LAKE TAHOE AREA TRANSIT AUTHORITY
AND ITS PARTNER AGENCIES

- EFFECTIVE -
May 2008

CURB TO CURB
DEMAND RESPONSE SERVICE

"Ring Us and Ride!"

(530) 541-7149

TDD/TTY:711

SERVICE IN
SOUTH LAKE TAHOE CITY LIMITS
FOR ADA CERTIFIED PASSENGERS ONLY
6:00 AM - 8:00 PM DAILY

\$3.50 ONE WAY

\$25.00 10 RIDE PASS

Call at least 24 hours in advance for reservation.

SERVICE IN
EL DORADO COUNTY AREAS
AND WITHIN THE SOUTH LAKE TAHOE CITY LIMITS
7:00 AM - 7:00 PM

\$3.00 ONE WAY (City)

\$25.00 10 RIDE PASS (City)

\$5.00 ONE WAY (County)

\$45.00 10 RIDE PASS (County)

Call at least 60 minutes in advance for a reservation.

SERVICE TO SPECIAL NEEDS PASSENGERS THAT ARE
SENIORS AGE 60 YEARS AND OLDER AND LOW INCOME,
PERSONS WITH DISABILITIES OR ADA CERTIFIED WITH A
VALID EL DORADO COUNTY SPECIAL NEEDS PASS

\$1.00 ONE WAY

\$10.00 10 RIDE PASS

8:00 AM - 7:00 PM MONDAY - FRIDAY

8:00 AM - 5:00 PM SATURDAY AND SUNDAY

Call at least 24 hours in advance between 9:00 am and 5:00 pm for reservation.

FOR SPECIAL NEEDS PASS CERTIFICATION CALL (530) 573-8400.

EXHIBIT 2

BLUEGO EXISTING BUS ROUTES/SERVICE AREAS



EXHIBIT 3

Exhibit 3

Federal Funding Agency Requirements

SECTION I

Compliance with Federal Requirements: County is relying on Federal Transit Administration (hereinafter referred to as "FTA") assistance or grants for the funding for the services to be provided by the STATA herein. As a requirement in County's application for FTA funds, County is required to comply with 49 U.S.C. 5332 and 49 CFR part 21 and to extend the requirements of these sections to all third party contracts. STATA shall comply with all applicable provisions of 49 U.S.C. 5332 and 49 CFR part 21, related executive orders or regulations, and the provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," as amended or revised by FTA, applicable federal regulations or requirements and FTA's "Best Practices Procurement Manual, Appendix A.1, Federally Required and Other Model Contract Clauses." References to "Purchaser" in those documents and elsewhere in this Agreement refer to County. STATA's failure to comply with all mandates shall constitute a material breach of this Agreement.

SECTION II

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

SECTION III

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

SECTION IV

Energy Conservation: STATA agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

SECTION V

Clean Water: The following provisions shall apply to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement:

- A. STATA 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. STATA agrees to report each violation to County and understands and agrees that County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. STATA also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

SECTION VI

Clean Air: The following provisions shall apply to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement:

- A. STATA 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. STATA agrees to report each violation to County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. STATA also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

SECTION VII

Certification Regarding Lobbying: In compliance with the provisions of the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 (to be codified at 2 U.S.C. § 1601, et seq.), STATA certifies, to the best of its knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with

this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

Signature of STATA's Authorized Official

Name and Title of STATA's Authorized Official

Date

SECTION VIII

Access to Records: The following access to records requirements apply to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement:

- A. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 CFR 18.36(i), STATA agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States, the State of California or any of their authorized representatives access to any books, documents, papers and records of STATA which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. STATA also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to STATA's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- B. STATA agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. STATA agrees to maintain all books, records, documents, papers, accounting records, reports and other evidence pertaining to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance under this Agreement, in which case STATA agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, the State of California or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
1. STATA and any subcontractors under this Agreement shall make such materials available at their respective offices at all reasonable times during the performance period of this Agreement and for three (3) years from the date of final payment, if applicable, under this Agreement and all subrecipient contracts.
 2. County, the State of California, the State Auditor General and any duly authorized representative of the federal government shall have access to any books, records and documents of STATA that are pertinent to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement for audits, examinations, excerpts and transactions and copies thereof shall be furnished if requested.
 3. STATA's accounting system and billing procedures are subject to audit and accounting records pertaining to work performed and billed to County, if applicable, are subject to audit for a period of three (3) years after date of final payment, if any, under this Agreement. If STATA fails to retain records such as employee time cards, payroll records, travel records, equipment time and cost records, billings from subcontractors,

and material and equipment suppliers' records that are sufficient to permit audit verification of the validity of the cost, if any, charged to County, STATA will be liable for reimbursement to County of any unsubstantiated billings.

4. STATA shall furnish County with any additional reports or data that may be required by the State of California or FTA. Such reports and/or data will be submitted on forms provided by County.

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

SECTION IX

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

SECTION X

No Government Obligation to Third Parties: The following provisions shall apply to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement:

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

SECTION XI

Program Fraud and False or Fraudulent Statements or Related Acts: The following provisions shall apply to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement:

- A. STATA 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 CFR Part 31, apply to its actions pertaining to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement. Upon execution of this Agreement, STATA certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it

may make, or causes to be made, pertaining to this Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, STATA 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 STATA to the extent the Federal Government deems appropriate.

- B. STATA also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on STATA, to the extent the Federal Government deems appropriate.
- C. STATA 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.

SECTION XII

Debarment and Suspension: STATA's administration and operation of the BlueGO OnCall transit program under this Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, STATA is required to verify that none of STATA, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

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

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

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

STATA agrees to comply with the requirements of Executive Order Nos. 12549 and

12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note, U.S. DOT Regulations in Debarment and Suspension, and 49 CFR Part 29.

Unless otherwise permitted by FTA, STATA agrees to refrain from awarding any third party contract of any amount to or entering into any sub-agreement of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement or Non-procurement Program," implementing Executive Order No. 12549 and 12689, Debarment and Suspension" and 49 CFR Part 29. The list also included the names of parties debarred, suspended or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.

Before entering into any sub-agreements with any subrecipient, STATA agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that subrecipient and its "principals," as defined at 49 CFR Part 29.

Before entering into any third party contract exceeding \$100,000, STATA agrees to obtain a debarment and suspension certification from each third party contractor containing information about the debarment and suspension status of that third party contractor and its "principals," as defined at 49 CFR 29.105(p). STATA also agrees to require each third party contractor to refrain from awarding any third party subcontract of any amount (at any tier) to a debarred or suspended subcontractor and to obtain a similar certification from any third party subcontractor (at any tier) seeking a contract exceeding \$100,000.

SECTION XIII

Contracts Involving Federal Privacy Act Requirements: The following requirements apply to STATA and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. STATA agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, STATA agrees to obtain the express consent of the Federal Government before STATA or its employees operate a system of records on behalf of the Federal Government. STATA understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
- B. STATA also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

SECTION XIV

Civil Rights: The following requirements apply to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement:

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, STATA agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, STATA agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to STATA's administration and operation of the BlueGO OnCall transit program under this Agreement:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, STATA 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 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Agreement. STATA agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, STATA agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, STATA agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, STATA agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, STATA agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, STATA agrees to comply with any implementing requirements FTA may issue.

- C. STATA also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

SECTION XV

Federal Nondiscrimination Provisions: In accordance with Title VI (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Title 49 CFR Part 21 – Effectuation of the 1964 Civil Rights Act), during the STATA's administration and operation of the BlueGO OnCall transit program under this Agreement, STATA, for itself, its assignees and successors in interest (hereinafter collectively referred to as "STATA") agrees as follows:

- A. **Compliance with Regulations:** STATA shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal regulations Part 21 – Effectuation of the 1964 Civil Rights Act). Title VI provides that the recipients of Federal-assistance will implement and maintain a policy of nondiscrimination in which no person in the State of California shall, on the basis of race, color, national origin, religion, sex, age, or disability, be excluded from participation in, denied the benefits of or be subjected to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- B. **Nondiscrimination:** STATA, with regard to its administration and operation of the BlueGO OnCall transit program during the term of this Agreement shall act in accordance with Title VI. Specifically, STATA shall not discriminate on the basis of race, color, national origin, religion, sex, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. STATA shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's regulations, including employment practices when the contract covers a program whose goal is employment.
- C. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation by STATA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by STATA of STATA's obligations under this Agreement and the

Regulations relative to nondiscrimination on the grounds of race, color or national origin.

- D. **Information and Reports:** STATA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by County, the State of California or the FTA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, STATA shall so certify to County, the State or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of STATA's noncompliance with the nondiscrimination provisions of this Agreement, County shall impose such contract sanctions as it, the State or the FTA may determine to be appropriate, including, but not limited to:
1. Withholding of payments, if any, due to STATA under this Agreement until STATA complies, and/or
 2. Cancellation, termination or suspension of this Agreement, in whole or in part.
- F. **Incorporation of Provisions:** STATA shall include the provisions of these paragraphs (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. STATA will take such action with respect to any subcontractor or procurement as County, the State or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, STATA may request County or the State to enter into such litigation to protect the interest of County or the State, and in addition, STATA may request the United States to enter into such litigation to protect the interests of the United States.

SECTION XVI

Transit Employee Protective Provisions: STATA agrees to comply with applicable transit employee protective requirements as follows:

- A. **General Transit Employee Protective Requirements -** To the extent that FTA determines that transit operations are involved, STATA agrees to carry out the transit operations work under this Agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the

employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work under this Agreement. STATA agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. An alternate provision is set forth in subsection B of this clause.

- B. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, STATA agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto. STATA understands and accepts the terms and conditions of the "Special Section 13(c) Warranty for Application to the Small Urban and Rural Program," as executed by the Secretary of Labor and the Secretary of Transportation on May 31, 1979, and those terms and conditions are incorporated by reference into this Agreement.

STATA also agrees to include the applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

SECTION XVII

Drug and Alcohol Testing: STATA agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, any State of California Oversight Agency, or the County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. STATA agrees further to certify annually its compliance with Parts 653 and 654 before January 15th of each year and to submit the Management Information System (MIS) reports before January 15th of each year to the County. To certify compliance, STATA shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. STATA further agrees to submit to the County upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program.

By signing this Agreement, STATA certifies that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with California Government Code Section 8355, et seq. STATA is required to include the language of this certification in award documents for all sub-awards at all

tiers (including subcontracts, contracts under grants, and cooperative agreements) and all subrecipients shall certify and disclose accordingly. To the extent that STATA, any third party contractor at any tier, any subrecipient at any tier, or their employees perform a safety sensitive function under STATA's administration and operation of the BlueGO OnCall transit program under this Agreement, STATA agrees to comply with, and assure the compliance of each affected third party contractor at any tier, each affected subrecipient at any tier, and their employees with 49 U.S.C. Section 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

SECTION XVIII

Interest in this Agreement: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Neither STATA nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with this Agreement or any property included or planned to be included in this Agreement, in which any member, officer, or employee of STATA or of County during the Project term or for one year thereafter has any direct or indirect interest. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the effective date of this Agreement, any such interest, and if such interest is immediately disclosed to STATA and such disclosure is entered upon the minutes of STATA's written report to County of such interest, STATA, with prior written approval of County, may waive the prohibition contained in this Section, provided that any such present member, officer or employee shall not participate in any action by STATA or County relating to such contract, subcontract or arrangement.

STATA shall insert in all contracts entered into in connection with this Agreement or in all contracts with any property included or planned to be included in this Project, and shall require its subcontractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of STATA or of County during the Project term or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this Section shall not be applicable to any agreement between STATA and its fiscal depositories or to any agreement for utility services, the rates for which are fixed or controlled by a government agency.

SECTION XIX

State and Local Law Disclaimer: Some of the preceding provisions relating to STATA's obligation to include applicable clauses in sub-agreements and contracts may not be governed by Federal law, but may be significantly affected by State law. The language of those provisions may need to be modified depending on State law, and before the provisions are used in STATA's documents, STATA should consult with its own attorney.

SECTION XX

Breaches and Dispute Resolution: Notwithstanding any other provision of this Agreement to the contrary, the following provisions shall apply:

- A. **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of County's Director of Transportation. This decision shall be final and conclusive unless within seven (7) days from the date of receipt of its copy, STATA mails or otherwise furnishes a written appeal to the Director of Transportation. In connection with any such appeal, STATA shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transportation shall be binding upon STATA and STATA shall abide by the decision.
- B. **Performance During Dispute** - Unless otherwise directed by County, STATA shall continue performance under this Agreement while matters in dispute are being resolved.
- C. **Claims for Damages** - Should either party to the Agreement 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 it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- D. **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between County and STATA 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 County of El Dorado, State of California.
- E. **Rights and Remedies** - The duties and obligations imposed by the Agreement 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 County or STATA shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

SECTION XXI

Disadvantaged Business Enterprises:

- A. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 10%. A separate contract goal has not been established for this procurement.

- B. STATA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. STATA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by STATA to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate. Each subcontract STATA signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- C. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- D. STATA is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after STATA's receipt of payment, if applicable, for that work from County. In addition, STATA may not hold retainage from its subcontractors.
- E. STATA must promptly notify County whenever a DBE subcontractor performing work related to this Agreement 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. STATA may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of County.
- F. STATA shall cooperate with County with regard to maximum utilization of disadvantaged business enterprises, and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum opportunity to compete for sub contractual work under this Agreement.

SECTION XXII

Section 504 and American with Disabilities Act Program Requirements: STATA shall comply with 49 CFR Parts 27, 37 and 38, implementing the Americans with Disabilities Act and with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.

SECTION XXIII

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

SECTION XXIV

Incorporation of FTA Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by FTA and the United States Department of

Transportation (USDOT), whether or not expressly set forth in the preceding provisions. All contractual provisions required by FTA or USDOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. STATA shall not perform any act, fail to perform any act, or refuse to comply with any County or State of California requests which would cause County or the State to be in violation of FTA terms and conditions.