



2035 Tulare Street, Suite 201  
Fresno, CA 93721  
Phone: (559) 233-6789  
Fax: (559) 233-9645  
[www.ruraltransit.org](http://www.ruraltransit.org)

FRESNO COUNTY RURAL TRANSIT AGENCY (FCRTA)  
MEETING AGENDA

Date: Thursday, April 26, 2018  
TIME: 5:30 P.M, AFTER the Fresno Council of Governments (FCOG) Meeting  
PLACE: FCOG/FCRTA Offices  
Sequoia Conference Room  
2035 Tulare Street, Suite 201  
Fresno, CA 93726  
(Corner of Tulare and Van Ness Ave. – above Club One  
Park in Underground Garage – Entrance off Tulare & Van Ness Ave.  
Exit Elevator on Tulare St., Turn Left, Enter Lobby Door,  
Up Elevator to Second Floor, Left to Sequoia Conference Room)

**Americans with Disabilities Act (ADA) Accommodation**

The Fresno COG/FCRTA offices and restrooms are ADA accessible. Individuals with disabilities may call (559) 233-4148 / (559) 233-6789 at least 3 days in advance, to request auxiliary aids and/or translation services necessary to participate in the public meeting/public hearing. If Fresno COG/FCRTA is unable to accommodate an auxiliary aid or translation request for a public hearing after receiving proper notice, the hearing will be continued on a specified date when accommodations are available.

**AB 23 Requirement:** In accordance with the Brown Act and AB23 the amount of stipend paid to members of the Board of Directors for attending this meeting of the Fresno County Rural Transit Agency , is \$50.00.

**1. ROLL CALL**

Public Presentation – This portion of the meeting is reserved for persons wishing to address the FCRTA Board on items within its jurisdiction but not on this Agenda.

NOTE: The public may also comment on any Agenda item, as they are presented, prior to action by the FCRTA Board.

**2. CONSENT ITEMS**

A. **Approve Attached Executive Minutes of March 29, 2018 (ATTACHMENT).**

**B. 2018 ANNUAL CHP-MOTOR CARRIER DIVISION TERMINAL, VEHICLE AND DRIVER INSPECTION REPORT (INFORMATION).**

**Summary:** On 4/05/18 the CHP completed the FCRTA Annual Inspection for the Terminal Maintenance, Vehicles and Driver's Records. This included Drug and Alcohol testing requirements under the Federal Transit Administration and Caltrans. The satisfactory ratings are to meet Local, State and Federal requirements to continue operations and remain eligible for funding allocations in FY 2018-19 as a Public Transit Agency. Attached are the Transit Operator Compliance Certificate, Controlled Substance and Alcohol Testing Program and Motor Carrier Certification for your information **(ATTACHMENT)**.

**Action:** Information only. Direction may be provided at the discretion of the Board.

**C. WEST PARK TRANSIT TERMINATION NOTICE (INFORMATION).**

**Summary:** The Board approved last month (March) the issuance of a thirty (30) day notification to the West Park residents informing the community of the May 11, 2018 termination of the route. This is due to low ridership and the farebox during the six (6) month demonstration period. The West Park Transit termination notice was issued on April 10, 2018 and the West Park route will conclude on May 11, 2018. Attached is the termination notice for your information. **(ATTACHMENT)**.

**Action:** Information only. Direction may be provided at the discretion of the Board.

**D. FCRTA DRUG AND ALCOHOL POLICY ADDENDUM (APPROVE).**

**Summary:** On March 6, 2018 the Division of Rail and Mass Transportation (DRMT), Office of Project Management sent out a letter to encourage updates to all 5311 sub recipient agency Drug and Alcohol Policies. This update is required by the Federal Transit Administration (FTA) so that drug testing commences nationwide for opioids, specifically four semi-synthetic opioids - hydrocodone, oxycodone, hydromorphone, and oxymorphone. An Addendum has been provided that will be added to FCRTA's current, approved Drug and Alcohol Policy. The Addendum language has been approved by an FTA certified subcontractor hired by the California Association for Coordinated Transportation (CaACT) under the direction of the DRMT Federal Transit Grants Office, and the California Rural Transit Assistance Program (RTAP). This is a federal and state requirement since FCRTA is a recipient of Federal and State DOT Funding as a public transit operator. Attached is the Drug and Alcohol Policy for your review **(ATTACHMENT)**.

**Action:** Staff recommends Board Approval of the updated Drug and Alcohol Policy.

**3. ACTION ITEMS**

**A. PROTERRA AGREEMENT (APPROVE).**

**Summary:** The Board approved (in September) that FCRTA obtain one (1) additional Proterra bus through a previous grant from CARB thru SJVAPCD. This bus has been added to the previous award to make this award allocation a total of five (5) forty (40) foot Proterra Electric Buses. The Proterra buses are in the early stages of production and procurement processes are being established. The agreement with Proterra has been attached for your review **(ATTACHMENT)**.

**Action:** Staff recommends Board approval of Proterra Agreement to process the delivery of the five (5) electric buses.



**B. 2018-19 FCRTA DRAFT BUDGET (APPROVE).**

**Summary:** The budget has been prepared to be reflective of the Fresno Council of Government's (FCOG) Regional Transportation Plan (RTP) and the Short Range Transit Plan (SRTP) for the Rural Fresno County Area 2018-2022. The document recommends the implementation of programmed service improvements and the continuation of existing services/ This year's draft Budget has been developed for the continued review, comment and action during a forty-five (45) day review period that will culminate on June 28, 2018, with the scheduled FCRTA Board meeting. The numbers in the draft Budget are subject to refinement following: the service contract negotiations, an opportunity for public presentations, and a public presentation before the Board of Directors. The Budget is quite dynamic and may require periodic amendments during the course of the 2018-2019 fiscal year **(HANDOUT)**.

**Action:** Staff recommends Board initiate the 45 day review process for the annual 2018-19 FCRTA Budget with a proposed adoption date of June 28, 2018 at the FCRTA Board of Directors meeting following the public hearing.

**C. FCRTA MAINTENANCE FACILITY (DESIGNATE THE CITY OF SELMA AS PREFERRED LOCATION)**

**Summary:** FCRTA has been in contact with three (3) prospective cities, Fowler, Selma, and Kingsburg, in order to determine a potentially appropriate location for the proposed new maintenance facility. All three (3) cities have submitted letters of interest to FCRTA in response to the letters of solicitation sent to the three (3) cities by FCRTA. After staff review it appears that the most suitable site is in the City of Selma based on the land being owned by the City and the affordability within an industrial subdivision including all the offsite connections available for the building pad. Staff would like the Board to designate the City of Selma as the preferred location for the potential facility and to authorize staff to pursue negotiations and planning/environmental efforts for the potential facility.

**Action:** Staff recommends Board Designation of the City of Selma as the preferred site for the potential maintenance facility location.

**4. OTHER BUSINESS**

A. Items from staff.

B. Items from members.

**5. ADJOURNMENT**





FRESNO COUNTY RURAL TRANSIT AGENCY (FCRTA)

Executive Minutes

Thursday, March 29, 2018 at 7:30 PM before COG Policy Board Meeting  
COG Sequoia Conference Room  
2035 Tulare St., Suite 201, Fresno, CA 93721

Members Attending:

Mayor Nathan Vosburg, City of Coalinga  
Mayor Pro Tem Felipe Perez, City of Firebaugh  
Mayor David Cardenas, City of Fowler  
Mayor Rey Leon, City of Huron  
Mayor Rhonda Armstrong, City of Kerman  
Mayor Michelle Roman, City of Kingsburg  
Councilmember Robert Silva, City of Mendota  
Mayor Victor Lopez, City of Orange Cove  
Mayor Alma Beltran, City of Parlier  
Councilmember Robert Beck, City of Reedley  
Mayor Frank Gonzalez, City of Sanger  
Mayor Pro Tem Scott Robertson, City of Selma

Moses Stites, General Manager  
Arthur Wille, County Counsel  
Jeaneen Cervantes, FCOG

Absent:

Sal Quintero, Fresno County  
Mayor Pro Tem Amarpreet Dhaliwal

**QUORUM:** At the start of the meeting there were 12 members present representing 100% of the population and there was a quorum to conduct business. (Coalinga, Firebaugh, Fowler, Huron, Kerman, Kingsburg, Mendota, Orange Cove, Parlier, Reedley, Sanger, Selma)

1. ROLL CALL – Meeting called to order at 6:52 p.m.  
Public Presentation – This portion of the meeting is reserved for persons wishing to address the FCRTA Board on items within its jurisdiction but not on the Agenda.

Note: The public may also comment on any Agenda Item, as they are presented, prior to action by the FCRTA Board.

2. **CLOSED SESSION** – (1 Hour)  
**A. CONFERENCE WITH LEGAL COUNSEL – SIGNIFICANT EXPOSURE TO LITIGATION – Government Code Section 54956.9 (d) (2) (2 Cases).** One hour
3. **RETURN TO OPEN SESSION**

4. **CONSENT ITEMS**

- A. **Approve Executive Minutes of March 29, 2018 (Attachment)**
- B. **UPDATE OF REQUEST FOR PROPOSALS (RFP) FOR SERVICE (INFORMATION)**
- C. **MAINTENANCE FACILITY (INFORMATION)**
- D. **WEST PARK TRANSIT RIDERSHIP/FAREBOX**
- E. **KINGSBURG BUS SHELTER RELATED IMPROVEMENTS**
- F. **SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT (SJVAPCD) AGREEMENT AND PROTERRA AGREEMENT**
- G. **UPDATE ON FCRTA RURAL CTSA CO-DESIGNATION**

A motion was made by Mayor Lopez (Orange Cove) and second by Councilmember Beck (Reedley). A vote was called and motion carried.

5. **ACTION/DISCUSSION**

A. **BEST BEST & KRIEGER AGREEMENT**

Before you is an Agreement with Best Best & Krieger (Attorneys at Law) – for a real estate transaction that will involve a land and building. It's imperative that we retain legal counsel to make sure that the transaction is handled properly during the process. In discussion with our attorney, it appears the information from Best Best & Krieger is appropriate for what we are looking for and there is staff recommendation to enter into an agreement for legal services not to exceed \$10,000.00.

A motion was made by Mayor Vosburg (Coalinga) and second by Mayor Pro Tem (Robertson) (Selma). A vote was called and motion carried.

B. **VOLKSWAGON APPLICATION**

This is an application that FCRTA submitted that has been returned requesting more information from FCRTA.

We've submitted some very ambitious projects that we hope to implement in the rural areas if we are awarded any of these projects.

They are categorically in marketing, capital electric vehicle charging infrastructure, by location as well they are very specific with regard to all rural communities and what we are trying to do is make it known that there are needs out in the community and whenever there is an opportunity to apply for the funding, we will try to augment the award. It is presented to you for approval.

A motion was made by Mayor Leon (Huron) and second by Mayor Lopez (Orange Cove). A vote was called and motion carried.



C. **REGIONAL SUSTAINABLE INFRASTRUCTURE PLANNING GRANT APPLICATION**

A Proposal is being proposed thru Fresno COG thru the Infrastructure SB1 funding, it is very ambitious. Public Transit is not a fix all for everybody. We all know that public transit can't address all those needs in the county. We are requesting approximately \$300,000 there are 2 Cycles and they are \$155,000 per cycle. The first Cycle we are proposing is 3 projects. The 2<sup>nd</sup> Cycle is 2 other projects.

We believe they are appropriate and timely. It would be good for the electric vehicle program we want to incorporate in the rural communities outside of public transit. You had on the agenda about the CTSA and the funding that will come back to you with a proposal. The idea is to return and get some of the vehicles and operations funded thru the other entity so it won't be a conflict with ADA requirements and FTA regulations especially farebox.

Essentially that this would be implementing an UBER, LYFT, Taxi Script in each of the communities & the unincorporated communities of Fresno County.

FCRTA does not plan to operate this project however we plan to obtain the infrastructure and obtain the funding to operate it – we would be looking at your cities, recreation, community centers and social service agencies within your community so that you would have control and operation of these vehicles for medical appointments, short duration trips to the library, shopping trips without the ADA/FTA regulations that we're bound by as a general public transportation Agency.

A motion was made by Mayor Lopez (Orange Cove) and second by Councilmember Silva (Mendota). A vote was called and motion carried.

6. **OTHER BUSINESS**

A. **Items from Staff**

Moses informed the board that they just finished the installation of security cameras in San Joaquin and Kerman will be next and will also be upgrading some of the CNG facilities in the City yards.

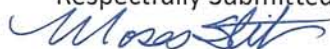
B. **Items from Members**

Mayor Vosburg (Coalinga) informed the board that Coalinga would soon be closing the Coalinga Hospital possibly by June 2018. This will have a big effect on Coalinga as well as Huron. Ridesharing Programs will be very important. Mayor Vosburg (Coalinga) asked Moses if he could somehow contact someone as to how they can bridge the gaps. Ambulance will be driving either to Fresno or Hanford. There will be no transportation to hospitals. Moses would like to know the nearest location of this facility would be in the event that it's close so that with any upcoming application and/or modifications we can include those locations so they would be a part of the narrative project description.

7. **ADJOURNMENT at 8:04 p.m.**

A motion was made by Mayor Lopez (Orange Cove) and second by Mayor Castro (Mendota). A vote was called and motion carried.

Respectfully Submitted,



Moses Stites

General Manager





STATE OF CALIFORNIA  
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

**TRANSIT OPERATOR COMPLIANCE CERTIFICATE**

CHP 339 (Rev. 9-09) OPI 062

TRANSIT OPERATOR NAME

FRESNO COUNTY RURAL TRANSIT AUTHORITY ( CA 47703 )

ADDRESS

TELEPHONE NUMBER

2035 TULARE STREET

559-233-6789

CITY

ZIP CODE

COUNTY

FRESNO CA

93721

FRESNO

This is to certify that the above named transit operator was inspected on this date and found to be in compliance with California Vehicle Code Section 1808.1, regarding participation in the Department of Motor Vehicles Pull Notice Program, and with Section 12804.6, regarding transit bus operator certificates.

ISSUED BY

I.D. NUMBER

DATE

A12525

04/05/2018

Destroy Previous Editions

Chp339\_0809.pdf



**CARRIER INSPECTION**  
 CHP 343D (Rev. 2-99) OPI 062

☐ This report contains CONFIDENTIAL pages.

Pages 1 of 6

|  |  |                                     |                                     |                         |
|--|--|-------------------------------------|-------------------------------------|-------------------------|
| CARRIER NAME<br><b>FRESNO COUNTY RURALTRANSIT AUTHORITY</b>                                  |  | CA NUMBER<br><b>47703</b>           | LOC. CODE<br><b>435</b>             | SUBAREA<br><b>8</b>     |
| STREET ADDRESS, CITY, STATE, ZIP CODE<br><b>110 W NIELSEN AVE FRESNO CA 93706</b>            |  | PHONE NUMBER<br><b>559-486-6587</b> | DATE<br><b>4-3,4&amp; 5, 6-2018</b> |                         |
| CARRIER REPRESENTATIVE<br><b>GEORGE SIPIN</b>  |  | TITLE<br><b>MAINTENANCE</b>         | TIME IN<br><b>830</b>               | TIME OUT<br><b>1130</b> |
| INSPECTION LOCATION (IF OTHER THAN THE CARRIER'S PRINCIPAL PLACE OF BUSINESS)<br><b>HOME</b> |  | U.S. DOT NUMBER<br><b>2808618</b>   | MC NUMBER                           |                         |

On this date, the above named motor carrier was inspected by the California Highway Patrol. The inspection evaluated the carrier's compliance with the following requirements:

☒ CONTROLLED SUBSTANCE AND ALCOHOL TESTING PROGRAM [VC 34520 & 49 CFR 382]

☐ OTHER: \_\_\_\_\_

REMARKS

Carrier is rated satisfactory at this time.


See Capri report for more information.

As a result of the inspection noted above, this carrier was assigned a compliance rating of SATISFACTORY. This rating applies only to carrier requirements - Terminals are rated separately.

|  |   |                      |  |  |                                 |
|--|---|----------------------|--|--|---------------------------------|
| INSPECTION HISTORY<br><u>1 S 2 S 3 S 4 S</u> | NUMBER OF RECORDS INSPECTED<br><b>8</b> | NUMBER OF VIOLATIONS | CHP 345 ISSUED<br><input type="checkbox"/> | SUSPENSE DATE<br><input checked="" type="checkbox"/> Auto<br><input type="checkbox"/> None | CHP 100D COLUMN NO.<br><b>7</b> |
| INSPECTED BY (NAME)<br><b>SINGH</b>          |   |                      | ID NUMBER<br><b>A12525</b>                 | CARRIER TYPE<br><input checked="" type="checkbox"/> Truck <input type="checkbox"/> Bus     |                                 |

**MOTOR CARRIER CERTIFICATION**

I hereby certify that all violations recorded hereon and on the attached pages 2 through 6 will be corrected in accordance with applicable provisions of the California Vehicle Code and the California Code of Regulations. I understand that I may request a review of an unsatisfactory rating by contacting the District Motor Carrier Safety Unit Supervisor at 559-453-3130 within 5 business days of the rating.

|   |   |                                 |
|---|---|---------------------------------|
| CARRIER REPRESENTATIVE'S PRINTED NAME<br><b>GEORGE SIPIN</b>  | TITLE<br><b>MAINTENANCE</b>                   | DRIVER LICENSE NUMBER AND STATE |
| CARRIER REPRESENTATIVE'S SIGNATURE<br> | CURRENT CARRIER RATING<br><b>SATISFACTORY</b> | DATE<br><b>4-6-18</b>           |

Destroy previous editions







US DOT #  
2808618

Legal: FRESNO COUNTY RURAL TRANSIT AUTHORITY  
Operating (DBA): COALINGA TRANSIT SYSTEM

California Highway Patrol

MC/MX #:

State #: 491639

Federal Tax ID: 94-2180682 (EIN)

Review Type: Non-ratable Review - Special Study

Scope: Terminal

Location of Review/Audit: Company facility in the U. S.

Territory:

Operation Types Interstate Intrastate

Carrier: N/A Non-HM

Shipper: N/A N/A

Cargo Tank: N/A

Business: Other

Gross Revenue:

for year ending: 4/6/2018

Company Physical Address:

2100 TULARE ST STE 619

FRESNO, CA 93721-2111

Contact Name: MOSES STITES

Phone numbers: (1) 559- 233-6789

(2) 559-263-8017

Fax 559-485-6357

E-Mail Address: MSTITES@FRESNOCOG.ORG

Company Mailing Address:

2100 TULARE ST STE 619

FRESNO, CA 93721-2111

Carrier Classification

Private Passenger, Non-business

Local Government

Argo Classification

Passengers

Equipment

Owned Term Leased Trip Leased

Motor Coach

8

0

0

Minibus, 16+

Owned Term Leased Trip Leased

67

0

0

Power units used in the U.S.: 75

Percentage of time used in the U.S.: 100

Does carrier transport placardable quantities of HM? No

Is an HM Permit required? N/A

Driver Information

Inter Intra

< 100 Miles:

37

>= 100 Miles:

Average trip leased drivers/month: 0

Total Drivers: 37

CDL Drivers: 37









Part A

QUESTIONS regarding this report Hazardous Materials rules  
may be addressed to the Office of Motor Carriers at:

5435 EAST OLIVE AVENUE FRESNO CA 93727  
TEL: (559)453-3130  
FAX: (559)452-1251

This TERMINAL REVIEW deals only with safety compliance at this terminal.

Person(s) Interviewed

Name: GEORGE SIPIN

Title: SHOP

Name: ROSALIND

Title: TRAINER







### Part B Violations

#### Safety Fitness Rating Information:

Total Miles Operated 100,000  
Recordable Accidents 0

OOS Vehicle (CR): 0  
Number of Vehicle Inspected (CR): 0  
OOS Vehicle (MCMIS): 0  
Number of Vehicles Inspected (MCMIS): 0

Our proposed safety rating is :

**This Review is not Rated.**









## Part B Requirements and/or Recommendations

1. Questions related to this inspection may be directed to the [central ] Division Motor Carrier Safety Unit Supervisor at [559-453-3130]
2. Forms and publications are available at the CHP internet website at: <http://www.chp.ca.gov/publications/index.html>









Part C

Reason for Review: Other  
Planned Action: Compliance Monitoring  
C-SAT INSPECTION

Parts Reviewed Certification:

325 382 383 387 390 391 392 393 395 396 397 398 399 171 172 173 177 178 180

Prior Reviews

5/4/2017  
4/27/2017

Prior Prosecutions

Reason not Rated: Special Study

Study Code: CA

Unsat/Unfit Information

Is the motor carrier of passengers subject to the safety fitness  
procedures contained in 49 CFR part 385 subpart A, AND does it  
transport passengers in a commercial motor vehicle?

Yes - Intrastate

Does carrier transport placardable quantities of hazardous materials?

Not Applicable

Unsat/Unfit rule:

Corporate Contact: GEORGE SIPIN

Corporate Contact Title: SHOP

Special Study Information:

Remarks:

Carrier Name: Click here to enter text. CA # - 47703  
Carrier Address: Click here to enter text.

Rating Information:

In accordance with 13 CCR 1233, this carrier has been rated satisfactory at this time.

DRIVER RECORDS VIOLATIONS:  
See Part B.

ADDITIONAL INFORMATION:

Consortium: Preferred Alliance  
Phone 877-272-5227 x 425

|                    |     |               |
|--------------------|-----|---------------|
| Upload Authorized: | Yes | No            |
| Authorized by:     |     | Date:         |
| Uploaded:          | Yes | No            |
| Verified by:       |     | Date:         |
|                    |     | Failure Code: |







**FCRTA** Fresno County  
Rural Transit Agency

## **Public Notice to West Park Residents: Route Termination Notice**

**The West Park community fixed route that started service on November 13<sup>th</sup>, 2017 will end on May 11<sup>th</sup>, 2018 due to lack of ridership after a six (6) month demonstration period.**

**We thank you for your patronage in riding the bus during this demonstration period. Should you have any questions, please contact the Fresno County Rural Transit Agency.**

**Thank you,**

**Fresno County Rural Transit Agency**

**Moses Stites, General Manager**

**2035 Tulare Street, Suite 201**

**Fresno, California 93721**

**(559) 233-6789 x244**

**[mstites@fresnocog.org](mailto:mstites@fresnocog.org)**

**[www.ruraltransit.org](http://www.ruraltransit.org)**



**FCRTA** Fresno County  
Rural Transit Agency

## **Aviso público a los residentes del West Park:**

### **Aviso de finalización de ruta**

**La ruta fija de la comunidad de West Park que comenzó a funcionar el 13 de noviembre de 2017 terminara el 11 de mayo de 2018 debido a la falta de pasajeros después de un período de demostración de seis (6) meses.**

**Le agradecemos su patrocinio al viajar en el autobús durante este período de demostración. Si tiene algunas preguntas, por favor póngase en contacto con Fresno County Rural Transit Agency.**

**Gracias,**

**Fresno County Rural Transit Agency**

**Moses Stites, General Manager**

**2035 Tulare Street, Suite 201**

**Fresno, California 93721**

**(559) 233-6789 x244**

**[mstites@fresnocog.org](mailto:mstites@fresnocog.org)**

**[www.ruraltransit.org](http://www.ruraltransit.org)**

# DRUG AND ALCOHOL POLICY ADDENDUM

## EFFECTIVE: JANUARY 1, 2018

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The United States Department of Transportation (USDOT) – Office of Drug and Alcohol Policy and Compliance (ODAPC) has issued an update to USDOT’s drug and alcohol testing regulation (49 CFR Part 40). The new regulation has been revised and the changes (summarized below) will become effective on January 1, 2018. Therefore, the Fresno County Rural Transit Agency drug and alcohol testing policy is amended as follows:

### 1. CHANGES TO THE DRUG TESTING PANEL

- a. Four new opioids added to the drug testing panel –
  - i. The USDOT drug test remains a “5-panel” drug test; however, the list of opioids for which are tested will expand from three to seven opioids.
  - ii. The “opioid” category will continue to test for codeine, morphine, and heroin; however, the “opioid” testing panel will now be expanded to include four (4) new semi-synthetic opioids:
    - 1. (1) Hydrocodone, (2) Hydromorphone, (3) Oxycodone, and (4) Oxymorphone.
    - 2. Common brand names for these semi-synthetic opioids include, but may not be limited to: OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.
- b. ‘MDA’ will be tested as an initial test analyte
- c. ‘MDEA’ will no longer be tested for under the “amphetamines” category.

### 2. BLIND SPECIMEN TESTING

- a. The USDOT no longer requires blind specimens to be submitted to laboratories.

### 3. ADDITIONS TO THE LIST OF “FATAL FLAWS”

- a. The following three circumstances have been added to the list of “fatal flaws”:
  - i. No CCF received by the laboratory with the urine specimen.
  - ii. In cases where a specimen has been collected, there was no specimen submitted with the CCF to the laboratory.
  - iii. Two separate collections are performed using one CCF.





#### 4. MRO VERIFICATION OF PRESCRIPTIONS

- a. When a tested employee is taking a prescribed medication, after verifying the prescription and immediately notifying the employer of a verified negative result, the MRO must then (after notifying the employee) wait five (5) business days to be contacted by the employee's prescribing physician before notifying the employer of a medical qualification issue or significant safety risk.
  - i. Specifically, in cases where an MRO verifies a prescription is consistent with the Controlled Substances Act, but that the MRO has still made a determination that the prescription may disqualify the employee under other USDOT medical qualification requirements, or that the prescription poses a significant safety-risk, the MRO must advise the employee that they will have five (5) business days from the date the MRO reports the verified negative result to the employer for the employee to have their prescribing physician contact the MRO. The prescribing physician will need to contact the MRO to assist the MRO in determining if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If in the MRO's reasonable medical judgment, a medical qualification issue or a significant safety risk still remains after the MRO communicates with the employee's prescribing physician, or after five (5) business days, whichever is shorter, the MRO must communicate this issue to the employer consistent with 49 CFR Part 40.327.

#### 5. DEFINITIONS

- a. The term "***DOT, the Department, DOT Agency***"
  - i. Modified to encompass all DOT agencies, including, but not limited to, FAA, FRA, FMCSA, FTA, PHMSA, NHTSA, Office of the Secretary (OST), and any designee of a DOT agency.
  - ii. For the purposes of testing under 49 CFR Part 40, the USCG (in the Department of Homeland Security) is considered to be a DOT agency for drug testing purposes.
- b. The term "***Opiate***" is replaced with the term "***Opioid***" in all points of reference.



- c. The definition of “***Alcohol Screening Device*** (ASD)” is modified to include reference to the list of approved devices as listed on ODAPC’s website.
- d. The definition of “***Evidential Breath Testing Device*** (EBT)” is modified to include reference to the list of approved devices as listed on ODAPC’s website.
- e. The definition of “***Substance Abuse Professional*** (SAP)” will be modified to include reference to ODAPC’s website. The fully revised definition includes:
  - i. A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by an organization listed at <https://www.transportation.gov/odapc/sap>) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

NOTE: The revisions listed in this addendum include only those revisions to 49 CFR Part 40 which may be referenced in our drug & alcohol testing policy. A list of all the revisions made to 49 CFR Part 40 can be found at <https://www.transportation.gov/odapc>.

**Addendum Authorization Date:** April 26, 2018

**Authorized Official (Printed Name):** Amarpreet Dhaliwal, Chairman

**Authorized Official (Signature):**\_\_\_\_\_

**Employee (Printed Name):** Moses Stites, General Manager

**Employee (Signature):**\_\_\_\_\_

**Employee Receipt Date:**\_\_\_\_\_



PROTERRA FORM SALE CONTRACT

**Contract No. P2018-02**

**FRESNO COUNTY RURAL TRANSIT**

**AND**

**PROTERRA INC**

**Purchase and Sale of Five (5) 40 Foot Battery  
Electric Buses and Eight (8) Associated  
Charging Stations**

This Contract Agreement (hereinafter referred to as "Contract" or "Agreement") is made and entered into effective as of the date executed in full (March 29, 2018) by the "Fresno County Rural Transit" located at 2035 Tulare Street, Suite 201, Fresno, CA 95721 and Proterra Inc, a Delaware corporation, with its principal place of business 1 Whitlee Court, Greenville, SC 29607 ("Contractor") for the manufacture and delivery of five (5) 40 Foot Proterra Catalyst Battery Electric Buses (hereinafter "Buses"), and eight (8) Depot charger(s) ("Depot Charger"), or generically hereinafter "Charging Stations(s)". The Fresno County Rural Transit and the Contractor are sometimes individually referred to as "Party" and collectively as "Parties."

## **SEC. 1 CONTRACT DOCUMENTS**

A. The Contract consists of the following which are incorporated herein by reference as appropriate:

1. General Contractual Provisions contained herein.
2. Bus Technical Specifications set forth as Attachment 1 hereto.
3. Charging Station Technical Specifications set forth as Attachment 2 hereto.
4. Option Tracker and Customer Templates set forth as Attachment 3 hereto
5. Warranty Provisions and spare parts as set forth as Attachment 4 hereto.

B. In case of any conflict among these documents where the Parties' intended resolution is not clear, the order of precedence shall be in the same order set forth in paragraph A above.

## **SEC. 2 TERM OF CONTRACT**

The Fresno County Rural Transit and the Contractor agree that the Term of this Contract shall be for five (5) years commencing on the later of the Effective Date or the date of the Notice to Proceed (as defined below) unless otherwise extended by written amendment mutually agreed by the Fresno County Rural Transit and Contractor. Notwithstanding the foregoing, or anything to the contrary contained herein, in no event shall the Effective Date be deemed to have occurred, and none of the obligations of the Fresno County Rural Transit or Contractor under this Contract shall be deemed to have accrued, until the Fresno County Rural Transit has issued to Contractor a written notice to proceed under this Contract ("Notice to Proceed"). In the event no such notice is delivered on or before April 30, 2018, this Contract shall be deemed null and void and of no further force and effect.

## **SEC. 3 PAYMENT**

A. The Fresno County Rural Transit shall pay and the Contractor shall accept:

1. Seven hundred eighty two thousand, two hundred and eighty two Dollars (\$785,335) per Bus ("Bus Unit Price"), for a total of three million, nine hundred and eleven thousand, four hundred and ten Dollars (\$3,926,675) for all five (5) Buses initially purchased under this Agreement;
2. Fifty thousand Dollars (\$50,000) per Depot Charging Station ("Depot Charger Unit



Price”) for a total of four hundred thousand Dollars (\$400,000) for the eight (8) Charging Stations initially purchased under this Agreement;

for a total contract price of four million, three hundred and eleven thousand, four hundred and ten Dollars (\$4,326,675) **BUT SPECIFICALLY EXCLUDING SALES TAX** (“Contract Price”). It is understood and agreed by the Fresno County Rural Transit and the Contractor that the Fresno County Rural Transit will be responsible for the remittance of sales tax, if any, directly to the State of California or any other state.

B. The Parties agree that the Contractor will submit an invoice to Fresno County Rural Transit for payment of Contract Price, and Fresno County Rural Transit will make payments of Contract Price, on the following schedule:

1. Bus Payments: Fresno County Rural Transit shall make payments on a per-Bus basis in accordance with the below provisions:

- a. Fresno County Rural Transit shall make a \$420,000 payment, equal to the local match for the five (5) buses (\$84,000 per bus) purchased when the first Bus is accepted and approved for shipment by Fresno County Rural Transit at Contractor’s facility in accordance with the provisions of this Contract.
- b. As each Bus is delivered and accepted by Fresno County Rural Transit at their facility in accordance with the provisions of this Contract Fresno County Rural Transit shall, within two (2) business days, request funding for the Bus Unit Price from the San Joaquin Valley Air Quality Control District.
- c. Within five (5) business days of receipt of San Joaquin Valley Air Quality Control District funding for the Bus, Fresno County Rural Transit shall mail payment to Contractor for the grant funded portion of the Bus in accordance with the provisions of this Contract.

2. Plug-In Charger Payment. Fresno County Rural Transit agrees that it will make a payment of four hundred thousand Dollars (\$400,000) to Proterra upon completion of the Plug-In Chargers Installation as set forth in Attachment 2 and according to the following provisions.

- a. Fresno County Rural Transit shall, within two (2) business days of the completion of the Plug-In Charger installation, request funding from the San Joaquin Valley Air Quality Control District for the Plug-In Charger.
- b. Within five (5) business days of receipt of San Joaquin Valley Air Quality Control District funding for the Plug-In Chargers, Fresno County Rural Transit shall mail payment to Contractor for the Plug-In Chargers in accordance with the provisions of this Contract.

C. All payments due under this Contract shall be sent via over-night mail to Proterra Inc at the following address:

Proterra Inc.  
Attn. Amy Ard/Accts Receivable  
1815 Rollins Road.  
Burlingame, CA 94010

D. The Fresno County Rural Transit shall be charged and shall make payments for spare parts and/or equipment at the unit prices itemized in the price schedule to be delivered by Contractor within fifteen (15) calendar days after the delivery and acceptance of said spare parts and/or equipment and receipt of a proper invoice. The Fresno County Rural Transit shall also be responsible for and pay any sales tax associated with the purchase of any such spare parts and/or equipment.

E. Unless otherwise provided in this Contract, the Contractor shall pay all federal, state and local taxes, and duties applicable to and assessable against any work, goods, services, processes and operations incidental to or involved in the Contract, excluding sales taxes associated with the sale of the items set forth herein to the Fresno County Rural Transit (i.e., for the avoidance of doubt, the Fresno County Rural Transit shall pay any and all sales taxes associated with or resulting from purchases pursuant to this Contract).

#### **SEC. 4 OPTIONS**

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#### **SEC. 5 ADDITIONAL EQUIPMENT, SERVICES AND DELIVERABLES**

The Parties recognize that additional services and equipment are necessary for the Fresno County Rural Transit to fully implement the Buses and Charging Stations supplied by the Contractor under the terms of this Agreement, which are set forth below as either being included in, or excluded from the Contract Price.

##### Included in the Contract Price:

1. Driver, Maintenance and Repair and Parts Manuals, in quantities/formatting provided pursuant to Section 14 herein.
2. Diagnostic laptop, software, tools and spare parts as described in Attachment 3, Options Tracker.

#### **SEC. 6 PRE-PRODUCTION MEETING**

A. A formal pre-production meeting shall be held to review the technical specifications and related Contract provisions and to discuss actual and potential open items.

B. The Contractor and the Fresno County Rural Transit agree that the pre-production meeting will be held at either the Fresno County Rural Transit's chosen location or Contractor's facility in the City of Industry, California, as mutually determined between the Fresno County Rural Transit and Contractor. Contractor shall provide a formal production schedule at this meeting which, upon mutual acceptance by the Parties, shall be automatically incorporated by reference into this Agreement. The Parties shall make commercially reasonable efforts to resolve all the issues/questions raised at this pre-production meeting within six (6) weeks after the date of the meeting.

## **Sec. 7            FINAL BUS DESIGN**

In the course of bus design and production, Contractor shall request bus option and design input from the Fresno County Rural Transit. The Fresno County Rural Transit shall give input on bus option and design within a reasonable timeframe. Contractor and the Fresno County Rural Transit shall both agree on final bus option and design package.

After agreeing on final bus option and design, Contractor's Engineering Department will design bus to required specifications. The Fresno County Rural Transit shall review design and, once satisfied, approve "Final Bus Design". Contractor commits to build bus to Final Bus Design and specifications. The Fresno County Rural Transit commits to accept buses built to Final Bus Design. If the Fresno County Rural Transit, after agreeing to final bus design, makes material changes to final bus design, the Fresno County Rural Transit acknowledges that Contractor, in its sole discretion, retains recourse to pursue any of the following actions, as described below, in the "Late Changes" Clause. Contractor shall solely determine whether changes are "material." Additionally, the Fresno County Rural Transit agrees to inspect buses with solely the "Final Bus Design" as the standard for inspection.

"Final Bus Design" is comprised of Proterra's Option Tracker (ATTACHMENT 3) and the Fresno County Rural Transit's Technical Specification (if any such specification exists; ATTACHMENT 1). Any changes to the Fresno County Rural Transit's Technical Specification, agreed to by both parties and incorporated into the "Final Bus Design," shall supersede the Technical Specification.

## **SEC. 8            BUS DELIVERY SCHEDULE AND ACCEPTANCE PROCEDURES**

A.      Delivery of Buses shall be determined by signed receipt of the Fresno County Rural Transit's designated agent(s), at point of delivery and may be preceded by a cursory inspection of the Bus. Delivery location for the Buses is 3120 W. Nielson, Fresno, CA 93706.

C.      Hours of delivery shall be between 8:30 AM to 5:30 PM local time, Monday through Friday except holidays.

C.      Prior to the Fresno County Rural Transit's final acceptance of each Bus, each Bus shall undergo the Fresno County Rural Transit's reasonable tests prior to the Fresno County Rural Transit's final acceptance of each Bus. Each Bus will be deemed accepted by the Fresno County Rural Transit only when the Contractor has complied in all material respects with the "Final Bus Design" set forth in Proterra's Option Tracker (ATTACHMENT 3) and the Fresno County Rural Transit's Technical Specification (if and such specification exists ATTACHMENT 1) to this Agreement. Acceptance will not be completed until the Contractor has made all reasonably requested repairs to the Bus in accordance with Section 12 of this Contract. The Fresno County Rural Transit agrees and acknowledges that it must make its determination on acceptance or non-acceptance no later than twelve (12) calendar days following receipt of each Bus under this Contract or the Bus shall be deemed accepted, and that in the event of any non-acceptance, the Fresno County Rural Transit shall provide Contractor a reasonably detailed description of the reasons for non-acceptance. The Fresno County Rural Transit shall not be able to reject or not accept a Bus after such twelve (12) calendar day period. Notwithstanding the foregoing, placement of any non-accepted Bus into service shall, notwithstanding anything

to the contrary in this Agreement, be deemed acceptance of such Bus.

D. The Contractor's pre-delivery tests and inspections of all Buses shall be performed at or near the Contractor's California plant/facility, and they shall be witnessed by the Fresno County Rural Transit's inspector(s). Any such tests and inspections performed at or near Contractor's California plant/facility shall be made using the same criteria as set forth above in Subsection (C), and if the Fresno County Rural Transit inspects and accepts a Bus at or near Contractor's plant/facility, and such Bus has not materially changed when it has been delivered and received by the Fresno County Rural Transit as compared to when such Bus was inspected and accepted at or near Contractor's plant/facility, then the Fresno County Rural Transit shall not and may not then reject such delivered and received Bus. No post-delivery test/inspection shall apply criteria that are different from the criteria applied in any pre-delivery test/inspection.

## **SEC. 9 OH CHARGING STATION DELIVERY SCHEDULE AND ACCEPTANCE PROCEDURES**

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## **SEC. 10 END OF LIFE BATTERY REPLACEMENT**

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## **SEC. 11 TITLE**

The Contractor shall provide 1) Certificate of Origin, 2) Weight Slip, 3) Disclosure Form-Odometer Mileage Statement, 4) Bus Delivery and Acceptance Form, and, 5) FMVSS Compliance Self-Certification, subject to the sole satisfaction of FCRTA for registering the Bus in the State of California to the Fresno County Rural Transit at the time of delivery. Risk of loss on any Bus remains with the Contractor until delivery to the Fresno County Rural Transit, at which point risk of loss passes to the Fresno County Rural Transit.

## **SEC. 12 REPAIRS OF BUSES AND CHARGING STATIONS AFTER NON-ACCEPTANCE**

A. After non-acceptance of a Bus the Contractor must take commercially reasonable efforts to complete work within fifteen (15) business days after receiving notification from the Fresno County Rural Transit of failure of acceptance tests. In the event a repair shall take longer than fifteen (15) business days, Contractor shall have such reasonable time as is necessary to complete the repair so long as Contractor commences to resolve the repair issue within such fifteen (15) business day period. The Fresno County Rural Transit shall make the Bus available to complete repairs timely with the Contractor's repair schedule.

B. The Contractor shall provide all spare parts, tools, and space required to complete the repairs. The Fresno County Rural Transit agrees that for the first thirty (30) day period following non-acceptance, Contractor shall have the right to perform repairs at the Fresno County Rural Transit's facilities, provided that following such thirty (30) day period if the non-accepted item is not corrected then, at the Fresno County Rural Transit's option, the Contractor may be required to remove the non-accepted item from the Fresno County Rural Transit's facilities while repairs

are being effected. If the non-accepted item is removed from the Fresno County Rural Transit's facilities, repair procedures must be pursued by the Contractor's representatives.

### **SEC. 13 ENGINEER/SERVICE REPRESENTATIVES**

The Contractor shall provide a field service representative(s) available on request to assist The Fresno County Rural Transit's staff in the solution of engineering or design problems that may arise during the acceptance and warranty periods.

### **SEC. 14 DOCUMENTS AND TRAINING**

A. The Contractor shall supply training documents to the Fresno County Rural Transit in Contractor's customary format and as reasonably determined by Contractor. The Contractor agrees to provide driver and maintenance training. In connection with such training, the Fresno County Rural Transit agrees to provide Contractor reasonable access to the Fresno County Rural Transit's data and information, and the Fresno County Rural Transit shall have access to its own custom web portal, which contains the latest versions of all applicable manuals, videos, guidelines and other training materials. Contractor recommends that the Fresno County Rural Transit obtain high voltage safety training for its employees and that the Fresno County Rural Transit develops its own high voltage safety rules and guidelines; however, any such training, rules and guidelines will not be provided by the Contractor.

B. Contractor shall own all data produced by the Buses/vehicle and the Charging Station/charging system. Contractor reserves the right to present data to third parties with the concurrence of the Fresno County Rural Transit. Contractor agrees to provide any data that may be reasonably required to satisfy the requirements of any grants or other sources of funding used to purchase the Buses by the Fresno County Rural Transit at an interval of no more frequently than once per month.

C. The Contractor shall train the Fresno County Rural Transit to do all warranty work with the exception of work on the batteries. The Fresno County Rural Transit Labor Rates for any work chargeable to the contractor is based on the hourly wage rate of a Fresno County Rural Transit Senior Field Service Technician, plus 62% fringes plus 125% overhead. The wage rate, and therefore the warranty labor rate, are subject to adjustment once each year.

### **SEC. 15 TOOLS AND EQUIPMENT**

The Contractor shall provide the Fresno County Rural Transit with a comprehensive list of all of the tools, equipment, software, specialized diagnostic tools, and/or related equipment for the service, repair and overhaul of the complete Bus, all major sub-systems of the Bus, and the Charging Stations. Proprietary software and computer hardware necessary to repair, service and/or diagnose all systems of the Bus and the Charging Stations shall be made reasonably available to the Fresno County Rural Transit when required to repair the Bus, its systems, or the Charging Stations at no cost to the Fresno County Rural Transit per Section 5 above.

## **SEC. 16 PARTS AVAILABILITY GUARANTEE**

A. Contractor hereby agrees to make available the spare parts and equipment as set forth in the Option Tracker.

B. Unless otherwise agreed, all units and components procured under this Contract, whether provided by suppliers or manufactured by the Contractor, shall be duplicates in design, manufacture, and installation to assure interchangeability among Buses in this procurement. This interchangeability shall extend to the individual components as well as to their locations in the Buses.

C. EXCEPT FOR ANY SUCH WARRANTIES THAT CONTRACTOR MAY EXPRESSLY AND SPECIFICALLY PROVIDE, ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT, OR ANY WARRANTIES BASED UPON SAMPLES, MODELS, OR SPECIFICATIONS, ARE EXPRESSLY DISCLAIMED.

## **SEC. 17 MATERIALS/ACCESSORIES RESPONSIBILITIES**

The Contractor shall be responsible for all materials and workmanship in the construction of the Buses and Charging Stations and all accessories used, whether the same are manufactured by the Contractor or purchased from supplier and as subject to the Warranty provisions set forth in Attachment 4 to this Agreement. This provision excludes fare boxes, radios, and any equipment supplied by the Fresno County Rural Transit, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is solely caused by the Contractor during the manufacture of the Buses and/or Charging Stations.

## **SEC. 18 REPRESENTATIVES AND NOTICE**

A. The Fresno County Rural Transit's Representative. The Fresno County Rural Transit hereby designates Moses Stites, to act as its representative for the performance of this Agreement ("The Fresno County Rural Transit's Representative"). The Fresno County Rural Transit's Representative shall have the power to act on behalf of the Fresno County Rural Transit for all purposes under this Agreement.

B. Contractor's Representative. Contractor hereby designates TJ Nass as its Project Manager, to act as its representative to oversee the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. Contractor agrees that its representative will be on site, as needed, during the period of design, construction and installation of the Charging Station. Contractor further agrees that if its representative named above is not physically on site at any time, it will designate an individual employed by its construction contractor to act as its representative. Such designation will be provided in writing to the Fresno County Rural Transit's representative.

C. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the

respective parties may provide in writing for this purpose:

Contractor: TJ Nass  
Customer Program Manager  
Proterra Inc  
383 Cheryl Lane  
The City of Industry, CA 91789  
Phone (626) 327-3537

with a copy to: Eric McCarthy  
Vice President Government Relations & General Counsel  
Proterra Inc  
1 Whitlee Court  
Greenville, SC 29607  
Phone (864) 438-0000  
Fax (864) 281-1894

The Fresno County Rural Transit:  
Moses Stites  
General Manager  
Fresno County Rural Transit  
2035 Tulare Street, Suite 201  
Fresno, CA 93721

And with respect to invoices for payment, in addition to the above, also to:  
Moses Stites  
General Manager  
Fresno County Rural Transit  
2035 Tulare Street, Suite 201  
Fresno, CA 93721

Any notices required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand (including overnight courier service) during receiving Party's regular business hours or by facsimile before or during receiving Party's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to the provisions of this Section. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

## **SEC. 19 ACCOUNTING RECORDS AND AUDIT ADJUSTMENTS**

The Contractor shall maintain accurate records with respect to all costs and expenses incurred under this Agreement. The Contractor agrees that the United States Department of



Transportation and the Fresno County Rural Transit, or any of their duly authorized representatives, shall, for the purpose of audit and examination, and to the extent required by law, be permitted to inspect all work, materials, payrolls, and other data and records, and to audit, during normal business hours with reasonable advanced notice, the books, records, and accounts relating to the performance of the Contract; provided that Contractor shall have the right to maintain and protect the confidentiality of any information so provided. Further, Contractor agrees to maintain all required records for at least three (3) years after the Fresno County Rural Transit has made final payment and all other pending matters are closed.

## **SEC. 20 CHANGE ORDERS AND SPECIFICATION REVISIONS**

Unless there are changes mandated by applicable law, the Parties recognize that no changes to the Bus to be delivered by the Contractor to the Fresno County Rural Transit can be made without a written Change Order executed by the Fresno County Rural Transit's Representative and accepted by Contractor's Representative.

## **SEC. 21 LATE CHANGES**

This Agreement represents and contains specific configurations and specifications agreed upon between Proterra and the Fresno County Rural Transit. Notwithstanding anything to the contrary contained herein, for any and all proposed changes, no matter how material or immaterial, requested by the Fresno County Rural Transit after the date hereof that are outside of or different from the configurations and/or specifications agreed upon between the parties hereto as of the date hereof, Proterra reserves and shall have the right to, in its sole and absolute discretion, pursue any of the following:

- A) Propose price increases for the changed configurations and/or specifications, which price increases are subject to the Fresno County Rural Transit's prior approval, which approval shall not be unreasonably withheld or delayed;
- B) Propose, subject to the Fresno County Rural Transit's prior approval (which approval shall not be unreasonably withheld or delayed), an alternative build slot and/or delays in delivery/shipment to account for delays resulting from the requested changed configurations and/or specifications;
- C) Reject some or all of the requested changes to, among other things, preserve a build slot(s) and delivery timeframe; and/or
- D) Any other solution proposed by Proterra, subject to the Fresno County Rural Transit's prior approval, which approval shall not be unreasonably withheld or delayed.

Notwithstanding anything to the contrary contained herein, the Fresno County Rural Transit acknowledges and agrees that any of the above rights, if/when exercised by Proterra (including any delivery/shipment delays and/or alternative build slots and including any outright rejection of any requested changes) shall not (1) be a breach of this Agreement, (2) affect or toll any warranties provided by Proterra, (3) result in or cause any penalties, damages (including liquidated damages), claims or liabilities to Proterra, (4) give the Fresno County Rural Transit any termination right, (5) affect or change payment terms (including any progress payments) and/or (6) give the Fresno County Rural Transit the right to reject any shipment or fail any inspection. In addition, notwithstanding anything to the contrary contained herein, Proterra may, in its sole and absolute discretion, utilize subcontractors to implement any requested changes

that Proterra may agree to.

## **SEC. 22        DISPUTES**

A.     General. Any dispute between the Contractor and the Fresno County Rural Transit relating to the implementation or administration of the Contract shall be resolved in accordance with this Section.

B.     Resolution. The Parties shall first attempt to resolve the dispute informally in meetings or communications among the Contractor's Representative and the Fresno County Rural Transit's Representative. If the dispute remains unresolved fifteen (15) days after it first arises, the Contractor may request that the Fresno County Rural Transit's Representative issue a recommended decision on the matter in dispute. The Fresno County Rural Transit's Representative shall issue the recommended decision in writing and provide a copy to the Contractor. If Contract does not, in its sole discretion, accept the Fresno County Rural Transit's recommended decision and the dispute remains unresolved, either party may seek resolution through non-binding mediation, and failing agreement after mediation judicial resolution of the dispute in the Fresno County Superior Court of the State of California.

## **SEC. 23        MINOR CHANGES**

The Fresno County Rural Transit acknowledges and agrees that there could be minor changes and/or minor delivery and timeline revisions. Accordingly, the Fresno County Rural Transit and Proterra agree to reasonably cooperate in good faith regarding any such minor changes and slight timeline revisions.

## **SEC. 24        TERMINATION**

A.     Termination for Convenience

a.     Action by the Fresno County Rural Transit

The performance of work under the Contract may be terminated by the Fresno County Rural Transit in accordance with this Section in whole, or from time to time in part, with at least sixty (60) days prior written notice to Contractor. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of the professional services under the Contract is terminated and the date upon which such termination becomes effective; provided that such termination effective date shall be no earlier than sixty (60) days after receipt of such termination notice by Contractor.

b.     Responsibility of Contractor

Upon receipt of a notice of termination, and except as otherwise directed by the Fresno County Rural Transit, the Contractor shall, to the extent possible, (1) stop work under the Contract on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated; (3) to the extent possible, terminate all orders and

subcontracts to the extent that they relate to the performance of work terminated by the notice of termination; (4) transfer title to the Fresno County Rural Transit and deliver in the manner, at the times, and to the extent, if any, directed by the Fresno County Rural Transit, non-proprietary supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and any information and other property which, if the Contract had been completed, would have been required to be furnished to the Fresno County Rural Transit provided that the Fresno County Rural Transit reimburses Contractor for all related costs and expenses; and (5) complete any such part of the work as shall not have been terminated by the notice of termination. Payments by the Fresno County Rural Transit to the Contractor shall be made by the effective date of termination, including with respect to the portion of any completed work and related costs and expenses so terminated. Except as otherwise provided, settlement of claims by the Contractor under this termination Section shall be in accordance with the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

B. Termination by Mutual Agreement.

The Contract may be terminated by mutual agreement of the Parties. Such termination shall be effective in accordance with a written agreement by the Parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Sections 24.A. and C., respectively.

C. Termination for Default

a. Action by the Fresno County Rural Transit

Subject to the provisions of subparagraph c. below, the Fresno County Rural Transit may terminate the whole or any part of the Contract in any one of the following circumstances:

- (1) If the Contractor fails to provide any material services required under this Contract; or
- (2) If the Contractor fails to perform any of the material provisions of the Contract in accordance in all material respects with its terms.

b. Contractor Liability

In the event that the Fresno County Rural Transit terminates the Contract in whole or in part as provided in this Subsection (C), the Fresno County Rural Transit may procure, upon such terms and in such manner as the Fresno County Rural Transit may deem appropriate and at the Fresno County Rural Transit's cost and expense, supplies or services similar to those so terminated. The Contractor shall continue the performance of

the Contract to the extent not terminated under the provisions of this Section.

c. Cure by Contractor

If the Fresno County Rural Transit determines that an event of default under this Section 24 has occurred, it shall immediately notify the Contractor in writing and provide the Contractor with thirty (30) days in which to cure such default; provided that if it would reasonably take longer to cure such default, Contractor shall commence the cure during such thirty (30) day period and take commercially reasonable efforts to cure as soon as reasonably practicable thereafter. If the Contractor fails to cure within such time frame, the Fresno County Rural Transit may declare that Contractor to be in default and terminate the Contract in whole or in part.

d. Claims

Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance to the provisions set forth in 48 C.F.R. Part 49, as amended from time to time.

e. Default by the Fresno County Rural Transit

Except to the extent solely caused by a default of Contractor, in the event that the Fresno County Rural Transit breaches this Contract, and such breach, if and only if curable, is not cured within thirty (30) days following written notice from Contractor (or such longer period as is reasonably necessary to cure if such cure may not reasonably be effected in such thirty (30) day period, provided the Fresno County Rural Transit diligently prosecutes such cure to completion at all times), Contractor shall have the right to terminate this Contract by written notice delivered by Contractor to the Fresno County Rural Transit at which time the Fresno County Rural Transit shall reimburse Contractor for all reasonable costs and expenses incurred by Contractor in connection with this Contract, including, at Contractor's option, payment of the difference between the purchase price under this Contract and the actual price paid to Contractor to sell the Buses and Charging Station(s) to another customer. For the avoidance of doubt, failure to make any payment by the Fresno County Rural Transit is a breach that would require cure within thirty (30) days.

**SEC. 25      RESPONSIBILITIES OF CONTRACTOR AND THE FRESNO COUNTY RURAL TRANSIT**

A. Compliance with Law. The Contractor and Fresno County Rural Transit shall give all notices and comply with all Federal, state, and local laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these provisions of the Contract. If the Contract documents are

at variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon reasonable request by the other Party, the requested Party shall furnish the other Party with certificates of compliance with all such laws, orders, and regulations.

B. Independent Contractor. All services shall be performed by Contractor or by a third party under Contractor's cost and supervision. The Fresno County Rural Transit retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for, and sell similar products to, others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of the Fresno County Rural Transit and shall be under Contractor's direction.

## **SEC. 26      FORCE MAJEURE**

The Contractor shall not be liable for any failure to perform if acceptable evidence has been submitted to the Fresno County Rural Transit that failure to perform the Contract was due to causes beyond the control of the Contractor. Examples of such causes include acts of God, civil disturbances, unanticipated work stoppages, strikes, lockouts, labor disputes, national emergencies, acts of government, acts of public enemy, storms, casualties, fires, riots, hurricanes, tornadoes, wars, floods or other cause of similar or dissimilar nature beyond Contractor's control.

## **SEC. 27      CONFLICT OF INTEREST**

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## **SEC. 28      INDEMNIFICATION, INSURANCE & LIABILITY**

### **A.      Indemnification**

The Contractor shall indemnify and save harmless the Fresno County Rural Transit, its officials and employees, from all losses, damages, costs, expenses, liability, claims, actions, and judgments of any kind brought or asserted against, or incurred by, the Fresno County Rural Transit, to the extent that the same arise out of or are caused by any willful act or omission of the Contractor, or by the employees, officers or directors of the Contractor, but not to the extent arising out of or are caused by any act or omission of the Fresno County Rural Transit or its employees, officers, directors, agents or representatives.

The Fresno County Rural Transit agrees that it shall be responsible for the negligent, willful and wrongful acts or omissions of its employees, officers, directors, agents and representatives. In addition, the Fresno County Rural Transit agrees that it shall be responsible for any use of the goods either (a) in combination with apparatus, devices or other products/goods not supplied by Contractor, or (b) in a manner for which the goods were neither designated nor contemplated.

### **B.      Insurance**

Prior to commencing work, the Contractor shall procure and maintain at Contractor's own cost and expense for the duration of the Agreement, the following insurance against claims for injuries to person(s) or damages to property which may arise from, or in connection with, the performance of the work or services hereunder by the Contractor or its employees. Contractor shall maintain limits no less than:

(1) Commercial General/Umbrella Liability Insurance - \$1,000,000 limit per occurrence for property damage and bodily injury. The service provider should indicate in its proposal whether the coverage is provided on a claims-made or on an occurrence basis.

(2) Business Automobile/Umbrella Liability Insurance - \$1,000,000 limit per accident for property damage and personal injury.

(3) Workers' Compensation and Employers'/Umbrella Liability Insurance -- Workers' Compensation coverage with benefits and monetary limits as set forth in California law. This policy shall include Employers'/Umbrella Liability coverage for \$1,000,000 per accident.

(4) Other Insurance Provisions:

a. Commercial General Liability and Automobile Liability Coverage

The Fresno County Rural Transit shall be covered as additional insured's.

b. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Fresno County Rural Transit. At the option of the Fresno County Rural Transit, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the Fresno County Rural Transit.

c. Acceptability of Insurers

Insurance is to be placed with California admitted insurers rated B+X or better by A.M. Best's rating service.

d. Verification of Coverage

Contractor shall furnish The Fresno County Rural Transit with certificates of insurance and with original endorsements affecting coverage required by this clause.

## **SEC. 29        INTERPRETATION, JURISDICTION, AND VENUE**

This Contract shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of California. The Contractor and the Fresno County Rural Transit hereby consent and submit to the jurisdiction of the appropriate courts of Fresno County or of the United States having jurisdiction in Fresno County for adjudication of any suit or cause of action arising under or in connection with the Contract documents, or the performance of this Contract, and agree that any such suit or cause of action may be brought in any such court.

## **SEC. 30        NO FEDERAL GOVERNMENT OBLIGATIONS**

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## **SEC. 31 INTERESTS OF MEMBERS OF, OR DELEGATES TO, CONGRESS**

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## **SEC. 32 FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

By executing this Contract, the Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties under the program Fraud Civil Remedies Act of 1986.

## **SEC. 33 DEBARMENT/SUSPENSION STATUS**

The Contractor shall provide the Fresno County Rural Transit with a certification addressing its debarment and suspension status, if any, and that of its principals. The Contractor shall promptly inform the Fresno County Rural Transit of any change in the suspension or debarment status of the Contractor or its principals during the term of the Contract.

## **SEC. 34 AMERICANS WITH DISABILITIES ACT**

The Contractor shall ensure that the Buses manufactured and delivered under the terms of this Contract meet, in all material respects, the applicable Accessibility Guidelines for Transportation Vehicles set out in 49 C.F.R. Part 38.

## **SEC. 35 BUY AMERICA**

The Contractor shall comply with the applicable Buy America requirements set forth in 49 U.S.C. 5323(j) and the applicable regulations in 49 C.F.R. Part 661, as amended.

## **SEC. 36 CARGO PREFERENCE**

The Contractor agrees:

A. Whenever shipping any equipment, materials or commodities pursuant to this Contract, to utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, but only if and to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. To furnish within twenty (20) business days following the date of loading for shipments originating within the United States, or within forty (40) business days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A. above to the Fresno County Rural Transit (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.



## **SEC. 37      FLY AMERICA**

The Contractor agrees that if this Contract may involve the international transportation of goods, equipment, or personnel by air, the Contractor will use U.S.-flag air carriers, only if and to the extent service by these carriers is available at fair and reasonable rates. (49 U.S.C. 40018 and 4 C.F.R. Part 52).

## **SEC. 38      RECYCLED PRODUCTS**

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

## **SEC. 39      ENVIRONMENTAL REQUIREMENTS**

The Contractor agrees to comply in all material respects with all Federal, State and local environmental and resource conservation requirements that apply to the construction activities under the terms of this Contract. The Contractor shall report any violation of standards, orders or regulations issued under the Clean Air Act (42 U.S.C. 7401 et seq.) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) resulting from any activity of the Contractor in connection with the performance of the Contract to FTA and to the appropriate U.S. EPA Regional Office. The Contractor shall be responsible for the disposal of hazardous materials, in accordance with applicable Federal, state and local laws and regulations.

## **SEC. 40      ENERGY EFFICIENCY**

The Contractor shall recognize the mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

## **SEC. 41      NONDISCRIMINATION**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

## **SEC. 42      EQUAL EMPLOYMENT OPPORTUNITY**

The following equal employment opportunity requirements apply to the Contract:

A. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of

U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.

C. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

#### **SEC. 43        DISADVANTAGED BUSINESS ENTERPRISE**

The Contractor agrees to comply with the Disadvantaged Business Enterprise requirements set forth in 49 C.F.R. 26.49.

#### **SEC. 44        PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

A. The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Contractor certifies compliance with Buy America, it shall submit documentation which lists: 1) component and subcomponent parts of the rolling stock to be purchased, identified by manufacturer of the parts, their country of origin and costs on a percentage basis; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly on a percentage basis.

B. The Contractor shall submit evidence that it will be capable of meeting the specifications.

C. The Contractor shall submit: 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS; or 2) manufacturer's certified statement that the contracted Buses will not be subject to FMVSS regulations.

## **SEC. 45      BUS TESTING**

The Contractor agrees to comply with 49 U.S.C. § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following if applicable:

A.      If the bus being procured under this Contract is a new bus model or a bus produced with a major change in components or configuration, the Contractor shall provide a copy of the final test report to the Fresno County Rural Transit prior to the Fresno County Rural Transit's final acceptance of the first bus.

B.      If the Contractor releases a report under paragraph A above, it shall provide notice to the operator of the testing facility that the report is available to the public.

C.      If the Contractor represents that the vehicle was previously tested, the vehicle being sold should have substantially the same configuration and major components as the vehicle in the test report, which must be provided to the Fresno County Rural Transit prior to the Fresno County Rural Transit's final acceptance of the first vehicle. If the configuration or components are not identical, the Contractor shall provide a description of the change and the Contractor's basis for concluding that it is not a major change requiring additional testing.

D.      If the Contractor represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the Contractor shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

## **SEC. 46      FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

The Contractor shall comply with the Federal Motor Vehicle Safety Standards (FMVSS) and Regulations (49 C.F.R. Part 571) issued by the National Highway Traffic Safety Administration, which require motor vehicle manufacturers to conform to and certify compliance with the FMVSS requirements. These Regulations establish crashworthiness and crash avoidance standards for various types of vehicles, including buses.

## **SEC. 47      INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS AND CONDITIONS**

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## **SEC. 48      TAX AND CARBON CREDITS**

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## **SEC. 49      LACK OF FUNDS**

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## **SEC. 50      ASSIGNMENT OR TRANSFER**

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## **SEC. 51      INTELLECTUAL PROPERTY & CONFIDENTIAL INFORMATION**

A. Intellectual Property. The Fresno County Rural Transit and Contractor acknowledge that the Fresno County Rural Transit is a transit agency and not a manufacturer of buses or charging stations and therefore has no interest in ownership of any rights in, to, or arising out of: (i) any patents; (ii) inventions, discoveries (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and other intellectual property; (iii) copyrights, copyright registrations, mask works, mask work registrations, and applications therefor in the United States, and anywhere in the world, and all other rights corresponding thereto throughout the world; and (iv) any other proprietary rights ((i) through (iv) hereof collectively, the "Intellectual Property") in or to the technology associated with the charging stations and vehicles/buses that are the subject of this Agreement. As such, the Fresno County Rural Transit and Contractor agree that Contractor shall own any Intellectual Property developed in connection with the buses and charging stations purchased through this Agreement. The Fresno County Rural Transit will provide immediate notice in writing to the Contractor of the existence of any claim that the goods furnished hereunder violate or infringe upon another third party's rights, and the Fresno County Rural Transit shall reasonably cooperate with Contractor in connection with any such claim. The Fresno County Rural Transit also agrees that it shall not, and shall not allow any third party to, directly or indirectly reverse engineer the Bus or otherwise obtain, share or use any confidential information of Contractor, including, without limitation, any control or other software of Contractor provided with either the Bus or Charging Station.

B. Confidential Information. During the performance under this Contract, it may be necessary for either party (the "Discloser") to make confidential information available to the other party (the "Recipient"). The Recipient agrees to use all such information solely for the performance under this Contract and to hold all such information in confidence and not to disclose the same to any third party without the prior written consent of the Discloser. Likewise, the Recipient agrees that information developed in connection with the performance of this Contract shall be used solely for the performance under this Contract, and shall be held in confidence not disclosed to any third party without the prior written consent of the Discloser. The Fresno County Rural Transit shall employ sound business practices no less diligent than those used for the Fresno County Rural Transit's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by the Contractor pursuant to this Contract.

C. Survival. This Section shall survive termination or expiration of this Contract.

## **SEC. 52      MARKETING**

Contractor and the Fresno County Rural Transit shall work together to promote the unique

nature of the deployment of the Buses and Charging Stations under this Contract. However, the Parties shall mutually agree to the content of any press release related to the substance, performance or existence of this Contract and the purchase or use of Buses and Charging Stations hereunder. The Fresno County Rural Transit hereby gives Contractor, and Contractor gives the Fresno County Rural Transit, the right to use images of the Buses and Charging Stations under this Contract in any manner desired by the Parties, subject to each party's prior written consent, not to be unreasonably withheld.

## **SEC. 53 COMPLIANCE WITH FEDERAL LOBBYING POLICY**

Customers, including the Fresno County Rural Transit, who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal Contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

## **SEC. 54 WHISTLEBLOWER PROTECTION**

Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, provides protections for certain individuals who make specified disclosures relating to Recovery Act funds.

A. An employee of any non-Federal employer receiving covered funds may not be discharged, demoted or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or his/her/their representatives, information that the employee reasonably believes is evidence of:

- 1) gross mismanagement of an agency contract or grant relating to covered funds;
- 2) a gross waste of covered funds;
- 3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- 4) an abuse of authority related to the implementation or use of covered funds; or
- 5) a violation of law, rule or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

B. To be protected, the disclosure must be made by the employee to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a

member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, or the head of a federal agency or his/her/their representatives.

## **SEC. 55      IRON, STEEL AND MANUFACTURING**

A.      Required Use of American Iron, Steel, and Manufactured Goods--Section 1605 of the American Recovery and Reinvestment Act of 2009.

1)      This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel and manufactured goods used in the project are produced in the United States except as provided in paragraph 2 CFR 176.140 (b)(3) and 2 CFR 176.140 (b)(4). This requirement does not apply to the material listed by the Federal Government under 2 CFR 176.140(b)(2).

2)      A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) should submit the request to the U.S. Federal Transit Administrator in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs 2 CFR 176.140(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

## **SEC. 56      CLEAN AIR AND CLEAN WATER**

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The Contractor shall report each violation to the Fresno County Rural Transit and understands and agrees that the Fresno County Rural Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

## **SEC. 57      FEDERAL CHANGES**

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## **SEC. 58      PRIVACY**

To the extent that Contractor administers any system of records on behalf of the Federal Government, Contractor agrees to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. Sect. 552, (the Privacy Act). Contractor shall obtain the express consent of the Department and the Federal Government before the Contractor operates a system of records on behalf of the Federal Government.

## **SEC. 59      GENERAL PROVISIONS**

A. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Unless and except otherwise set forth herein, any term referencing time, days or period for performance shall be deemed calendar days and not business days. All references to the Fresno County Rural Transit include its elected officials, officers, agents, volunteers and independent contractors who serve as the Fresno County Rural Transit officers, officials, or staff except as otherwise specified in this Agreement. The captions of the various sections and paragraphs herein are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.

B. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

C. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise. The failure of the Fresno County Rural Transit or the Contractor to enforce one or more of the terms or conditions of this Contract or to exercise any of its rights or privileges, or the waiver by one Party of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

D. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

E. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

F. Invalidity; Severability. If any portion of this Agreement is declared as invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

G. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver and perform this Agreement. The Fresno County Rural Transit has all requisite power and authority to conduct its business and to execute, deliver and perform this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

H. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which expressly refers to this Agreement.

I. Counterparts. This Agreement may be executed in any number of counterparts, each of

which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic means shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

J. Rules of Construction. The singular shall include the plural and vice versa, and any gender shall include any other gender as the text shall indicate. All references to "including" shall mean "including, without limitation."

[Signatures continued on next page]



**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be duly executed with all the formalities required by law.

**Proterra Inc**

Attest: \_\_\_\_\_

Name and Address:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**Fresno County Rural Transit**

Attest: \_\_\_\_\_

Name and Address:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Legal Attest: \_\_\_\_\_

Name and Address:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

