

**FRESNO COUNTY RURAL TRANSIT AGENCY  
AGREEMENT FOR CONTRACTOR SERVICES**

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the FRESNO COUNTY RURAL TRANSIT AGENCY, 2035 Tulare St., Suite 201, Fresno, California 93721, a joint powers Public Agency ("FCRTA"), Walker Consultants, 4909 Eisenhower Blvd, Tampa, Florida 33634, a Michigan Corporation ("CONTRACTOR"). FCRTA and CONTRACTOR are each a "Party" to this Agreement and collectively are the "Parties" to this Agreement.

**WITNESSETH:**

WHEREAS, the FCRTA is an eligible project partner and was awarded funding from the California Department Of Transportation's (Caltrans) as a subrecipient from FTA 5304 funding; and

WHEREAS, the FCRTA agreed to partner with Caltrans to conduct a model Zero Emission Fleet Transition Plan and Implementation Plan and provide technical assistance for small urban/rural transit providers; and

WHEREAS, the FCRTA will work with our agency consultant to complete the model ZEV Transition Plan Template and provide technical assistance to other small urban/rural transit providers ( "PROJECT"); and

WHEREAS, CONTRACTOR represents it is qualified to perform the services required for the PROJECT and is willing to perform such services pursuant to the terms and conditions stated in this Agreement; and

NOW, THEREFORE, it is agreed by FCRTA and CONTRACTOR as follows:

**I. CONTRACTOR'S OBLIGATIONS**

A. The CONTRACTOR shall perform all work necessary to complete the PROJECT. CONTRACTOR shall perform all technical/administrative tasks overseeing the PROJECT, as described in: (1) Scope of Work attached hereto as Exhibit A and incorporated herein by this reference as though set forth in full. CONTRACTOR shall perform those tasks and services in accordance with the instructions set forth in Exhibit A. In the event of any inconsistency between this Agreement (minus Exhibit A) and Exhibit A, such inconsistency shall be resolved by giving precedence in the following order of priority: (1) to the text of this Agreement; (2) to Exhibit A.

B. CONTRACTOR shall perform the tasks and services contemplated by this Agreement according to the Proposed Scope of Work Schedule as set forth in Exhibit A (CONTRACTOR's Scope of Work & Project Timeframe), and according to the requirements of this Agreement.

C. CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged in the geographical area in which CONTRACTOR practices his profession. All products of whatsoever nature which

CONTRACTOR delivers to FCRTA pursuant to this Agreement shall be prepared in a substantial, first class manner and conform to the standards of CONTRACTOR's profession.

## **II. FCRTA's OBLIGATIONS**

A. FCRTA shall compensate CONTRACTOR as provided in section III of this Agreement.

B. FCRTA will make available to the CONTRACTOR any document, studies, or other information in its possession related to the PROJECT.

## **III. COMPENSATION**

### **A. Total Compensation.**

Notwithstanding any other provision in this Agreement, the basic fee for the services rendered shall be computed at the hourly and cost rates as set forth in Exhibit A (CONTRACTOR's Scope of Work), and shall be limited by an amount not to exceed the sum of \$406,642.

### **B. Progress Payments.**

FCRTA shall make progress payments to CONTRACTOR upon receipt and approval by FCRTA of CONTRACTOR's monthly invoices, based upon completion of the task and services as set forth in Exhibit A. Payment of said progress payments to CONTRACTOR shall be based upon FCRTA's evaluation of the completion of each respective component.

### **C. Invoices.**

CONTRACTOR shall submit two copies of each invoice with adequate supporting documentation of work billed and costs charged by Task as set forth in Exhibit A, to FCRTA, specifying those services which CONTRACTOR believes have been completed. The invoice shall specify: (1) the rates authorized in Amendment IV to the Contractor Services Agreement Between the Fresno County Rural Transit Agency and Walker Consultants, (2) an itemization of other direct cost and/or subcontractor fees as set forth in Exhibit A; (3) the total amount billed for the current period, (4) the total amount billed to-date for the project. (5) the retention amount withheld. The invoice shall include a written progress report adequately describing the services billed and provided, and summarizing the status of the PROJECT in regards to task completion, timelines, and budget.

### **D. Payment.**

Within 30 days of receipt of a proper invoice, FCRTA shall determine whether CONTRACTOR has adequately performed to the satisfaction of FCRTA the item(s) for which CONTRACTOR seeks payment, and shall remit payment thereof to CONTRACTOR.

### **E. Disputes.**

If FCRTA determines that CONTRACTOR has not adequately performed any such task or services, FCRTA shall inform CONTRACTOR of those acts in writing which are necessary for satisfactory completion of the item(s). CONTRACTOR shall undertake any and all work to satisfactorily complete the item(s) at no additional charge to FCRTA.

In the event there is a dispute over an alleged error or omission by CONTRACTOR, FCRTA shall have the right to withhold payment of CONTRACTOR's fees in the disputed amount.

FCRTA and CONTRACTOR shall endeavor to resolve any dispute informally between them. In the event the dispute cannot be thus resolved, either Party may request the Parties engage in arbitration or mediation (hereafter referred to as "arbitration") of the dispute before an independent arbitrator. In the case the Parties mutually agree to arbitrate the dispute, they shall mutually select an independent arbitrator or panel of arbitrators from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or another entity mutually agreed to. In the event a panel of arbitrators is selected, each Party shall select one member, and shall mutually agree on a third member of the panel. Any arbitration shall occur in Fresno County, California.

#### **IV. Provisions for Resolution of Disputes, Breaches, or Other Litigation**

The FCRTA and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the CONTRACTOR shall submit to the FCRTA Representative for this Contract or designee a written demand for a decision regarding the disposition of any dispute arising under this Contract. The FCRTA Representative shall make a written decision regarding the dispute and will provide it to the CONTRACTOR. The CONTRACTOR shall have the opportunity to challenge in writing within ten (10) working days to the FCRTA's General Manager or his/her designee. If the CONTRACTOR'S challenge is not made within the ten (10) day period, the FCRTA Representative's decision shall become the final decision of the FCRTA. The FCRTA and the CONTRACTOR shall submit written, factual information and supporting data in support of their respective positions. The decision of the FCRTA shall be final, conclusive, and binding regarding the dispute, unless the CONTRACTOR commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

#### **V. TERMINATION**

##### **A. Termination Without Cause.**

This Agreement may be terminated without cause at any time by FCRTA or the CONTRACTOR upon thirty (30) calendar days written notice. If FCRTA terminates this Agreement, CONTRACTOR shall be compensated for services satisfactorily completed to the date of termination based upon the compensation rates and subject to the maximum amounts payable agreed to in Section III.

##### **B. Breach of Contract.**

FCRTA may immediately suspend or terminate this Agreement in whole or in part, where in the determination of FCRTA there is:

1. an illegal or improper use of funds;
2. a failure to comply with any term of this Agreement;
3. a substantially incorrect or incomplete report, study, or other documents or documentation submitted to FCRTA;
4. improperly performed services under this Agreement.

In no event shall any payment by FCRTA constitute a waiver by FCRTA of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to FCOG with respect to the breach or default.

##### **C. Non-Allocation of Funds.**

The terms of this Agreement, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. CONTRACTOR services and reimbursements beyond June 30, 2021, are subject to the inclusion of this project in the FCRTA FY21-22 Budget. Should sufficient funds not be allocated, the services to be provided hereunder may be modified, or this Agreement terminated at any time by FCRTA's giving the CONTRACTOR thirty (30) days advance written notice.

D. In the event of any termination of this Agreement, all finished and unfinished work materials, including, without limitation, notes, minutes, research, documents, maps, graphs, and studies, shall be FCRTA's property, and at FCRTA's sole option, shall be delivered by CONTRACTOR to FCRTA.

E. Termination for Convenience. When it is in the FCRTA's best interest, the FCRTA reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the FCRTA. If the CONTRACTOR has any property in its possession belonging to the FCRTA, the CONTRACTOR will account for the same, and dispose of it in the manner the FCRTA directs.

F. Termination for Default. If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the FCRTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the FCRTA that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, the FCRTA, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

G. Mutual Termination. The PROJECT may also be terminated if the FCRTA and the CONTRACTOR agree that its continuation would not produce beneficial results commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

## **VI. RIGHT TO PUBLISH/OWNERSHIP OF MATERIALS**

FCRTA shall be the owner of all materials produced pursuant to this Agreement upon completion and full performance of this Agreement by CONTRACTOR and shall have the right to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared by CONTRACTOR under this Agreement. CONTRACTOR shall not be liable for misuse or modification beyond their control by FCRTA of materials produced pursuant to this agreement.

## **VII. INDEPENDENT CONTRACTOR**

In performance of the work, duties, and obligations assumed by CONTRACTOR to be provided under this Agreement, it is mutually expressly understood and agreed that CONTRACTOR, including any and all of CONTRACTOR's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of FCRTA. Furthermore, FCRTA shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, FCRTA shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof. CONTRACTOR and FCRTA shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to FCRTA employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save FCRTA harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to FCRTA or to this Agreement.

## **VIII. ASSIGNMENT**

CONTRACTOR shall not assign or subcontract its duties under this Agreement without the prior express written consent of the FCRTA. No such consent shall be construed as making the FCRTA a party to such subcontract, or subjecting the FCRTA to liability of any kind to any subcontractor.

No subcontract whether existing or later entered into as set forth herein, under any circumstances shall relieve the CONTRACTOR of his liability and obligation under this contract, and all transactions with the FCRTA must be through the CONTRACTOR. Subcontractors may not be changed by CONTRACTOR without the prior express written approval of FCRTA.

CONTRACTOR has submitted a Scope of Work (Exhibit A) which names no subcontractors (“Approved Subcontractors”) as subcontractor(s) for the purposes of this Agreement. CONTRACTOR represents and covenants by entering into this Agreement that it is the prime contractor in this Agreement, and that it is responsible for all acts or omissions of its said subcontractors, if any. CONTRACTOR shall also be responsible for submitting invoices, in accordance with the requirements of Section III of this Agreement, to FCRTA for work performed by the Approved Subcontractors, and shall remit payment to the Approved Subcontractors in accordance with the agreements between CONTRACTOR and the Approved Subcontractors. FCRTA shall have no responsibility to provide compensation directly to the approved Subcontractors, if any.

**IX. BINDING NATURE OF AGREEMENT; MODIFICATION**

The parties agree that all of the terms of this Agreement and its Exhibits shall be binding upon them and that together these terms constitute the entire Agreement of the parties with respect to the subject matter hereof. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the parties. This Agreement shall be binding upon FCRTA, the CONTRACTOR, and their successors in interest, legal representatives, executors, administrators, and assigns with respect to all covenants as set forth herein.

**X. INDEMNITY**

CONTRACTOR agrees to indemnify, save, hold harmless, the FCRTA, its boards, committees, representatives, officers, agents, and employees from and against any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death, and property damage) occurring or resulting to FCRTA to the extent they are caused from any negligent, recklessness or willful misconduct of CONTRACTOR, its officers, agents, subcontractors, or employees in their performance of this Agreement, and from any and all costs and expenses (including reasonable attorneys fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death and property damage), occurring or resulting to any person, firm, corporation, or entity who may be injured or damaged to the extent such injury or damage arises from any negligent acts, errors or omissions of CONTRACTOR, its officers, agents, subcontractors, or employees in their performance of this Agreement.

**XI. NON DISCRIMINATION AND DBE**

CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONTRACTOR shall carry out all applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract and such other remedy as FCRTA deems appropriate.

## **XII. INSURANCE**

Without limiting FCRTA's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and affect the following insurance policies throughout the term of this Agreement:

A. Comprehensive general liability insurance with coverage of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

Comprehensive general liability insurance policies shall name the FCRTA, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned.

Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by FCRTA, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the CONTRACTOR'S policies herein.

B. Comprehensive automobile liability insurance with limits for bodily injury of not less than \$25,000 per person, \$250,000 per accident and for property damages of not less than \$50,000, or such coverage with a combined single limit of \$250,000.

C. Professional liability insurance in the minimum amount of at least \$1,000,000 coverage per occurrence.

D. Cyber liability coverage with limits of \$1,000,000 per occurrence or claim.

E. Workers compensation insurance as required by law.

No insurance coverage required by this Agreement may be canceled or changed without a minimum of thirty (30) days advance, written notice given to FCRTA.

CONTRACTOR shall provide certification of said insurance to FCRTA within twenty-one (21) days of the date of the execution of this Agreement.

Such certification shall show to FCRTA's sole satisfaction that such insurance coverages have been obtained and are in full force; that FCRTA, its officers, agents, and employees will not be responsible for any premiums on the policies; that as and if required such insurance names FCRTA, its officers, agents, and employees, individually and collectively, as additional insured (comprehensive general liability only), but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by FCRTA, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the CONTRACTOR's policies herein; and that this insurance shall not be canceled or changed without a minimum of thirty (30) days advance, written notice given to FCRTA.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, FCRTA may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

## **XIII. CONFLICT OF INTEREST**

CONTRACTOR covenants that it has no interest, and will not have any interest, direct or indirect, which would conflict in any manner with the performances of the services required hereunder.

**XIV. EFFECTIVE DATE, TERM**

This Agreement shall become effective as of the date of its execution by the parties hereto and shall remain in full force and effect through December 31, 2024 unless sooner terminated or unless its term is extended. Upon the mutual written Agreement of the parties hereto, this Agreement may be extended beyond that date.

**XV. NOTICES**

Any and all notices between FCRTA and the CONTRACTOR provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such Party, at such addresses set forth below:

**FCRTA**

Fresno County Rural Transit Agency  
2035 Tulare St., Suite 201  
Fresno, CA 93721

**CONTRACTOR**

Walker Consultants  
4909 Eisenhower Blvd  
Tampa, Florida 3363

**XVI. PROJECT MANAGER**

The CONTRACTOR's project manager shall be Chrissy Mancini Nichols. CONTRACTOR may not change its project manager without obtaining prior express written approval by FCRTA. It is understood by the parties hereto that in entering into an agreement of this type with CONTRACTOR, FCRTA has evaluated CONTRACTOR's Scope of Work & Project Timeline (Exhibit A) and taken into consideration the project team designated therein for this PROJECT, including but not limited to CONTRACTOR's designation of Chrissy Mancini Nichols as the project manager for said PROJECT.

**XVII. VENUE; GOVERNING LAW**

Venue for any claim or action arising under this Agreement shall only be in Fresno County, California. This Agreement shall be governed in all respects by the laws of the State of California.

**XVIII. COMPLIANCE WITH LAWS**

CONTRACTOR shall comply with all current Federal, State, and local laws, ordinances, and regulations applicable in carrying out its obligations under this Agreement.

CONTRACTOR agrees that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et. seq., shall be used to determine the eligibility of individual items of cost.

CONTRACTOR also agrees to comply with applicable federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the contract pursuant to



Government Code 8546.7, the CONTRACTOR, contractor's subcontractors, and the FCRTA shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the cost of administering the contract. All parties shall make such material available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. Any duly authorized representative of the FCRTA, the state, or federal government shall have access to any books, records, and documents that are pertinent to the contract for audits examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

Any costs for which payment has been made to CONTRACTOR that are determined by subsequent audit to be unallowable under Title 2, CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards or 2 CFR, Part 1201, Uniform Administrative Requirements Costs Principles, and Audit Requirements for Federal Awards, are subject to repayment by Contractor to FCRTA.

**XIX. CONTRACTOR'S LEGAL AUTHORITY**

Each individual executing or attesting this Agreement on behalf of CONTRACTOR hereby covenants, warrants, and represents: (1) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of such corporation in accordance with a duly adopted resolution of the corporation's board of directors and in accordance with such corporation's article of incorporation or charter and bylaws; (2) that this Agreement is binding upon such corporation; and (3) that CONTRACTOR is a duly organized and legally existing corporation in good standing in the State of California.

**XX. NO THIRD PARTY BENEFICIARIES**

Notwithstanding anything else to the contrary herein, the Parties acknowledge and agree that no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.

**XXI. SEVERABILITY**

In the event any provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine how to mutually amend such provisions with valid and enforceable provisions, and the remaining provisions of this Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

**XXII. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES**

The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. This Agreement is the product of negotiation between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the County of Fresno shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

### **XXIII. DRUG FREE WORK PLACE**

CONTRACTOR shall certify compliance with Government Code Section 8355 pertaining to providing a drug-free workplace per Exhibit B - "Drug Free Workplace Certification", attached hereto and incorporated herein by this reference as though set forth in full. The CONTRACTOR agrees to participate in the FCRTA's drug and alcohol program established in compliance with 49 CFR Part 655.

### **XXIV. NO OBLIGATION TO THIRD-PARTIES BY USE OF A DISCLAIMER**

A. No Federal Government Obligation to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.

B. Third-Party Contracts and Subagreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the subagreements of third-party contractors and the subagreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each subagreement financed in whole or in part with financial assistance provided by the FTA.

C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be fully responsible to the FCRTA for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the FCRTA's obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.

D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.

E. AWARDING AGENCY Approval of Subagreements. The FCRTA shall approve in writing all proposed Subagreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Subagreements unless the same are approved in writing by the FCRTA. Any proposed amendments or modifications to such Subagreements must be approved by the FCRTA prior to implementation.

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### **XXV. PROGRAM FRAUD AND FALSE OR FRADULAUNT STATEMENTS OR**

### **RELATED ACTS**

A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the federally assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 in the CONTRACTOR to the extent the Federal Government deems appropriate.

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

C. The CONTRACTOR agrees to include the above two clauses in each subagreement financed in whole or in part with Federal Assistance provided by the California Department of Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **XXVI. ACCESS TO RECORDS**

The FCRTA, the California Department of Transportation, the State Auditor General, and any duly authorized representative of the Federal government shall have access to any books, records, and documents of the CONTRACTOR and its subcontractors that are pertinent to this Contract of audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. The CONTRACTOR shall include a clause to this effect in every subagreement entered into relative to the PROJECT.

### **XXVII. RECORD KEEPING**

The CONTRACTOR and all subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Contract. All parties shall make such materials available at their respective offices at all reasonable times during the performance and for three (3) years from the date of final payment under this Contract and all subagreements.

### **XXVII. ACCOUNTING RECORDS**

The CONTRACTOR shall establish and maintain separate accounting records and reporting procedures specified for the fiscal activities of the PROJECT. The CONTRACTOR'S accounting system shall conform to generally accepted accounting principles (GAAP) and uniform standards that may be established by California Department of Transportation. All records shall provide a breakdown of total costs charged to the PROJECT including properly executed payrolls, time records, invoices, and vouchers.

### **XXVIII. FEDERAL CHANGES**

The terms of the most recent amendments to any federal, State, or local laws, regulations, FTA directives, and amendments to the grant or cooperative contract that may be subsequently adopted, are applicable to the PROJECT to the maximum extent feasible, unless the California Department of Transportation provides otherwise in writing.

#### **XXIX. CIVIL RIGHTS (TITLE VI, EEO, & ADA)**

During the performance of this Contract, the CONTRACTOR its assignees and successors in interest, agree to comply with all federal statutes and regulations applicable to grantee subrecipients under the Federal Transit Act, including, but not limited to the following:

A. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 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 from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation any issue.

B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's Regulations, including employment practices when the Contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.

C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access

to its books, records, accounts, other sources of information and its facilities as may be determined by the FCRTA or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the FCRTA of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the FCRTA shall:

1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
2. Cancellation, termination, or suspension of the Contract, in whole or in part.

F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the FCRTA or the California Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the FCRTA to enter into such litigation to protect the interest of the FCRTA, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

G. Section 504 and Americans with Disabilities Act Program Requirements. The CONTRACTOR will comply with 49 CFR Parts 27, 37, and 38, implementing and Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as amended.

### **XXX. INCORPORATION OF FTA TERMS**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any California Department of Transportation requests which would cause the California Department of Transportation to be in violation of the FTA terms and conditions. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any FCRTA requests which would cause the FCRTA to be in violation of the FTA terms and conditions.

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

FCRTA is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or

C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
2. Telecommunications or video surveillance services provided by such entities or using such equipment.
3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

D. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

E. CONTRACTOR represents and warrants that it has performed a due diligence review of its supply chain and that no such “covered telecommunications equipment or services” shall be provided to the FCRTA that would cause the FCRTA to be in violation of the prohibition contained in the Act.

### **XXXII. ENERGY CONSERVATION**

The CONTRACTOR agrees to comply with the mandatory energy efficiency standards and policies within the applicable California Department of Transportation energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42, U.S.C. Section 6321 et seq.

### **XXXIII. DEBARMENT AND SUSPENSION**

A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.

B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the “U.S. General Services Administration’s (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program,” implementing Executive Order Nos. 12549 and 12689, “Debarment and Suspension” and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or

otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.

C. Before entering into any subagreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that FCRTA and its “principals,” as defined at 49 CFR Part 29.

D. Before entering into any third-party contract exceeding \$25,000.00, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its “principals,” as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any subagreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

#### **XXXIV. LEGAL MATTERS CONCERNING A COVERED TRANSACTION**

If a current or prospective legal matter that may affect the Federal Government or STATE emerges, the FCRTA must promptly notify the STATE. The FCRTA must include a similar notification requirement in its Third Party Agreements and must require each CONTRACTOR to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government or STATE as a party to litigation or a legal disagreement in any forum for any reason.
2. Matters that may affect the Federal Government or STATE include, but are not limited to, the Federal or STATE Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal or STATE Government’s administration or enforcement of federal laws, regulations, and requirements.
3. The FCRTA must promptly notify the STATE, if the FCRTA has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving FY2020 Contractors Manual – Procurement 9-49 federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the FCRTA and STATE, or an agreement involving a principal, officer, employee, agent, or CONTRACTOR of the FCRTA. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions

of the FCRTA, including divisions tasked with law enforcement or investigatory functions.

### **XXXV. LOBBYING**

A. The CONTRACTOR agrees that it will not use federal assistance funds to support lobbying. In accordance with 31 U.S.C. and U.S. Department of Transportation Regulations, "New Restrictions on Lobbying." 49 CFR Part 20, if the bid is for an award for \$100,000.00 or more the FCRTA will not make any federal assistance available to the CONTRACTOR until the FCRTA has received the CONTRACTOR'S certification that the CONTRACTOR has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal grant, cooperative agreement, or any other federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;

B. If applicable, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the form instructions.

C. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly.

D. This Contract is a material representation of facts upon which reliance was placed when the Contract was made or entered into. These provisions are a prerequisite for making or entering into a Contract imposed by Section 1352, Title 31, U.S. Code. Any person who fails to comply with these provisions shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.

### **XXXVI. DBE CONTRACT ASSURANCE**

The CONTRACTOR or any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR or SUBCONTRACTOR shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of [Federal] DOT-assisted contracts. Failure by the CONTRACTOR or SUBCONTRACTOR to carry out these requirements is a material breach of this contract, which may result in the termination of the Standard Agreement between the STATE and the FCRTA, the termination of this contract by the FCRTA, or such other remedy the STATE or FCRTA deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the CONTRACTOR from future bidding as non-responsive.

FCRTA shall notify the CALTRANS DBELO in the event the FCRTA finds the CONTRACTOR or SUBCONTRACTOR is in violation of 49 CFR Part 26 within five (5) business



days the finding is made.

**XXXVI. CLEAN WATER**

A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the AWARDING AGENCY and understands and agrees that the AWARDING AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**XXXVII. CLEAN AIR**

A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. The CONTRACTOR agrees to report each violation to the FCRTA and understands and agrees that the FCRTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**XXXVIII. INTELLIGENT TRANSPORTATION SYSTEMS (ITS)- NATIONAL ARCHITECTURE**

To the extent applicable, the CONTRACTOR agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 U.S.C. Section 517(d), 23 U.S.C. Section 512 note, and 23 CFR Part 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives the FTA may issue at a later date, except to the extent the FTA determines otherwise in writing.

**XXXVIII. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

A. The CONTRACTOR agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 33 and also ensure compliance of its subcontractors; if applicable, CONTRACTOR shall comply with DOL regulations "Safety and Health Regulation for Construction" 29 CFR Part 1926.

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

**XXXIX. PATENT RIGHTS & RIGHTS IN DATA AND COPYRIGHTS**

In accordance with 37 CFR Part 401, 49 CFR Parts 18 and 19, the CONTRACTOR

must comply with patent and rights in data requirements for federally assisted contracts involving experimental, developmental, or research work. The FCRTA reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and reserves the right to grant authority to others.

**XL. INTEGRATED AGREEMENT**

This Agreement, including Exhibit A, attached hereto and incorporated herein by this reference, represents the full and complete understanding of the parties with respect to the subject matter hereof, and all preliminary negotiations and oral or written agreements with respect thereto are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof.

(Signature page follows.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

FRESNO COUNTY RURAL TRANSIT AGENCY

By \_\_\_\_\_  
MOSES STITES, General Manager

CONTRACTOR,

By \_\_\_\_\_  
Chrissy Mancini Nichols, Project Manager

APPROVED AS TO LEGAL FORM ON BEHALF OF THE FCRTA:  
DANIEL C. CEDERBORG, County Counsel

By *Bryan Rome* E-Signed by  
Bryan D. Rome  
Sept. 18, 2023  
BRYAN ROME, Deputy County Counsel

# Exhibit A

## Scope of Work

### Introduction

The Bipartisan Infrastructure Law (BIL), Pub. L. 117-58, signed by the President on November 15, 2021, amended the statutory provisions for the Federal Transit Administration's (FTA) Buses and Bus Facilities Competitive Program (49 U.S.C. § 5339(b)) and the Low or No Emission Program (49 U.S.C. § 5339(c)) to include the requirement that any application for projects related to zero-emission vehicles include a Zero-Emission Transition Plan and an Implementation Plan. This project would develop a Zero Emission Bus Transition Plan Template for these programs so applicants may better prepare documentation to meet this requirement. A Zero-Emission Transition Plan must, at a minimum: 1. Demonstrate a long-term fleet management plan with a strategy for how the applicant intends to use the current request for resources and future acquisitions. 2. Address the availability of current and future resources to meet costs for the transition and implementation. 3. Consider policy and legislation impacting relevant technologies. 4. Include an evaluation of existing and future facilities and their relationship to the technology transition. 5. Describe the partnership of the applicant with the utility or alternative fuel provider. 6. Examine the impact of the transition on the applicant's current workforce by identifying skill gaps, training needs, and retraining needs of the existing workers of the applicant to operate and maintain zero-emission vehicles and related infrastructure and avoid displacement of the existing workforce. The ZEV Transition Plan and ZEV Implementation Plan guidance documents should include how to apply for and secure grant funding including procurement of ZEV's (Federal and State fund sources), vehicle maintenance and training, local utility coordination and estimated timeframes for implementation. The final product will be a single document (a template) agency can use for the purpose of being eligible to apply for zero-emission vehicles under the 49 U.S.C. § 5339(b) or 49 U.S.C. § 5339(c). Contractor would then assist as many rural agencies as possible (minimum of five) in completion of the Transition and Implementation guidance documents.

### Scope of Work

Task #	Task Description	Deliverable/Outcome	Timeframe
1	Develop Contracts and Hire Sub-Consultants	Sub-Consultant Contracts Executed	3 months
2	Conduct Research	Compiled Literature	2 months
3	Develop Draft Zero Emission Fleet Transition Plan Template	Draft Zero Emission Fleet Transition Plan Template	2 months
4	Develop Draft Zero Emission Fleet Implementation Plan Template	Draft Zero Emission Fleet Implementation Plan Template	2 months
5	Partner Outreach	Stakeholder Feedback	2 months
6	Produce Final Draft Zero Emission Fleet Transition Plan Template	Final Draft Zero Emission Fleet Transition Plan Template	2 months
7	Produce Final Draft Zero Emission Fleet Transition Plan Template	Produce Final Draft Zero Emission Fleet Transition Plan Template	2 months
8	Formal Review and Comment Period	Stakeholder Feedback Incorporated into Final Product	1 month
9	Adopt Final Zero Emission Fleet Transition Plan and Implementation Templates	Final Zero Emission Fleet Transition Plan Template and Final Zero Emission Fleet Implementation Plan Template	1 month
10	Publish Distribute Zero Emission Fleet Transition Plan and Implementation Templates	Zero Emission Fleet Transition Plan Template and Zero Emission Implementation Fleet Plan Template	1 month
11	Assist as many rural agencies as possible in completion of the Transition and Implementation Plans	Multiple agencies will receive assistance in completing the Transition and Implementation plans.	6 months