

1 **SERVICES CONTRACT**

3
4 This Contract is by and between **Anaheim Transportation Network (ATN)**, 1280 South Anaheim
5 Boulevard, Anaheim, CA 92805, and _____ (Contractor), located
6 at _____.

7 **The parties agree as follows:**

8 **Effective Date and Termination Date.** The effective date of this Contract shall be _____ or the date, on
9 which each party has signed this Contract, whichever is later. Unless earlier terminated as provided
10 below, the termination date shall be _____.

11 **Statement of Work.** Contractor shall perform the work
12 described in Exhibit 1.

13 **Payment for Work.** ATN agrees to pay Contractor in accordance with
14 Exhibit 1.

15 **Contract Documents.** This Contract includes the following Exhibits listed below and attached
16 herein and incorporated herein by this reference:

- 17 EXHIBIT 1 - STATEMENT OF WORK
- 18 EXHIBIT 2 - CERTIFICATE OF LIABILITY INSURANCE
- 19 EXHIBIT 3 - AFFIDAVIT OF LAWFUL PRESENCE IN THE UNITED STATES
- 20 EXHIBIT 4 - CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR

21
22 **STANDARD TERMS AND CONDITIONS**

- 23
- 24 **1. Time is of the Essence.** Time is of the essence in the performance of this Contract. Contractor is
25 providing services which may involve transportation, and the health, safety and welfare of the
26 general public within Orange County, California. Delivery time is of the essence. Delivery must
27 be made in accordance with the delivery schedule as promised by the Contractor.
- 28 **2. Contract Amendments.** This Contract shall be modified only by a written Contract amendment
29 signed by the ATN’s Board Chairman, Executive Director or designee duly authorized to enter into
30 contracts on behalf of the ATN.
- 31 **3. Parole Evidence.** This Contract is intended by the parties as a final expression of their agreement
32 and is intended also as a complete and exclusive statement of the terms of this agreement. No

1 course of prior dealings between the parties and no usage of the trade shall be relevant to
2 supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of
3 performance rendered under this Contract shall not be relevant to determine the meaning of this
4 Contract even though the accepting or acquiescing party has knowledge of the nature of the
5 performance and opportunity to object.

6 **4. Subcontracts and Assignment.** Contractor shall not subcontract any of the work required by this
7 Contract or assign or transfer any of its interest in this Contract, without the prior written consent
8 of the ATN.

9 **5. No Third Party Beneficiaries.** ATN and Contractor are the only parties to this Contract and are
10 the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any
11 benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third
12 persons are individually identified by name in this Contract and expressly described as intended
13 beneficiaries of this Contract.

14 **6. Composition of Proposer/Contractor.** If the Contractor hereunder is comprised of more than one
15 legal entity, each such entity shall be jointly and severally liable for compliance with this Contract.

16 **7. Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the
17 benefit of the parties and their successors and approved assigns, if any.

18 **8. Merger Clause.** This Contract and the attached exhibits constitute the entire agreement
19 between the parties. All understandings and agreements between the parties and
20 representations by either party concerning this Contract are contained in this Contract. No
21 waiver, consent, modification, or change in the terms of this Contract shall bind either party
22 unless in writing and signed by both parties. Any written waiver, consent, modification, or
23 change shall be effective only in the specific instance and for the specific purpose given.

24 **9. Compliance with Applicable Law.** Contractor shall observe and comply with all established
25 federal, state, and local administrative rules, codes, ordinances, regulations, standards, and laws
26 applicable to the work under this Contract regardless of whether or not they are referred to by
27 the ATN.

28 **10. Governing Law.** The provisions of this Contract shall be construed in accordance with the laws
29 of the State of California and the provisions of the ATN Procurement Policy. In the event of
30 litigation between the parties, venue shall lie exclusively in Orange County, California.

31 **11. Federal Terms and Conditions.** To the extent the procurement of goods, services or work
32 product may be funded by State and/or federal funds, the Contractor is hereby notified that such

1 procurement shall be subject to additional terms and conditions required by State or federal law,
2 whether or not set forth in the Contract; and to the extent applicable, all such terms and
3 conditions are incorporated by reference herein. Such terms and conditions applicable to
4 federally funded procurements may include, but are not limited to, those terms and conditions
5 set forth in Federal Circular 4220.1F, or any successor version thereof, as are applicable to the
6 specific type of procurement herein.

7 **12. Licenses and Permits.** Contractor shall maintain in current status all federal, state, and local
8 certificates, approvals, authorizations, licenses, and permits required for the lawful performance
9 of this Contract, and for operation of the business conducted by the Contractor as applicable to
10 this Contract.

11 **13 Jurisdiction and Attorneys' Fees.** The parties agree to submit all their disputes arising out of or
12 in connection with this Contract to the exclusive jurisdiction of the courts of the State of
13 California. In any litigation by which one party seeks to enforce its rights under this Contract, the
14 prevailing party shall be awarded reasonable attorneys' fees, together with any costs and
15 expenses, to resolve the dispute and to enforce the final judgment.

16 **14. Early Termination.** This Contract may be terminated as follows:

- 17 a. ATN and Contractor, by written agreement, may terminate this Contract at any time.
- 18 b. ATN, in its sole discretion, may terminate this Contract for any reason on thirty (30) days
19 written notice to Contractor.
- 20 c. Either the ATN or Contractor may terminate this Contract in the event of a breach of the
21 Contract by the other. Prior to such termination, the party seeking termination shall give
22 to the other party written notice of the breach and intent to terminate. If the party
23 committing the breach has not entirely cured the breach within fifteen (15) days of the
24 date of the notice, then the party giving the notice may terminate the Contract at any
25 time thereafter by giving a written notice of termination.
- 26 d. Notwithstanding paragraph 14(c), ATN may terminate this Contract immediately by
27 written notice to Contractor upon (i) denial, suspension, revocation, or non-renewal of any
28 license, permit, or certificate that Contractor must hold to provide services under this
29 Contract; (ii) a material breach by Contractor of this Contract; or (iii) a violation by
30 Contractor of any federal or state law, rule, regulation or ordinance.

31 **15. Payment on Early Termination.** Upon termination pursuant to paragraph 14, payment shall be
32 made as follows:

- 1 a. If terminated under 14(a) or 14(b) for the convenience of the ATN, the ATN shall pay
2 Contractor for work performed prior to the termination date if such work was performed in
3 accordance with the Contract. Notwithstanding any provision in this Contract to the contrary,
4 ATN shall not be liable for any direct, indirect, exemplary, punitive or consequential damages,
5 even if ATN has been advised of the possibility of such damages. Termination shall not result
6 in a waiver of any other claim the ATN may have against Contractor.
- 7 b. If terminated under 14(c) by the Contractor due to a breach by the ATN, then the ATN shall
8 pay the Contractor for work performed prior to the termination date if such work was
9 performed in accordance with the Contract.
- 10 c. If terminated under 14(c) or 14(d) by the ATN due to a breach or violation by the Contractor,
11 then the ATN shall pay the Contractor for work performed prior to the termination date
12 provided such work was performed in accordance with the Contract less any setoff to which
13 the ATN is entitled.
- 14 **16. Remedies.** In the event of breach of this Contract, the parties shall have the following remedies:
- 15 a. If terminated under 14(c) or 14(d) by the ATN due to a breach by the Contractor, the ATN may
16 complete the work either itself, by agreement with another Contractor, or by a combination
17 thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total
18 compensation provided under this Contract, then the Contractor shall pay to the ATN the
19 amount of the excess.
- 20 b. In addition to the remedies in paragraphs 14 and 15 for a breach by the Contractor, the ATN
21 also shall be entitled to any other equitable and legal remedies that are available.
- 22 c. If the ATN breaches this Contract, Contractor's remedy shall be limited to termination of the
23 Contract and receipt of Contract payments for work performed prior to the termination date
24 to which Contractor is entitled as its sole and exclusive remedy.
- 25 **17. Waiver.** Waiver of any default under this Contract by ATN shall not be deemed to be a waiver of
26 any subsequent default or a modification of the provisions of this Contract.
- 27 **18. Non Waiver of Liability.** ATN shall not agree to waive any lawful or legitimate right to recover
28 monetary funds lawfully due it. Therefore, Contractor agrees that it will not insist upon or
29 demand any statement whereby the ATN agrees to limit in advance or waive any right the ATN
30 might have to recover actual lawful damages in any court of law under applicable California law.
- 31 **19. Conflict of Interest/Contract Cancellation.** Contractor stipulates that its officers and employees
32 do not now have a conflict of interest and it further agrees for itself, its officers, and its

1 employees that it will not contract for or accept employment for the performance of any work or
2 services with any individual business, corporation, or government unit that would create a
3 conflict of interest in the performance of its obligations pursuant to this Contract.
4

5 Pursuant to State of California enacted Political Reform Act of 1974, this Contract is subject to
6 cancellation by the ATN if any person significantly involved in initiating, negotiating, securing,
7 drafting, or creating the Contract on behalf of The ATN is, at any time while the Contract is in
8 effect, an employee of any other party to the Contract in any capacity or a consultant to any
9 other party of the Contract with respect to the subject matter of the Contract.

10 **20. No Kick Back Fee.** Contractor stipulates that no person has been employed or has been retained
11 to solicit or secure this Contract upon an agreement or understanding for a commission,
12 percentage, brokerage, or contingent fee; and that no member of the Board of Directors or any
13 officer or employee of ATN has any interest, financially or otherwise, in this Contract that has not
14 been publically declared and procured in accordance with Anti-Kickback Act of 1986 (41
15 United States Congress 51-58). In case of breach or violation of this requirement, the ATN shall
16 have the right to annul this Contract without liability or at its discretion to deduct from the
17 Contract price or consideration, the full amount of such commission, percentage, brokerage, or
18 contingent fee.

19 **21. Gratuities.** The ATN may, by written notice to the Contractor, cancel this Contract if it is found
20 that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the
21 Contractor or any employee, agent or representative of the Contractor, to any officer or
22 employee of the ATN. In the event this Contract is canceled by the ATN pursuant to this
23 provision, the ATN shall be entitled, in addition to any other rights and remedies, to recover or
24 withhold from the Contractor the amount of the gratuity.

25 **22. Non Exclusive Contract.** Any subsequent contract resulting from the solicitation shall be
26 awarded with the understanding and agreement that it is for the sole convenience of the ATN.
27 The ATN reserves the right to obtain like goods, service, or work product from another source
28 when necessary.

29 **23. Ownership of Work.** To the maximum extent permitted by law, all work products created by the
30 Contractor as part of Contractor's performance of this Contract shall be considered to be "works
31 made for hire" and the exclusive property of the ATN. If any such work products contain pre-
32 existing intellectual property of the Contractor that is or could be protected by federal copyright,

1 patent, or trademark laws, Contractor hereby grants ATN a perpetual, royalty-free, fully paid-up,
2 non-exclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of,
3 use, re-use, in whole or in part, and to authorize others to do so, all such work products. ATN
4 shall have no rights in any pre-existing work product of Contractor provided to ATN by Contractor
5 in the performance of this Contract except to copy, use, and re-use any such work product for
6 ATN use only. If this Contract is terminated prior to completion, and the ATN is not in default,
7 ATN, in addition to any other rights provided by this Contract, may require the Contractor to
8 assign, transfer and deliver all partially completed work products, reports or documentation,
9 together with all associated intellectual property rights, that the Contractor has specifically
10 developed or specifically acquired for the performance of this Contract.

11 **24. Force Majeure.**

- 12 a. Except for payment of sums due, neither party shall be liable to the other nor deemed in
13 default under this Contract if and to the extent that such party's performance of this Contract
14 is prevented by reason of force majeure. The term 'force majeure' means an occurrence that
15 is beyond the control of the party affected and occurs without its fault or negligence.
16 Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy;
17 war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts;
18 injunctions- intervention-acts; or failures or refusals to act by government ATN; and other
19 similar occurrences beyond the control of the party declaring force majeure which such party
20 is unable to prevent by exercising reasonable diligence.
- 21 b. Force Majeure shall not include the following occurrences:
- 22 1) Late delivery of equipment or materials caused by congestion at a manufacturer's plant
23 or elsewhere, or an oversold condition of the market;
 - 24 2) Late performance by a subcontractor unless the delay arises out of a force
25 majeure occurrence in accordance with this force majeure term and condition; or
 - 26 3) Inability of either the Contractor or any subcontractor to acquire or maintain any required
27 insurance, bonds, licenses, or permits.
- 28 c. If either party is delayed at any time in the progress of the work by force majeure, the delayed
29 party shall notify the other party in writing of such delay, as soon as is practicable and no
30 later than the following working day, of the commencement thereof and shall specify the
31 causes of such delay in such notice. Such notice shall be delivered or mailed certified-return
32 receipt and shall make a specific reference to this Section, thereby invoking its provisions.

1 The delayed party shall cause such delay to cease as soon as practicable and shall notify the
2 other party in writing when it has done so. The time of completion shall be extended by
3 Contract amendment for a period of time equal to the time that results or effects of such
4 delay prevent the delayed party from performing in accordance with this Contract.

5 d. Any delay or failure in performance by either party hereto shall not constitute default
6 hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the
7 extent that such delay or failure is caused, by force majeure

8 e. The ATN shall have no obligation to pay Contractor for services that are suspended by a force
9 majeure event.

10 **25. Late Submission of Claim.** The ATN shall not honor any invoices or claims which are tendered six
11 (6) months or later after the right to receive payment for the last item of the account accrued.

12 **26. Access to Records.** Contractor shall maintain fiscal records and all other records pertinent to this
13 Contract. All fiscal records shall be maintained pursuant to generally accepted accounting
14 standards, and other records shall be maintained to the extent necessary to clearly reflect actions
15 taken. All such records shall be retained and kept accessible for no less than **five (5) years**
16 following final payment. ATN's authorized representatives shall have the right to direct access to
17 all of Contractor's books, documents, papers and records related to this Contract for the purpose
18 of conducting audits and examinations and making copies, excerpts and transcripts.

19 **27. Insurance and Performance/Payment Bond Requirements.** Contractor shall maintain throughout
20 the term of the Contract the amounts and limits established and referenced in the solicitation
21 documents, such documents being incorporated herein by this reference and made part of this
22 Contract.

23 **28. Indemnity.** To the maximum extent permitted by law, Contractor shall indemnify, defend, save,
24 and hold harmless the ATN, its boards, commissions, directors, departments, officers, officials,
25 agents, contractors and employees individually and collectively (hereinafter referred to as
26 "Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or
27 expenses (including court costs, attorneys' fees, and costs of claim processing, investigation, and
28 litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including
29 death), any financial loss, or loss or damage to tangible or intangible property caused, or alleged
30 to be caused, in whole or in part, by (a) the acts or omissions of, or arising out of, or relating to
31 activities of, the Contractor or any of its owners, officers, directors, agents, employees, or
32 subcontractors under this Contract; (b) a breach of this Contract; or (c) a violation of any federal,

1 state or local law, rule, regulation or ordinance. It is the specific intention of the parties that the
2 ATN shall, in all instances be indemnified by Contractor from and against any and all claims,
3 regardless of whether or not the Claims are caused in whole or in part by a party indemnified
4 hereunder. It is agreed that Contractor will be responsible for primary loss investigation, defense,
5 and judgment costs where this indemnification is applicable. However, neither Contractor nor
6 any attorney engaged by Contractor shall defend the claim in the name of ATN or any department
7 of ATN, nor purport to act as legal representative of ATN or any of its departments, without first
8 receiving from ATN's Counsel's Office, ATN to act as legal counsel for ATN, nor shall Contractor
9 settle any claim on behalf of ATN without the approval of ATN's Board of Directors or Executive
10 Director. The ATN may, at its election and expense, assume its own defense. The indemnification
11 obligations in this Section shall survive any termination or expiration of this Contract.

12 **29. Indemnity—Patents, Copyright, and Trademark.** Contractor agrees to defend the ATN, its
13 boards, commissions, directors, departments, officers, officials, agents, and employees
14 individually and collectively (hereinafter referred to as "Indemnitees") at Contractor's own
15 expense, in all suits, actions, or proceedings in which ATN is made a defendant for actual or
16 alleged infringement of any United States of America or foreign letters, patents or intellectual
17 property rights resulting from ATN's use of the goods, service, or work product purchased as a
18 result of this Procurement (Request for Proposal (RFP)) and subsequent Contract. Contractor
19 further agrees to pay and discharge any and all judgments or decrees which may be rendered in
20 any such suit, action, or proceedings against ATN. Contractor agrees to indemnify and hold
21 harmless the Indemnitees from any and all license, royalty and proprietary fees or costs,
22 including payment of Indemnitees' attorneys' fees, costs of experts and any other legal costs,
23 which may arise out of ATN's purchase and use of goods, service, or work product supplied by
24 the Contractor. Contractor will indemnify Indemnitees against all claims for damages to persons
25 or property resulting from defects in materials or workmanship. It is expressly agreed by
26 Contractor that these covenants are irrevocable and perpetual.

27 **30. No Advance Payments.** Advance payments are not authorized. Payment will be made for only
28 actual services or commodities that have been received and accepted by the ATN.

29 **31. Advertisement.** Contractor shall not advertise or publish news releases concerning this Contract
30 without the prior written consent of the Executive Director or designee.

31 **32. Americans with Disabilities Act.** The Contractor shall comply with all applicable provisions of the
32 Americans with Disabilities Act, Public Law 101-336, 42 U.S.C. 12101-12213, and applicable

1 federal regulations under such Act.

2 **33. Non-Discrimination Clause.** In accordance with Title IX of the Education Amendments of 1972,
3 as amended, 20 U.S.C. sections 1681 *et seq.* and 49 CFR Part 25, Title VI of the Civil Rights Act, as
4 amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42
5 U.S.C. § 6102, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not
6 discriminate against any employee or applicant for employment because of race, color, creed,
7 national origin, sex, age, disability, source of income, or political affiliation in programs,
8 activities, services, benefits, or employment. Contractor shall not discriminate against minority-
9 owned, women-owned, or disadvantaged small businesses. Contractor shall include a provision
10 in each sub-contract requiring subcontractors
11 implementing regulations and other implementing requirements FTA may issue.

12 **34. Equal Employment Opportunity.** The following equal employment opportunity requirements
13 apply to this Contract:

14 a. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as
15 amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees
16 to comply with all applicable equal employment opportunity requirements of U.S. Department of
17 Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal
18 Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.*, (which implement
19 Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order
20 No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42
21 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and
22 Federal policies that may in the future affect construction activities undertaken in the course of
23 the Project. The Contractor agrees to take affirmative action to ensure that applicants are
24 employed, and that employees are treated during employment, without regard to their race,
25 color, creed, national origin, sex, or age. Such action shall include, but not limited to, the
26 following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising,
27 layoff or termination; rates of pay or other forms of compensation; and selection for training,
28 including apprenticeship. In addition, the Contractor agrees to comply with any implementing
29 requirements FTA may issue.

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

1 addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2 c. Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as
3 amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of
4 U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal
5 Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to
6 employment of persons with disabilities. In addition, the Contractor agrees to comply with any
7 applicable implementing requirements issued by the federal government.

8 d. Subcontracts – The Contractor also agrees to include these requirements in each
9 subcontract financed in whole or in part with Federal assistance, modified only if necessary to
10 identify the affected parties.

11 **35. OMB Circular A-133.** If Contractor is determined by the ATN to be a sub-recipient of federal
12 funds passed through the ATN, the Contractor must submit an annual Federal Compliance Audit
13 in conformity with the OMB Circular A-133, which applies the Federal Single Audit Act of 1984,
14 Public Law 98-502, to non-profit organizations.

15 **36. Disadvantaged/Minority/Woman Business Enterprise.** Contractor agrees to give
16 Disadvantaged/ Minority/Woman Businesses the maximum practical opportunity to participate
17 in this Contract when possible, by obtaining supplies, materials, and services from such firms.

18 **37. Non Appropriation Clause - Fiscal Year.** If appropriations are reallocated, reduced or eliminated
19 by legislative action or, for any reason, these goods and/or services are not funded, during any
20 fiscal year the ATN may take any of the following actions:

- 21 a. Accept a decrease in price offered by the Contractor and complete the Contract;
- 22 b. Place the Contract on-hold and pay the Contractor for work performed up to the date of the
23 non-appropriation notice. Work must be performed in accordance with the Contract prior to
24 payment and be less any setoff to which the ATN is entitled. The Contract may be resumed at
25 a later date when funding is reestablished. Contract cannot be resumed beyond a (4) four
26 year time period from the date of non-appropriation notice. Contractor must also reaffirm
27 pricing and resubmit insurance and bonding certificates, if applicable. Documents must be
28 received by the ATN prior to resuming the Contract;
- 29 c. Cancel the Contract and pay the Contractor for work performed up to the date of the non-
30 appropriation notice. Work must be performed in accordance with the Contract prior to
31 payment and be less any setoff to which the ATN is entitled, and re-solicit a new
32 procurement;

- d. Cancel the Contract and re-solicit the requirements;
- e. Cancel the Contract.

38. Non Appropriation Clause - Future Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current ATN's fiscal year. If payment for performance under this Contract extends into next fiscal year, the ATN's obligation to pay for such performance is subject to approval of future appropriations to fund this Contract by legislative action. The ATN shall have no legal liability to pay funds due for performance under the terms of the Contract until and unless funds are appropriated by legislative action.

39. Notice to Proceed. The Contractor agrees to render services promptly and diligently upon receipt of written notice by a duly authorized ATN agent and to proceed with any or all of the services set forth herein to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within **seven (7) days**, the demanding party may treat this failure as an anticipatory repudiation of this Contract.

41. Non Performance. In the event of nonperformance under this Contract, the ATN, after **seven (7) days** written notice to the Contractor, shall have the right to obtain from other sources such products and/or services as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, for said work or goods shall be borne by the Contractor.

For purposes of this section, nonperformance shall be defined as failure to appear and perform work and/or deliver goods as specified and scheduled.

42. Liens and Stop Notices. Contractor shall hold the ATN harmless from liens and stop notices filed by claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the work required under this Contract. Contractor shall provide written certification that all liens against materials and labor, and/or stop notices, have been satisfied, before the ATN will make final payment.

43. Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.

44. Title and Risk of Loss. The title and risk of loss of materials or service shall not pass to the ATN until the ATN actually receives and unconditionally accepts the material or service at the point of

1 delivery FOB; and such loss, injury, or destruction shall not release Contractor from any obligation
2 hereunder. The ATN shall notify the Contractor promptly of any damaged goods, service, or work
3 product, and further shall assist the Contractor in arranging for inspection.

4 **45. FOB Point of Delivery.** All pricing, labor, materials, and services are to be FOB destination and
5 delivered within the city limits of Anaheim, California, unless otherwise specified elsewhere in
6 the solicitation documents.

7 **46. Packing and Shipping.** Contractor shall be responsible for industry standard packing which
8 conforms to product and the requirements of carrier's tariffs, ICC regulations, and other
9 applicable regulations. Containers must be clearly marked with the Purchase Order number,
10 contact person, phone number, department, and FOB delivery address.

11 **47. Fuel Surcharges.** All pricing shall be protected from increase for three (3) months from the
12 execution date of this PO, Purchase Order, or Notice to Proceed. Fuel surcharges shall not be
13 allowed unless disclosed at the time the Proposer submits a response to a solicitation or quote
14 and subsequently closed at the stated date and time. Fuel surcharges will only be allowed if the
15 price per gallon of gasoline/diesel fuel **increases more than 20 percent (20%)** from the
16 gasoline/diesel fuel prices posted on the day the solicitation closed. The index used for diesel
17 prices is Weekly On Highway Diesel Prices for the West Coast California Region. The new weekly
18 On-Highway Gasoline and Diesel Fuel price index are posted every Monday for the West Coast
19 California Region and can be found at the following addresses:

20
21 <http://www.eia.gov/petroleum/gasdiesel/> or

22 http://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm

23
24 **48. Employment Standards.** The Contractor agrees that, upon request by the ATN, it shall remove
25 from the ATN's premises any Contractor's employee, who, in the reasonable opinion of the ATN,
26 is guilty of improper conduct, bringing any unauthorized personnel (including their own children)
27 into a facility or work area, or is not qualified to perform the work assigned. The Contractor
28 agrees that its employees must complete and pass a security background check, if so requested.

29 **49. Organization–Employment Disclaimer.** The agreement resulting hereunder is not intended to
30 constitute, create, give rise to, or otherwise recognize an employer/employee relationship,
31 agent/principal relationship, joint venture agreement or relationship, partnership or formal
32 business organization of any kind, and the right and obligations of the parties shall be only those

1 expressly set forth in the agreement. Contractor's relationship to ATN in the performance of the
2 Contract is that of an independent contractor. The parties agree that no persons supplied by the
3 Contractor in the performance of Contractor's obligations under the agreement are considered to
4 be ATN employees and that no rights of ATN civil service, retirement or personnel rules accrue to
5 such persons. The Contractor shall have total responsibility for all salaries, wage bonuses,
6 retirement, withholdings, workers' compensation, occupational disease compensation,
7 unemployment compensation, other employee benefits, and all taxes and premiums
8 appurtenant thereto concerning such persons and shall save and hold the ATN harmless with
9 respect thereto.

10 **50. Cooperative Governmental Purchasing.** Pursuant to California Government Code, Title 1
11 General, Division 7 Miscellaneous, Chapter 5 Joint Exercise of Powers Article 1 Joint Powers
12 Agreements, Section 6502, and if authorized by their legislative or other governing bodies, other
13 public agencies may contract directly with Contractor under the terms of the Contract.
14 Contractor shall be charged a one percent (1%) administrative fee for the use of said Contract.
15 Contractor shall notify the ATN prior to such use of the Contract in providing goods, service, or
16 work product to other agencies. Contractor shall pay the administrative fee upon execution of
17 said Contract. Contractor payable to the ATN at time of cooperative agency payment.

18 **51. Quarterly Reports.** If requested, parties agree that Contractor shall provide quarterly reports to
19 ATN which shows each item purchased from ATN in the prior quarter, the individual cost of each
20 item, and the total cost of all items purchased in the quarter.

21 **52. General Product Requirements.** All items delivered shall conform to the Scope of Work set forth
22 in the RFP as that term is defined in Section 29 above (the "Scope of Work") and shall be in first
23 class condition. Acceptance by the ATN shall be subject to inspection and approval. In case of
24 conflict between the Scope of Work and additional contract terms and these Standard Terms and
25 Conditions, the Scope of Work and Additional Contract Terms shall prevail. The apparent
26 silence of the Standard Terms and Conditions and Scope of Work and Additional Contract Terms
27 as to any detail or the apparent omission of a detailed description concerning any point shall be
28 regarded as meaning that only best commercial practice is to prevail and that only items
29 manufactured with material and workmanship of first quality are to be supplied. All items
30 delivered shall be of identical style, quality, and appointments as those offered to the trade in
31 general during the course of the model year. All items delivered shall be new current models, free
32 and clear of all liens and encumbrances. Unless otherwise provided in the Scope of Work, items

1 shall, where appropriate, be prepared for delivery to and use by the ATN by a factory franchised
2 agent. Each item delivered shall be accompanied by all pre-delivery inspection sheets, coupons,
3 certificates, descriptive literature, warranty cards, and information provided by the manufacturer
4 and furnished to the trade in general. All such documents shall be properly completed and
5 signed in accordance with industry standards. All items required by the Scope of Work to be UL
6 listed shall indicate the current UL listing on the item. All items that are required by the Scope of
7 Work to have any other certification shall indicate that certification on the item or in the
8 accompanying documentation.

9 **53. Inspection and Acceptance.** Goods, service, or work product furnished under this Contract shall
10 be subject to inspection and testing by the ATN at times and places determined by the ATN
11 within a reasonable time after arrival at its ultimate destination. If the ATN finds goods,
12 service, or work product to be incomplete, unsatisfactory, defective, or of inferior quality or
13 workmanship, or fails to meet the Scope of Work or other requirements or not in compliance
14 with the Contract, the ATN, at its sole discretion, may either reject the goods, service, or work
15 product, require Contractor to correct any defects without charge, or negotiate with Contractor
16 to sell the goods, service, or work product to the ATN at a reduced price, whichever the ATN
17 deems equitable under the circumstances. The ATN may return such goods, service, or work
18 product to Contractor at Contractor's expense. Contractor shall reimburse the ATN for any
19 amounts paid by the ATN for the returned goods, service, or work product and any costs incurred
20 by the ATN to return the goods to the Contractor. If Contractor is unable or refuses to cure any
21 defects within a time deemed reasonable by the ATN, the ATN may reject the goods, service, or
22 work product and cancel the Contract in whole or in part. Payment for merchandise, service, or
23 work product prior to inspection shall not be construed to be an acceptance of unsatisfactory or
24 defective merchandise, service, or work product. Nothing in this paragraph shall in any way
25 affect or limit ATN's rights as buyer under the Uniform Commercial Code, including the rights and
26 remedies relating to rejection or revocation of acceptance under California Commercial Code §§
27 1101, et seq.

28 **54. Warranty and Service.** Contractor warrants all goods, service, or work product delivered to be
29 free from defects in labor, material and manufacture and to be in compliance with the Scope of
30 Work set out in this Contract. All implied and express warranty provisions of the UCC are hereby
31 incorporated by reference. Further, Contractor represents and warrants that Contractor has the
32 power and ATN to enter into and perform this Contract and that this Contract, when executed

1 and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance
2 with its terms. All items delivered shall carry either the standard manufacturer's warranty or
3 service policy providing that warranty work will be performed by any authorized manufacturer's
4 dealer, or if specified in the Scope of Work, the warranty and service policy called for in the Scope
5 of Work. In addition, unless otherwise noted in the Scope of Work, the warranty and service
6 policy indicated above shall include the following terms and conditions:

7
8 a. There shall be no distance or time limitations, not applicable to the trade in general, on either
9 standard or extended warranty or labor. All franchised or authorized dealers of the item in
10 the state shall honor warranty. Warranty maintenance requirements, when performed by
11 ATN, shall be acceptable to dealer when said work performance meets or exceeds the dealer
12 certification requirements. ATN shall provide evidence of such work performance upon
13 request, as required by the manufacturer. Any extended warranty period customarily
14 granted shall be made available to ATN at no additional cost, and

15
16 b. ATN shall be advised of all product recalls on all or any part of the item at no additional cost.
17 All product recall information, replacement parts and labor, shall be provided to the ATN as
18 soon as available to dealer.

19 **55. Shipment Reservation Prohibited.** Contractor shall not ship the goods, service, or work product
20 under reservation and no tender of a bill of lading will operate or function as a tender of the
21 goods or work product.

22 **56. No Replacement of Defective Tender.** Contractor tender of goods, service, or work product must
23 fully comply with all provisions of this Contract as to time of delivery, quantity, assortment,
24 quality, and the like. If a tender is made which does not fully conform, this shall constitute a
25 breach, and the Contractor shall not have the right to substitute a conforming tender.

26 **57. Product Correction.** It is agreed that Contractor shall be fully responsible for making any
27 correction, replacement, or modification necessary for specification or legal compliance. In the
28 event of any call back, Contractor agrees to give the ATN first priority. Contractor agrees that if
29 the product or service offered does not comply with the foregoing, the ATN has the right to
30 cancel the purchase at any time with a full refund within thirty (30) days after Notice of Non-
31 compliance and Contractor further agrees to be fully responsible for any consequential damages
32 suffered by the ATN.

- 1 **58. Default in One Installment to Constitute Breach.** Each installment or lot of the Contract is
2 dependent on every other installment or lot and a delivery of nonconforming goods, service, or
3 work product or a default of any nature under one installment or lot will impair the value of the
4 whole Contract and constitute a breach of the Contract as a whole.
- 5 **59. Hazardous Materials.** Contractor warrants that goods, service, or work product provided under
6 this Contract comply with all federal, state, and local safety and health requirements. All items
7 that include hazardous materials shall be labeled in accordance with law with the names of the
8 hazardous ingredients, the hazards of the materials, and the appropriate precautions. Contractor
9 shall provide a Material Safety Data Sheet as defined by OSHA for any goods, service, or work
10 product provided under this Contract which may release, or otherwise result in exposure to, a
11 hazardous substance under normal conditions of use. In addition, Contractor shall label, tag, or
12 mark such goods, service, or work product. Those materials for which toxicological or hazard data
13 are unavailable shall carry a label stating: "Toxicological and other hazards unknown. Handle as
14 extremely hazardous."
- 15 **60. Security.** Any disclosure or removal of any ATN material and/or information marked as
16 confidential or private on the part of Contractor shall be cause for immediate cancellation of the
17 Contract. Any liability, including, but not limited to, attorney fees, resulting from any action or
18 suit brought against the ATN as a result of the Contractor's willful or negligent release of
19 information, documents, or property contained in ATN facilities shall be borne solely by the
20 Contractor.
- 21 **61. Preference for Recycled Materials.** Contractor agrees to comply with all the requirement of
22 Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C.
23 6962), including the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as
24 they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.
- 25 **62. Prohibition on Government Contracts.** The Contractor shall comply with all applicable provisions
26 of Public Law 110-174 – Sudan Accountability and Divestment Act of 2007, as amended and
27 Public Law 104-172 - Iran Sanctions Act of 1996, as amended. Contractor further agrees that
28 they shall not have any scrutinized business operations in Sudan and/or Iran.
- 29 **63. Terrorism Country Divestments.** In accordance with Export Administration Act of 1979, as
30 amended, ATN is prohibited from purchasing from a company that is in violation of the Export
31 Administration Act. By entering into this Contract, Proposer/Contractor warrants compliance
32 with the Export Administration Act.

1 **64. Contractor's Employee E-Verify Eligibility Requirement.** The Proposer/Contractor shall comply
2 with all applicable provisions of the Federal Immigration and Nationality Act (FINA), Title 8,
3 United States Code (USC), which requires compliance with federal immigration laws by State
4 employers, State contractors and State subcontractors in accordance with the E-Verify
5 Employee Eligibility Verification Program. See the following website for further information:
6 www.dhs.gov/e-verify.

7
8 Pursuant to the previous listed regulations, ATN may request verification of compliance from
9 any Contractor or subcontractor performing work under this Contract. ATN reserves the right
10 to confirm compliance. Should ATN suspect or find that the Contractor or any of its
11 subcontractors are not in compliance, ATN may pursue any and all remedies allowed by law,
12 including, but not limited to suspension of work, termination of this Contract for breach or
13 default, and suspension and/or debarment of the Contractor. All costs necessary for
14 compliance shall be solely borne by the Contractor.

15 **65. Evidence of lawful presence in the United States.** In accordance with United States Code (USC),
16 Title 8 Aliens and Nationality, Chapter 14, § 1601-1646, and as a condition of the Federal
17 Government entering into this Contract, an affected individual person(s) or duly authorized party
18 (company representative, manager, signer or officer) shall complete and execute the attached
19 affidavit form hereto named as **Exhibit 1**. An affected person shall present one of the
20 identification documents contained therein (the "Identification Documents") to verify their
21 lawful presence in the United States, in order to receive an ATN public benefit (defined as a
22 grant, contract or loan). Failure to execute the affidavit upon submittal of the Contract shall
23 render the Proposer/Contractor nonresponsive and shall result in rejection of the submitted
24 bid, proposal, quote or other response and automatic cancellation of this Contract.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

TO EFFECTUATE THIS CONTRACT, the parties have caused their duly authorized
representatives to execute this Contract by signing below.

I have read this Contract including the attached Exhibits. I understand the Contract and agree to be
bound by its terms.

CONTRACTOR

ANAHEIM TRANSPORTATION NETWORK

By _____

By _____

Diana Kotler
Executive Director

