

ORDINANCE NO. 3706-C.S.

AN ORDINANCE GRANTING AN EXCLUSIVE FIVE-YEAR
BUS STOP BENCH FRANCHISE TO CREATIVE OUTDOOR
ADVERTISING OF AMERICA FOR THE RIGHT, PRIVILEGE
AND PERMISSION TO PLACE AND OPERATE BENCHES
BEARING PRINTED MATTER OR SIGNS THEREON AT
DESIGNATED LOCATIONS ALONG THE STREETS IN THE
CITY OF MODESTO

The Council of the City of Modesto does ordain as follows:

SECTION 1. DEFINITIONS.

- (a) "Grantee" means Creative Outdoor Advertising of America
- (b) "The City" means and refers to the City of Modesto.
- (c) "Bench" means and refers to benches placed by or on behalf of the City upon public property along the public way for the accommodation of persons awaiting public transportation.
- (d) "Street" means and refers to any public thoroughfare or way including the sidewalk, the parkway and other public property fronting upon a public way in the City.
- (e) "Franchise" means and refers to this Ordinance and all of the rights, privileges, obligations, terms, conditions and restrictions set forth herein.
- (f) "City Manager" means and refers to the City Manager of the City of Modesto or the City Manager's designee.

SECTION 2. BENCHES PROHIBITED. No person shall install or maintain any bench bearing either printed matter or a sign along any street in the City except in accordance with the provisions of this franchise.

SECTION 3. SCOPE AND TERM OF FRANCHISE.

(a) **Scope.** Grantee shall have the exclusive franchise for the right, privilege and permission to install Grantee's benches, maintain benches, and place and maintain printed matter or signs on benches at designated locations along the streets in the City of Modesto in accordance with the provisions of this Franchise.

(b) **Term/Termination for Convenience.** The term of the Franchise shall commence on January 1, 2020 and shall end no later than December 31, 2024. The City shall have the right to extend the term for two additional 2 year periods, for a potential total of 9 years. The City shall have the right to terminate the Franchise for convenience at any time by providing Grantee with written notice of such termination at least ninety (90) days in advance of the date of termination. Should the City terminate the Franchise for convenience, the City shall reimburse the Grantee for all concrete pads installed by the Grantee, at a rate of \$8.80 per square foot. Notice of termination of Franchise shall be in writing and may be served by regular United States Postal Services. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to 8875 Hidden River Parkway, Tampa, FL 33637. Grantee is responsible for notifying the City in writing of any change of address. Failure of Grantee to give the City written notice of change of address shall not toll or otherwise prevent the commencement of the ninety (90) day notice period.

Grantee may terminate this franchise for convenience at any time and for any reason. Grantee shall give the City a minimum of ninety (90) days' notice in advance of the date of termination for convenience. This franchise shall terminate, and the parties shall have no further liability to each other except for obligations outstanding at the time of the effective date of the termination. The terms of this franchise shall remain in effect until the date of termination.

SECTION 4. BENCHES. A list of current benches shall be provided to Grantee by the City on the effective date of the franchise period. Grantee shall supply all benches for the franchise. The benches shall be the Avenue Bench. Upon completion of an in-person site audit by the Grantee, Grantee will replace all existing benches with the Avenue Bench provided that the Grantee can make the site ADA compliant. If Grantee cannot make the existing site ADA compliant, Grantee shall remove the existing bench.

Upon removal of existing benches, the Grantee will properly dispose of the benches. The Grantee will assume all costs associated with disposing of the existing benches that are removed.

Grantee shall install concrete pads for all benches as needed. Grantee shall be entirely responsible for obtaining the permits and work associated with permitting. Costs associated with permits shall be the Grantee's responsibility. All locations needing concrete work shall be approved by the City prior to start of work, and be in compliance with Americans with Disabilities Act requirements.

SECTION 5. LEASE OF SPACE FOR BENCHES/PAYMENT. For the exclusive rights and privileges set forth herein, Grantee shall lease bench space from the City

and/or advertise on the Avenue benches placed for a period no greater than five (5) years, plus two additional two year options if exercised.

For the right and privilege of leasing space for the benches from the City and installing the Avenue benches, Grantee shall pay to the City the greater of:

- (i) \$5 per bench that was sold to an advertising client for the month in question; or
- (ii) 12% of net advertising revenue for each installed advertising bench

Grantee's payments pursuant to this Section shall be to paid to City each month commencing on the first month of this franchise for the term of this franchise. These monthly payments will be due within sixty (60) days following the completion of the month the payment relates to.

SECTION 6. PLACEMENT OF BUS STOP PASSENGER SHELTERS

BEARING PRINTED MATTER OR SIGNS THEREON. The City shall have the authority to place printed matter or signs providing information about local public transportation systems on all bus stop shelters located along the City's public transportation system routes. The City shall also have the authority to place bus stop passenger shelters bearing paid advertising messages and other printed matter or signs thereon within the City of Modesto selected by the City Manager. Where such shelters are placed, Grantee shall remove benches unless otherwise directed by the City Manager.

SECTION 7. BENCH RESTRICTIONS. Grantee shall utilize only the front surface of the bench backrest for the placement of printed matter or signs unless otherwise

directed by City Manager. The rearward facing portion of each backrest shall be a blank surface with a solid color. No other material whatsoever shall be permitted on any portion of the bench except as specified by the City or approved by City Manager.

(a) Printed matter or signs shall be placed in accordance with the following stipulations:

(1) No printed matter shall be placed on any benches erected and maintained adjacent to property zoned by the City as Low Density Residential ("R-1"), Medium Density Residential ("R-2") or as Planned-Development ("P-D"), as those terms are defined by the Modesto Municipal Code. Where land use resembles an R-1 or R-2 Zone except for Pelandale Avenue between Dale Road and McHenry Avenue, where printed matter is allowed regardless of the adjacent land use. The City Managers determination of which P-D zoned properties resemble R-1 or R-2 zones shall be conclusive.

(2) Should the City, in its sole discretion, determine any advertising placed on any bench to be improper, offensive or a display that is likely to interfere with, mislead, or distract traffic or conflict with any traffic control system, Grantee shall remove all such material within twenty-four (24) hours after the City serves a written removal notice upon Grantee. Should the Grantee fail to remedy the situation within the twenty-four (24) hour period, the City may elect to remove said material in a manner deemed appropriate by City.

(3) Examples of words included in the prohibition stated in the preceding paragraph are the words, "Stop," "Look," "Drive-in," "Danger," but this list is not inclusive.

(4) No advertising or signs or devices shall be permitted in conjunction with bus stop bench advertising which comprise rotating, revolving or flashing lighting devices or any other moving parts.

(5) Reasonable proof or clarification of statements contained in any advertisement, exhibit material or announcement placed on a bus stop bench may be required by the City as a condition of use or continued use of bus stop bench advertising space.

(6) Advertisements displayed with dated content shall be removed by Grantee within ten (10) business days of the expiration or obsolescence of the ad content unless otherwise mutually agreed upon in advance with the City.

(b) No printed matter or sign is permitted to be displayed that:

(1) Advertises tobacco, beverages containing alcohol, or businesses regulated by Modesto Municipal Code Sections 5-9.101 through 5-9.406.

(2) Contains any depiction of an act of an immoral, violent, or debasing nature, or is otherwise not in keeping with the standards of the community.

(3) Competes with any primary products or services offered by any businesses occupying the abutting property where the bench or benches are placed.

(4) Is false, misleading, deceptive or defamatory.

(5) Promotes unlawful or illegal goods, services, or activities or implies that illegal behavior of any kind is acceptable.

(6) Implies or declares an endorsement by Modesto Area Express or the City of any service, product, or point of view without prior written authorization from the City Manager.

(7) Contains an image of any person in a sexually suggestive dress, pose, or context or shows any portion of any person's unclothed breasts, buttocks, navel or genitals, or in any way calls attention to a person's breasts, buttocks or genitals, clothed or not.

(8) Is directly adverse to the commercial or administrative interests of Modesto Area Express or the City, or is harmful to the morale of the City or City employees or City's operations Grantee.

(9) Demeans an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age, disability, or sexual orientation.

(10) Contains images or information that would be deemed by a significant segment of the public to be offensive, improper, or in bad taste.

(11) Promotes the legalization use of a controlled substance, as defined by Title 21, Chapter 13, of the U.S. Controlled Substances Act..

(12) May create an impression that would appear to support an illegal activity or organization.

(13) Contains political information concerning local, state or national subjects or promotes or endorses any position, individual, group, or political party for political purposes.

(14) Includes any material that demeans public transportation, suggests that another mode of transportation is superior to riding public transit, or portrays public transportation in a negative light.

(15) Promotes or advertises equipment or supplies that are commonly associated with the growing, manufacturing or use of illegal substances as defined by local, state or federal laws.

SECTION 8. APPROVAL OF LOCATION. Benches shall be placed at sites mutually agreed upon by Grantee and the City Manager. The City Manager may decide, at its sole discretion, to add or remove bus routes and bus stops as needed.

Benches shall be added, maintained, relocated, and removed as required by the City Manager. Grantee shall maintain an up to date listing of locations where benches are in place. Said listing shall include the street that the bench faces, the nearest cross street. The benches contemplated are designed for the convenience of those using public transportation buses in the City and shall be placed only at locations designated as bus stops by the City Manager. No bench shall be installed or maintained:

(a) Without the express written approval of the proposed location of the bench by the City Manager;

(b) In any alley;

(c) At any location where the distance from the face of the curb to the property line is less than six feet (6'); provided that whenever, the City Manager determines that observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager; or

(d) At any location when the owner or the person in lawful possession or control of the property abutting upon the public street at the place where the bench is located, requests in writing to the City Manager that the bench not be placed or maintained at such location; provided that whenever in the determination of the City Manager , observance of this requirement would result in inconvenience or hardship, this requirement may be waived in writing by the City Manager.

(e) At any location where a bus stop passenger shelter with advertising thereon is located, unless otherwise directed by the City Manager.

SECTION 9. RATIO OF BENCHES BETWEEN COMMERCIAL AND RESIDENTIAL AREAS. For each seven (7) benches installed in areas where benches bearing printed matter or signs are allowed, at least one bench shall be installed in areas where benches bearing printed matter or signs are not allowed. The specific locations of these latter benches shall be specified by the City Manager.

SECTION 10. MAINTENANCE OF BENCHES.

(a) All benches, regardless of location inside or outside of the City limits of the City of Modesto or whether they have advertising on them, shall be maintained in good repair in a safe and visible condition. Grantee shall provide normal maintenance to the benches once a month or as often as reasonably required. The City Manager's determination as to the state of repair and condition shall be conclusive. Grantee shall inspect each bench periodically to assure full compliance with the provisions of this section. Grantee shall replace bench if deemed broken or damaged to provide a fully complete, safe and visible bench. Grantee shall be responsible for supplying all benches at the Grantee's expense. Grantee shall be responsible for transporting and installing new benches. Grantee shall clean or repair benches identified by the City within twenty-four (24) hours' notification by the City of the need for the repair or cleaning.

(b) Grantee shall have a local project manager that shall be reasonably available to the franchise. City shall direct all communications regarding maintenance, servicing, cleaning, or other related issues to Grantee's central office. The local project manager shall have access to and frequently monitor communication from the Grantee's central office. Grantee shall have an electronic tracking system to enable the City to track maintenance, servicing, cleaning and other related issues from a website.

SECTION 11. PENALTY FOR IMPROPER MAINTENANCE AND

CLEANING. If the City Manager notices that benches are not cleaned, the Grantee will be notified to clean them within 48 hours or be penalized. This section also applies to each bench which has not been maintained, cleaned, or had graffiti removed as required in Section 10.

Violation of this section shall be determined by the City Manager, after Grantee has had opportunity to respond. A maximum of Two Hundred and no/100ths Dollars (\$200.00) in penalties under this section may be assessed by the City during any one calendar month.

Penalties are due and payable to the City within fifteen (15) days of mailing of an invoice by the City in the U.S. Mail. The invoice will specify the bench locations which do not meet the cleaning and/or maintenance requirements.

SECTION 12. REMOVAL OF BENCHES.

Upon completion of an in-person site audit by the Grantee within 30 days of the beginning of the franchise, Grantee shall replace existing benches with the Avenue upon written approval from the City within 180 days from the date of the written approval. The old benches that are removed will be properly discarded and Grantee will install the (Proposed Bench) bench at the location at Grantee's sole expense. During the initial 180 days, printed matter may be placed on the old benches with fees assessed as directed in this franchise.

After the Avenue bench is installed at locations approved by the City, it shall not be removed by the Grantee during the term of this franchise except with the consent of the City Manager. Benches shall be moved or removed only as directed by the City Manager except if the Bench is a danger to the public. If the Bench is a danger to the public, the Grantee may remove it without approval with notification to the City, within 24 hours. The City Manager, for

a cause considered by him reasonable, order the Grantee to move or remove any bench. When the City Manager orders a bench moved or removed, the Grantee shall move or remove it within three (3) days at its own expense. If the Grantee shall fail to do so, the City Manager may order the removal of the bench and, in addition, bill the Grantee for the removal in a sum not in excess of One-Hundred and no/100ths Dollars (\$100.00) per bench. Provided that this agreement reaches the full 9 year term (original 5 year term plus 2 additional 2 year options) , at the end of the Franchise period, the City will retain the Avenue benches at the locations installed at the time. The City will retain ownership of any concrete installed by the Grantee. Should this Franchise expire or terminate for convenience prior to the expiration of the full 9-year term, the Grantee will retain the Avenue benches at the locations installed at the time.

SECTION 13. LOCATION OF BENCHES AND BENCH

SPECIFICATIONS. All benches placed shall be the Avenue, and will be installed on a concrete slab installed by the Grantee. The bench must have the following characteristics:

1. Seat 3-4 users
2. Accessible, with armrests on both end of the bench
3. Anti-vagrant bar in the middle of the bench
4. A functional design for public transportation use, and esthetically pleasing
5. Vandal resistant, with a finish that can easily be cleaned (especially with graffiti)
6. A plastic coating that will not overheat on Modesto's hottest days.
7. Rounded corners for comfort and safety
8. 10 year useful life
9. The color will be black with a matte finish

10. The minimum dimensions are: Height 42” x Depth 18” x Length 72”

11. The benches will be anchored to concrete or concrete fiber pads

All benches shall be placed on sidewalks at no more than a thirty (30) degree angle to the curb line and at a distance from the curb to be determined by the City Manager. No bench shall be placed so as to injuriously obstruct passage on the sidewalk or street. No bench shall be placed within fifteen feet (15') of any fire hydrant. The clearance between the bench and the nearest obstruction on the sidewalk shall be no less than forty-two inches (42"). No more than two benches may be placed at any one bus stop unless approved by the City Manager. Bench locations shall comply with any additional location criteria established by the City Manager. The Grantee shall have the right to refuse to install at any location.

SECTION 14. EMERGENCY SITUATIONS. Grantee shall be present at the site of an emergency situation within one hour of verbal notification that such an emergency exists. An emergency situation is defined as damage to or unauthorized movement to a new location of a bench which presents a serious hazard to the public. If the City Manager determines that an emergency situation exists, their determination shall be conclusive. Failure of Grantee to respond within the prescribed time limit shall result in a penalty of up to Fifty and no/100ths Dollars (\$50.00) for each failure to respond. Penalties are due and payable to the City within fifteen (15) days of mailing an invoice by the City in the U.S. Mail. The City may, at its discretion, move the bench to a safe location pending arrival of Grantee.

SECTION 15. INDEMNITY, INSURANCE, AND HOLD HARMLESS

a. The Grantee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the City's City Clerk. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by registered mail, return receipt requested, for all of the following stated insurance policies.

1. Commercial General Liability – Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability – If the Grantee or the Grantee's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this franchise. Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Grantee has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation - Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if consultant provides written verification it has no employees)

4. If at any time any of said policies shall be unsatisfactory to the City, as to form or substance or if a company issuing such policy shall be unsatisfactory to the City, the Grantee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove approved. Upon failure of the Grantee to furnish, deliver, or maintain such insurance and certificates as above provided, this franchise, at the election of the City, may be forthwith declared suspended, or terminated. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under this franchise, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Grantee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Worker's Compensation. The Worker's Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by the Grantee for the City. the Grantee's insurance policy(ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A; VII or with approval of the Risk Manager. The Grantee shall hold the City, its agents, officers, employees, and volunteers, harmless from and save, defend, and indemnify them against any and all claims, losses, liabilities, and damages from every cause, including but not limited to, injury to person, property, or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of the Grantee, whether or not the act or omission arises from the sole

negligence or other liability of the City, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this franchise.

5. The Grantee shall provide the City with separate endorsements evidencing proof of the City's additional insured status as to both the general liability and automobile liability insurance policies. In addition, the Grantee shall provide the City with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.
6. For any claims related to this program, the Grantee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Grantee's insurance and shall not contribute with it.

SECTION 16. DEFAULT. In the event that either party shall fail or neglect to do or perform each and all of the terms and conditions of this franchise, the aggrieved party may give the party in default thirty (30) days' written notice to correct the conditions in default, and if the party in default refuses or neglects to make such corrections within the thirty (30) day period, the aggrieved party may terminate this franchise. Should Grantee herein default, Grantee agrees to leave all benches in the positions approved in accordance with Section 8 herein.

Should Grantee default, and at all times throughout the term of this franchise ordinance, and notwithstanding City's election at any time to exercise any particular remedy described herein or otherwise available in law or equity, City hereby reserves and retains the right to elect and exercise any and all remedies, whether simultaneously or consecutively, described herein or otherwise available in law and equity.

SECTION 17. INSPECTION OF BOOKS. The City shall have the right at all reasonable times to examine all books, papers, and records of the Grantee for the purpose of verifying the statements or reports required and for any other purpose whatsoever connected with this franchise. Associated audit costs with copying and or reproduction of documents, and staff as required to complete the audit, shall be borne by the City.

SECTION 18. DEFACING BENCHES PROHIBITED. No person shall tamper with or deface any bench covered by this franchise.

SECTION 19. PENALTY FOR VIOLATION OF SECTION 18. It shall be unlawful for any person to violate the provisions of Section 18 of this franchise, or to cause, permit or suffer the same to be done; and any person who does shall be deemed guilty of a misdemeanor, and upon conviction of any such violation, such person shall be punished by a fine of not more than One Thousand and no/100ths Dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

SECTION 20. TRANSFER OR ASSIGNMENT. This franchise may not be sold, transferred, assigned or otherwise disposed of, in whole or in part, without the prior written consent of the City Council. The City Council may grant or deny any such request and may impose such conditions as it may deem to be in the public's interest. Any attempted disposition made without such consent shall be void.

SECTION 21. REPEALS. This ordinance shall be repealed effective December 31, 2029.

SECTION 22. EFFECTIVE DATE. This ordinance shall become effective January 1, 2020, or thirty (30) days from and after its final passage and adoption, whichever is later, provided that Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof.

SECTION 23. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

SECTION 24. TAX PROVISION.

Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise. Grantee's continued failure to pay such tax after written notice from the City shall constitute grounds for revocation of this franchise. The parties agree and expressly confirm that the City has conferred upon the Grantee certain exclusive license rights to use municipal lands in connection, and solely in accordance, with the terms of this Agreement and the Grantee has no leasehold and/or tenancy and/or other interests or rights of any nature or kind whatsoever in any real property of the City in connection

with the execution, delivery and/or performance of this Agreement by the parties.

SECTION 25. CITY USE OF BENCHES. Grantee shall make available to the City, at no cost to the City, a maximum of twenty (20) benches that are without paid advertising or which carry only the Grantee's advertisement for the sale of advertising space on the benches. Said twenty (20) benches will be used for the purpose of displaying printed messages selected by the City to promote City programs or messages determined by the City to be of importance to the public. The City shall have the sole ability to select said twenty (20) locations. The City shall be responsible for the cost of production of its printed message in a format, including both style and material definitions identical to the format used by the Grantee in fulfilling the advertising contracts signed under this franchise, to the benches it utilizes. Grantee shall install said City signs on the benches at no cost to the City. Grantee shall have the ability to remove the City signs from locations that may subsequently be purchased by advertisers but shall relocate displaced City signs to other locations selected by the City.

SECTION 26. DRUG FREE WORKPLACE. Grantee certifies that he/she is in compliance with Sections 8350-8355 of Chapter 5.5 of the Government Code, Drug Free Workplace Act.

SECTION 27. GRANTEE'S RESPONSIBILITY FOR DAMAGES. Grantee shall reimburse the City for the cost of repairing any damage it causes to the City's property. The City shall make the final determination as to the Grantee's responsibility for any damage that may have occurred to the City's property. The City will invoice the Grantee for the cost of

repairing damage determined by the City to have been the responsibility of the Grantee. Grantee shall pay the invoice in full to the City within thirty (30) days of the mailing date of the invoice.

SECTION 28. FLY AMERICA REQUIREMENTS. Grantee shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and sub-recipients of Federal funds and their Grantees are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Grantee shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Grantee shall include the requirements of this section in all subcontracts that may involve international air transportation.

SECTION 29. BUY AMERICA CERTIFICATION. Grantee shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating or planning funds. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a

general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

SECTION 30. CARGO PREFERENCE. Grantee shall:

a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels;

b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through Grantee in the case of a subcontractors bill-of-lading.);

c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

SECTION 31. ENERGY CONSERVATION. Grantee shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

SECTION 32. CLEAN AIR.

1. Grantee shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Grantee shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
2. Grantee shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

SECTION 32. CLEAN WATER. Grantee shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Grantee shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Grantee shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

SECTION 32. LOBBYING. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 10465 [to be codified at 2 U.S.C. § 1601, et seq.] - Grantees who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying

Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

SECTION 33. ACCESS TO RECORDS AND REPORTS. The following access to records requirements apply to this Franchise:

1. Grantee shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and Grantee records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Grantee shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO Grantee, access to Grantee's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Grantee shall provide the purchaser, authorized FTA representatives, including any PMO Grantee, access to Grantee's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Grantee shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the Grantee which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. If the City which is an FTA recipient enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, Grantee shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Grantee shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Grantee shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Grantee agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

SECTION 34. FEDERAL CHANGES. Grantee shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Grantee's failure to comply shall constitute a material breach of the contract.

SECTION 35. RECYCLED PRODUCTS. The Grantee agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

SECTION 36. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

(1) The recipient and Grantee acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the Grantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) Grantee agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

SECTION 37. PROGRAM FRAUD AND FALSE OR FRAUDULENT

STATEMENTS OR RELATED ACTS. (1) Grantee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, Grantee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is

being performed. In addition to other penalties that may be applicable, Grantee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on Grantee to the extent the US Government deems appropriate. (2) If Grantee makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on Grantee, to the extent the US Government deems appropriate. (3) Grantee shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

SECTION 38. CONTRACTS INVOLVING FEDERAL PRIVACY ACT

REQUIREMENTS. (1) The Grantee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Grantee agrees to obtain the express consent of the Federal Government before the Grantee or its employees operate a system of records on behalf of the Federal Government. The Grantee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Grantee also agrees to include these requirements

in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

SECTION 39. CIVIL RIGHTS REQUIREMENTS. The following requirements apply to the underlying franchise: The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with

FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

- b. Nondiscrimination - Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply

with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

- d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements

of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT

regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 - 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but

2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology

Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd - 290dd-2,
- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,
- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

SECTION 40. ADA ACCESS REQUIREMENTS. The Grantee shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Grantee shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

SECTION 41. DISADVANTAGED BUSINESS ENTERPRISE.

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- b. The Grantee shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The Grantee shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Grantee to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal

corporation deems appropriate. Each subcontract the Grantee signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- c. The Grantee is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Grantee's receipt of payment for that work from the recipient. In addition, the Grantee may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractors work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractors work by the recipient and Grantee's receipt of the partial retainage payment related to the subcontractors work.
- d. The Grantee must promptly notify the recipient whenever a DBE subcontractors performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractors to perform at least the same amount of work. The Grantee may not terminate any DBE subcontractors and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

SECTION 42. PROMPT PAYMENT. The Grantee agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime Grantee agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment

from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

SECTION 43. INCORPORATION OF FEDERAL TRANSIT

ADMINISTRATION (FTA) TERMS. The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated 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 Grantee shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

SECTION 44. FULL AND OPEN COMPETITION. In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition. Prohibition Against Exclusionary or Discriminatory Specifications Apart from inconsistent requirements imposed by Federal statute or regulations, the Grantee shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

SECTION 45. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES. Grantee shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass

transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Grantee shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

SECTION 46. NOTIFICATION OF FEDERAL PARTICIPATION. To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, Grantee shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

SECTION 47. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS. No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

SECTION 49. COMPLIANCE WITH FEDERAL REGULATIONS. Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in

the event of a conflict with other provisions contained in this Agreement. Grantee shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Grantee shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Grantee's failure to so comply shall constitute a material breach of this contract.

SECTION 50. VETERANS PREFERENCE. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

SECTION 51. GOVERNMENT WIDE DEBARMENT AND SUSPENSION.

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension

and Debarment,” 2 C.F.R. part 1200, 2 U.S. OMB, “Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA “System for Award Management,” <http://https.www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the “System for Award Management” at <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

SECTION 52. BREACHES AND DISPUTE RESOLUTION. Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon contractor and contractor

shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729. Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State. Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of November, 2019, by Councilmember Zoslocki, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____
TED BRANDVOLD, Mayor

ATTEST:

By: _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: _____
ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3706-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of November, 2019, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Ah You, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Ah You, Grewal, Kenoyer, Madrigal, Ridenour, Zoslocki, Mayor Brandvold
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: _____
MAYOR TED BRANDVOLD

ATTEST: _____
STEPHANIE LOPEZ, City Clerk

Effective Date: December 26, 2019

(SEAL)

APPROVED AS TO FORM:

By: _____
ADAM U. LINDGREN, City Attorney

ORDINANCE NO. 3706-C.S.
Effective Date: December 26, 2019

ACCEPTANCE OF FRANCHISE

Creative Outdoor Advertising of America, Tampa, Florida does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3706-C.S., introduced by the Council of the City of Modesto on November 5th, 2019, granting a nine-year bus stop bench franchise.

Date:_____. GRANTEE: _____

By:

Title:

By:

Title

APPROVED AS TO FORM:

By_____

ADAM U. LINDGREN, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of ____ o'clock p.m. on the ____ day of _____, 20__.

ORDINANCE NO. 3706-C.S.
Effective Date: December 26, 2019

STEPHANIE LOPEZ, City Clerk