

**AGREEMENT FOR IMPERIAL VALLEY TRANSIT (IVT) FIXED ROUTE SERVICES**

THIS AGREEMENT FOR IVT FIXED ROUTE SERVICES (“this Agreement”), made and entered into effective the 24<sup>th</sup> day of July, 2019, is by and between the IMPERIAL COUNTY TRANSPORTATION COMMISSION (“ICTC”), and FIRST TRANSIT, INC., a Delaware corporation authorized to conduct business in California (“PROVIDER”).

**WITNESSETH**

**WHEREAS**, certain funding is available to provide public transit services under the Local Transportation Authority (“LTA”), Transportation Development Act (“TDA”) and Federal Transit Administration (“FTA”); and

**WHEREAS**, ICTC has agreed to administer from said funds for payment to entity(ies) under contract with ICTC for the provisions of specific transit services; and

**WHEREAS**, ICTC has authorized and circulated a Request for Proposal for the IVT Fixed Route services among prospective PROVIDERs for the delivery of the IVT Fixed Route system.

**NOW, THEREFORE**, ICTC and PROVIDER have and hereby agree to the following:

**1. TERM AND RIGHT OF EXTENSION**

**1.1.** This Agreement shall commence on August 1, 2019 and shall continue until June 30, 2022, and if all two (2) one (1) year extension option periods are exercised pursuant to paragraph 1.2 herein, the Agreement shall continue until June 30, 2024.

**1.2.** ICTC may, at its sole option and discretion, extend this Agreement up to two (2) times as follows:

**1.2.1.** From July 1, 2022 through June 30, 2023; and

**1.2.2.** From July 1, 2023 through June 30, 2024; and

**1.3.** This Agreement is contingent upon the receipt of funds by the ICTC. Such funds include Federal Transit Administration (FTA) Section 5307, 5310, and 5311 Grants, Local Transportation Funds (LTF), State Transportation Assistance Funds (STAF) and Local Transportation Authority (LTA).

1 **2. DEFINITIONS**

2 **2.1** “Request for Proposal” shall mean “Imperial Valley Transit (IVT) Fixed Route Transit  
3 Services Request for Proposal” dated March 2019 and is incorporated herein by this  
4 reference.

5 **2.2** “Proposal” shall mean PROVIDER’s completed proposal entitled “Imperial Valley Transit  
6 (IVT) Fixed Route Transit Services Request for Proposal” dated May 8, 2019, PROVIDER  
7 submitted to ICTC on the proposal due date and is incorporated herein by this reference.

8 **2.3** “Attendant” shall include one (1) individual to assist the disabled passenger.

9 **2.4** “Eligible passenger” shall include those individuals deemed eligible for discounted fares for  
10 the fixed route service through a determination process.

11 **2.5** “Disability,” with respect to an individual, shall include all impairments as defined by the  
12 Act at 49 Code of Federal Regulations (“CFR”) 37.3.

13 **2.6** “General public” shall include those individuals that do not have an impairment(s) as defined  
14 by the Act at 49 CFR 37.3.

15 **2.7** “One-way trip” is defined as authorized travel between two (2) points. A new One-Way  
16 Trip begins with the cessation of the previous trip.

17 **2.8** “Route” is defined as a repetitive pattern of travel for a specific date and time that remains  
18 the same, each time performed. Each route will have a specific number or color designation  
19 for purposes of identification.

20 **2.9** “Senior” shall include individuals who are sixty years of age or older.

21 **2.10** “Subscriber” shall include individuals who travel to the same destination at the same time  
22 on a regular basis.

23 **3. DESCRIPTION OF WORK**

24 **3.1** The services to be provided under this agreement with ICTC are those contained in the  
25 document entitled “IVT Fixed Route Services Scope of Work FY 2019-2020 through FY  
26 2023-24”, attached hereto as Exhibit “A” and incorporated by this reference.

27 **3.2** This Agreement is for fixed-route transit services and implies a service that operates a  
28 majority of its services based upon a set, designated pattern and routes of travel, within a

1 designated operating area and with specific hours of operation. There may be routes or  
2 trips that are in a demonstration phase throughout the term of this Agreement. The fixed-  
3 route transit services system, when viewed in its entirety, must achieve a negotiated fare  
4 box. Routes and trips are to be monitored separately for performance standards,  
5 efficiency and effectiveness.

6 **3.3** In the event of a conflict among this Agreement, the Request for Proposal and the Proposal,  
7 the Request for Proposal shall take precedence over the Proposal and this Agreement shall  
8 take precedence over both.

9 **4. RESPONSIBILITIES OF PROVIDER**

10 **4.1** PROVIDER shall provide management, technical and operating personnel, services,  
11 equipment, non revenue service hour vehicles and facilities necessary for the operation  
12 of ICTC's fixed route services. In additional, PROVIDER shall participate fully in the  
13 meetings and events of the Social Services Transportation Advisory Council (SSTAC).

14 **4.2** In providing the services and oversight provided pursuant to this Agreement, PROVIDER  
15 will act in the capacity of an independent contractor and will provide management,  
16 technical and operating personnel, services, equipment and facilities necessary for the  
17 operation of ICTC's fixed route services.

18 **4.3** In the event of a major emergency (e.g., earthquake, flood or manmade catastrophe),  
19 PROVIDER shall make transportation and communication resources available to the  
20 degree possible for emergency assistance. Line of Instruction may or may not be direct  
21 through ICTC. PROVIDER shall take instruction from the organization that has assumed  
22 responsibility for the evacuation and/or transport of injured and ambulatory wounded and  
23 movement of persons to food and shelter facilities, e.g., local police or ICTC's Office of  
24 Emergency Services.

25 **4.4** PROVIDER shall comply with all terms, conditions and requirements of the Request  
26 for Proposal and this Agreement.

27 **4.5** PROVIDER shall perform such other tasks as necessary and proper for the full  
28 performance of the obligations assumed by PROVIDER hereunder.

1 **5. RESPONSIBILITIES OF ICTC**

2 **5.1.** ICTC will provide management oversight, establish priorities for service delivery,  
3 perform on-going planning, programming and establish related policies for all activities  
4 relative to the services, service areas, fares, schedules, days and hours of operations,  
5 preparation of planning documents, budgets, grant applications and related  
6 documentation, certification and eligibility and other such activities relative to overall  
7 system administration and contract compliance monitoring.

8 **5.2.** ICTC will pay a not-to-exceed annual reimbursement or subsidy within thirty (30) days after  
9 submittal of monthly invoices pertaining to the service. The monthly subsidy will be  
10 calculated by the subtraction of fare revenues collected and retained by the PROVIDER,  
11 from the cost, and will be paid in arrears. PROVIDER shall establish and maintain  
12 accounting records as required by ICTC, the Federal Transit Authority (FTA), the State  
13 Department of Transportation (Caltrans), and Imperial County Transportation  
14 Commission (ICTC). PROVIDER will be subject to annual fiscal and operational audits.

15 **5.3.** Disputes between passengers and PROVIDER will first be handled by PROVIDER's  
16 management personnel. ICTC will inform PROVIDER of all disputes. ICTC shall act  
17 as the final step and/or body of appeals in the resolution of any service complaints that  
18 PROVIDER is unable to resolve.

19 **5.4.** ICTC reserves the right to impose financial penalties for situations or items in this  
20 Agreement that are violated. (See Exhibit "A", Appendix A-3, for Table of Incentives or  
21 Penalties). Adjustments would be made at the time of monthly compensation.

22 **5.5.** An authorized agent of ICTC will handle administration, monitoring and determination  
23 of compliance with the requirements of this Agreement. All aspects of daily operations  
24 will be available to inspection/observation by an authorized representative of ICTC.

25 **6. SERVICE IMPLEMENTATION**

26 The service area designation, service days and hours, and service miles shall be those specified in  
27 Exhibit "A" – "IVT Fixed Route Services Scope of Work FY 2019-2020 through FY 2023-24".

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1 **7. REPRESENTATIONS BY PROVIDER.**

2 7.1 PROVIDER understands and agrees that ICTC has limited knowledge in the transit services  
3 specified in the description of work. PROVIDER has represented itself to be expert in these  
4 fields and understands that ICTC is relying upon such representation.

5 7.2 PROVIDER represents and warrants that it is a lawful entity possessing all required licenses  
6 and authorities to do business in the State of California and perform all aspects of this  
7 Agreement.

8 7.3 PROVIDER shall not commence any work under this Agreement or provide any other  
9 services, or materials, in connection therewith until PROVIDER has received written  
10 authorization from the ICTC Executive Director or his designee, via a Notice to Proceed,  
11 to do so.

12 7.4 PROVIDER represents and warrants that the people executing this Agreement on behalf  
13 of PROVIDER have the authority of PROVIDER to sign this Agreement and bind  
14 PROVIDER to the performance of all duties and obligations assumed by PROVIDER  
15 herein.

16 7.5 PROVIDER represents and warrants that any employee, PROVIDER, subcontractor and  
17 agent who will be performing any of the duties and obligations of PROVIDER herein  
18 possess all required licenses and authorities, as well as the experience and training, to  
19 perform such tasks.

20 7.6 PROVIDER represents and warrants that the allegations contained in its Proposal are true  
21 and correct.

22 7.7 PROVIDER understands that ICTC considers the representations made herein to be  
23 material and would not enter into this Agreement with PROVIDER if such  
24 representations were not made.

25 **8. COMPENSATION**

26 PROVIDER shall receive compensation monthly based upon the following formats:

27 8.1. A fixed hourly rate per fiscal year shall apply for each vehicle service or revenue hour.  
28 The fixed hourly rate shall apply for the assigned fiscal year. Vehicle revenue hours will

1 be calculated based upon the actual time that each revenue service vehicle is in service  
2 and available to passengers. Vehicle revenue hours shall specifically exclude  
3 deadhead hours, including time for travel to and from the first stop and after the last stop,  
4 storage facilities, fueling facilities, road tests, inspections training, personnel lunches and  
5 breaks.

6 **8.2.** The fixed hourly rate per fiscal year will be determined by the use of the combination of  
7 two other rates divided by the total annual vehicle service hours.

8 **8.2.1.** A variable monthly rate for all cost elements assigned to PROVIDER that can  
9 change.

10 **8.2.2.** A fixed monthly rate for all cost elements assigned to PROVIDER with known  
11 quantities or costs that are not included in the variable monthly rate.

12 **8.3.** Compensation for services provided for under Exhibit “A” – “IVT Fixed Route Services  
13 Scope of Work FY 2019-2020 through FY 2023-24” shall be as follows:

14 **8.3.1.** For the period August 1, 2019 through June 30, 2020, the price is identified as  
15 \$3,205,312. The fare box is established at seventeen percent (17%); therefore the  
16 annual not-to-exceed subsidy shall be \$2,660,409.

17 **8.3.2.** For the period July 1, 2020 through June 30, 2021, the price is identified as  
18 \$4,539,442. The fare box is established at seventeen percent (17%); therefore the  
19 annual not-to-exceed subsidy shall be \$3,767,739.

20 **8.3.3.** For the period July 1, 2021 through June 30, 2022, the price is identified as  
21 \$4,706,127. The fare box is established at seventeen percent (17%); therefore the  
22 annual not-to-exceed subsidy shall be \$3,906,085.

23 **8.3.4.** For the period July 1, 2022 through June 30, 2023, the base price is identified as  
24 \$4,849,972. The fare box is established at seventeen percent (17%); therefore the  
25 annual not-to-exceed subsidy shall be \$4,025,477.

26 **8.3.5.** For the period July 1, 2023 through June 30, 2024, the base price is identified as  
27 \$5,047,390. The fare box is established at seventeen percent (17%); therefore the  
28 annual not-to-exceed subsidy shall be \$4,189,334.

1           **8.4.** Compensation for services provided for under Exhibit “A” – “IVT Fixed Route Services  
2 Scope of Work – Blue and Green Lines Fixed-Route Bus FY 2019-2020 through FY 2023-  
3 24” shall be as follows:

4           **8.4.1.** For the period August 1, 2019 through June 30, 2020, the price is identified as  
5           \$582,616. The fare box is established at four percent (4%); therefore the annual  
6           not-to-exceed subsidy shall be \$559,311.

7           **8.4.2.** For the period July 1, 2020 through June 30, 2021, the price is identified as  
8           \$629,964. The fare box is established at four percent (4%); therefore the annual  
9           not-to-exceed subsidy shall be \$604,765.

10          **8.4.3.** For the period July 1, 2021 through June 30, 2022, the price is identified as  
11          \$653,097. The fare box is established at four percent (4%); therefore the annual  
12          not-to-exceed subsidy shall be \$626,973.

13          **8.4.4.** For the period July 1, 2022 through June 30, 2023, the base price is identified as  
14          \$673,058. The fare box is established at four percent (4%); therefore the annual  
15          not-to-exceed subsidy shall be \$646,136.

16          **8.4.5.** For the period July 1, 2023 through June 30, 2024, the base price is identified as  
17          \$700,455. The fare box is established at four percent (4%); therefore the annual  
18          not-to-exceed subsidy shall be \$672,437.

19          **8.5.** Compensation for services provided for under Exhibit “A” – “IVT Fixed Route Services  
20 Scope of Work – IVT Gold Line Fixed-Route Bus FY 2019-2020 through FY 2023-24”  
21 shall be as follows:

22          **8.5.1.** For the period August 1, 2019 through June 30, 2020, the price is identified as  
23          \$303,330. The fare box is established at four percent (4%); therefore the annual  
24          not-to-exceed subsidy shall be \$291,197.

25          **8.5.2.** For the period July 1, 2020 through June 30, 2021, the price is identified as  
26          \$327,981. The fare box is established at four percent (4%); therefore the annual  
27          not-to-exceed subsidy shall be \$314,862.  
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1           **8.5.3.** For the period July 1, 2021 through June 30, 2022, the price is identified as  
2                           \$340,025. The fare box is established at four percent (4%); therefore the annual  
3                           not-to-exceed subsidy shall be \$326,424.

4           **8.5.4.** For the period July 1, 2022 through June 30, 2023, the base price is identified as  
5                           \$350,418. The fare box is established at four percent (4%); therefore the annual  
6                           not-to-exceed subsidy shall be \$336,401.

7           **8.5.5.** For the period July 1, 2023 through June 30, 2024, the base price is identified as  
8                           \$364,681. The fare box is established at four percent (4%); therefore the annual  
9                           not-to-exceed subsidy shall be \$350,094.

10       **8.6.** The fare box recovery ratio of 17% (or any other fare box ratio calculated and ultimately  
11                           required during the course of this Agreement) is subject to the deduction of normal  
12                           Transportation Development Act operating cost exclusions.

13       **8.7.** In the event that the required fare box revenue is not achieved on an annual basis, the  
14                           PROVIDER may be allowed to request compensation from the ICTC for reimbursement  
15                           up to the agreed upon annual cost. The lack of attainment for the annual fare box revenue  
16                           must not be due to circumstances affecting the quality of transit service within the  
17                           PROVIDER's control, e.g. ICTC's documentation of poor maintenance affecting the  
18                           reliability of service or passenger comfort on vehicles, or inappropriate behavior by  
19                           customer service staff or vehicle drivers.

20       **8.8.** In the event that fuel costs are increased beyond PROVIDER's control and the negotiated  
21                           rate, ICTC will offer PROVIDER an additional amount to offset the increase in costs. A  
22                           fuel escalator clause shall contain the following provisions:

23       **8.8.1.** The fuel escalator shall be calculated as follows: the full amount that fuel costs  
24                           exceed the vehicle fuel budget line item shall be adjusted downward by any  
25                           savings in any other line item category that has not been fully utilized.

26       **8.8.2.** The request for additional subsidy shall be submitted to ICTC at the conclusion  
27                           of the fiscal year in which the costs are incurred. The request shall be  
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accompanied by an accounting developed by PROVIDER, and invoices substantiating said increase.

**8.8.3.** The cost of fuel is negotiated at a rate set at \$3.80 per gallon for the term of this Agreement.

**9. FARE BOX**

- 9.1.** Fare Box Revenue. Fareboxes are required. Vehicle operators will not make change for passengers.
- 9.2.** Fare Collection. PROVIDER’s staff will collect fares in advance where feasible. Vehicle operators shall also collect fares as established by ICTC and maintain an accurate count of all boarding passengers by fare category. Vehicle operators shall not make change for passengers.
- 9.3.** Fare box revenue shall be counted by PROVIDER’s office employees daily and reconciled against the stated number of passenger trips. Any shortages must be investigated and corrected by PROVIDER. PROVIDER will deposit farebox revenue daily. Fare box revenue is the property of ICTC, and PROVIDER will submit written reports to ICTC of revenue collection.
- 9.4.** Transfers. PROVIDER shall also develop a transfer procedure and collect transfers to and from IVT branded or other public agency transit services. PROVIDER shall account for it in its report of revenue collected.
- 9.5.** Prepaid Fare Revenue. PROVIDER shall develop and collect prepaid fare revenue from individuals, educational facilities and social service agencies. Revenue shall be collected by PROVIDER personnel as needed but at a minimum on a monthly basis.

**10. PERFORMANCE STANDARDS**

Standards and evaluation criteria will be utilized to annually measure performance and efficiency of routes, and PROVIDER performance. This criterion is reported to State and Federal agencies annually. For the purposes of this Agreement, criteria will be negotiated and established: Performance standards for service implementation shall be those specified in

1 Exhibit "A", Appendix A-1 – "IVT Fixed Route Services Scope of Work FY 2019-2020 through  
2 FY 2023-24".

3 **11. MARKETING**

4 **11.1** Approval. Not later than thirty (30) days after the execution of this Agreement and ninety  
5 (90) days prior to the end of the fiscal year thereafter, PROVIDER shall participate in the  
6 development of a marketing plan with ICTC and ICTC's consultant specific to the IVT  
7 services for ICTC's final approval. The marketing plan shall indicate all proposed  
8 activities with a corresponding budget of 5% of the total cost of the service for the fiscal  
9 year. PROVIDER shall be responsible for working with ICTC staff and consultant for  
10 the development and preparation, subject to the approval of ICTC, of all marketing  
11 materials for the IVT Fixed Route services. PROVIDER will coordinate the placement,  
12 scheduling and distribution of all advertising and promotional materials designed to  
13 inform patrons of ICTC services and to promote ridership.

14 **11.2** Preparation. PROVIDER shall be responsible for the preparation and printing of all  
15 necessary passes, tickets and transfers to be used in the fixed route service.

16 **11.3** Distribution. PROVIDER shall distribute and disseminate such materials in accordance  
17 with the provisions of this Agreement and any directions supplemental thereto provided  
18 by ICTC.

19 **11.4** Promotion. PROVIDER shall promote the service for ICTC, and distribute brochures  
20 and other materials.

21 **11.5** Presentation. PROVIDER shall, under the direction of ICTC, provide contact on an as-  
22 needed basis with private and non-profit community agencies, job resource centers and  
23 local governing bodies to promote interest and use in the transit services of ICTC. These  
24 contacts shall include, but not be limited to speaking engagements and displays.  
25 PROVIDER will participate as a technical resource contact with user groups or agencies  
26 as required, including meetings of ICTC committees or commission meetings upon  
27 request.  
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1           **11.6** Comment Cards. PROVIDER shall develop and distribute passenger comment cards.  
2           PROVIDER will respond to all comments with copies of response provided to ICTC.  
3           PROVIDER will provide statistical summaries of frequency and patterns of comments to  
4           ICTC on a monthly basis.

5   **12.    CUSTOMER SERVICE**

6           **12.1** Phone. PROVIDER shall establish at least two (2) customer service telephone numbers,  
7           at least one (1) of which shall be toll-free. PROVIDER shall provide telephone  
8           information service during all hours of system operation, up to one (1) hour before and  
9           one (1) hour after services have started and returned from daily operations. PROVIDER  
10          shall provide statistical summaries of frequency and patterns of telephone comments to  
11          ICTC on a monthly basis.

12          **12.2** TDD/FAX. PROVIDER's telephone system shall have TDD or equivalent, and FAX  
13          capabilities. PROVIDER shall publish these phone numbers in local telephone  
14          directory(ies).

15          **12.3** Exclusivity of Phone Services. PROVIDER's customer service telephone numbers shall  
16          be used solely for the purpose of providing customer information, serving trip requests  
17          and those activities required under the Scope of Work, and shall not be used by  
18          PROVIDER for any other purpose or business. These telephones shall be answered as  
19          specified by ICTC.

20          **12.4** Rollover of Phone. Upon termination of this Agreement, PROVIDER's customer service  
21          telephone numbers shall remain within the jurisdiction of ICTC. Any new PROVIDER  
22          would be responsible for transferring PROVIDER's customer service telephone numbers  
23          to their service.

24          **12.5** Bilingual Capability. PROVIDER shall provide bilingual dispatchers or information  
25          operators, and drivers who can fluently speak both the English and Spanish languages  
26          and are knowledgeable of time schedules, routes, window corridors and transit services  
27          of ICTC as is necessary to answer customer information requests, refer passengers to  
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1 other public transit service PROVIDERs and/or questions in a courteous, timely and  
2 professional fashion.

3 **13. COORDINATION**

4 **13.1 Consultation.** PROVIDER represents itself as an expert in the field of public fixed route  
5 transit service. As such, PROVIDER shall provide ICTC with minor technical assistance  
6 and consultation in such matters as operating policies, funding and coordination with  
7 other transit PROVIDERs at no additional charge to ICTC. At no time will PROVIDER  
8 be required to prepare intensive or in-depth studies without mutually agreed-upon  
9 compensation. Periodically, consultants will request information or interviews with  
10 PROVIDER staff. PROVIDER is required to cooperate with all ICTC-administered  
11 consultant projects.

12 **13.2 Service Recommendations.** PROVIDER shall report to ICTC and shall make  
13 recommendations as to changes to improve ICTC's fixed route service on a case-by-case  
14 basis. PROVIDER may not make any permanent changes that affect the quantity, quality  
15 or nature of the fixed route service without obtaining ICTC's written permission.

16 **14. MANAGEMENT**

17 **14.1 General Manager/Operations Manager.** ICTC shall participate in the selection and  
18 approval of the person serving as General Manager/Operations Manager. In the event  
19 that the General Manager must be replaced, ICTC will participate in the selection and  
20 approval of the replacement.

21 **14.2 Day-to-Day Operations.** PROVIDER will manage the day-to-day operation in  
22 accordance with the adopted operations plan and good management practices.  
23 Management of day-to-day operations of the system will be vested in at least one (1) local  
24 management individual who shall be experienced in all aspects of public fixed route  
25 operations. The individual shall be responsible for managing and monitoring all aspects  
26 of the system operation including but not limited to maintenance, repair, fueling, security,  
27 supply of on-line and spare vehicles, warranty work, quality of service, accounting, fare  
28 collection, personnel and contract administration. PROVIDER shall supply ICTC with a

1 twenty-four (24) hour emergency telephone number at which PROVIDER can be  
2 reached.

3 **14.3 Priority of Service.** The General Manager/Operations Manager shall be employed and  
4 available on a full-time basis.

5 **14.4 Executive Level Availability.** PROVIDER shall also designate a responsible executive  
6 level employee of PROVIDER to be available at all times, either by phone or in person,  
7 to make decisions or provide coordination as necessary. This executive must be  
8 authorized to act throughout the service area on behalf of PROVIDER. This individual  
9 may not be the same individual as the General Manager/Operations Manager.

10 **14.5 Operational Efficiency.** PROVIDER shall seek out and implement methods of improving  
11 system operations, service and cost-effectiveness along with improvements to correct  
12 deficiencies and substandard performance. After approval by ICTC, results will be  
13 reported to ICTC via the monthly management summary (“MSS”) report, activity report  
14 or direct memorandum, along with a summary of any corrective actions that have been  
15 taken. PROVIDER shall review and comment on plans, equipment purchases, operative  
16 changes and related proposals of ICTC.

17 **15. GENERAL REPORTS AND RECORDKEEPING**

18 **15.1** PROVIDER shall collect data on the operation of the fixed route service system and  
19 supply the data to ICTC on a monthly basis, or as may otherwise be directed below. All  
20 such information supplied by PROVIDER shall be certified as accurate.

21 **15.2 Management Information System.** PROVIDER's Management Information System shall  
22 utilize Word, Excel, Power Point, Access, Adobe Acrobat and e-mail and provide an  
23 adequate methodology to gather, store, retain, calculate, compute, cross-reference and  
24 display in textual, tabular and graphic form all operating, performance and financial data  
25 associated with this Agreement. In addition, e-mail capability is required to communicate  
26 with ICTC. ICTC uses IBM-compatible computer equipment.

- 1           **15.3** Monthly Reports. PROVIDER will report the information on a monthly basis in the  
2           format as described in Exhibit A, Appendix E to “IVT 2019” Request for Proposal dated  
3           March 2019 - Reporting.
- 4           **15.4** Annual Reports. PROVIDER will report the information on an annual basis in the format  
5           as described in Exhibit A, Appendix E to “IVT 2019” Request for Proposal dated March  
6           2019 - Reporting.
- 7           **15.5** Miscellaneous Reports. In addition to the monthly and annual reporting, PROVIDER  
8           shall supply any and all reports necessary to comply with requirements of ICTC and other  
9           local, State or Federal authorities. These reports shall include but not be limited to all  
10          required California Air Resource Board Urban or Medium Bus Operators Emission  
11          Requirements, California Transportation Development Act and FTA and National Transit  
12          Database reporting requirements.
- 13          **15.6** Accident Reporting. PROVIDER shall provide ICTC with immediate telephone  
14          notification of accidents. PROVIDER shall forward written copies of accident reports  
15          within one (1) business day for injury accidents and three (3) business days for non-injury  
16          accidents. PROVIDER shall also forward all California Highway Patrol (“CHP”) Safety  
17          Compliance Reports within two (2) business days after CHP submission to PROVIDER.
- 18          **15.7** Survey/Study/Analysis Data. ICTC may periodically conduct surveys of ridership during  
19          the term and, if applicable, the extension term of this Agreement. These surveys may  
20          determine matters including socioeconomic, origination and destination and fare-type  
21          characteristics of fixed route service system users. PROVIDER shall cooperate in the  
22          conduct of all surveys, including having its in-service drivers participate where  
23          operationally possible, at no additional charge to ICTC.
- 24          **15.8** Proprietary Restriction. PROVIDER agrees that all information it must furnish pursuant  
25          to this Agreement shall be free from proprietary restrictions unless identified during  
26          negotiation and mutually agreed-upon. PROVIDER further agrees that other such data  
27          is public and in the public domain.
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1           **15.9** Maintenance of Data. PROVIDER shall maintain accurate and complete books, records,  
2           data and documents on generally-accepted accounting principles in accordance with  
3           Uniform System of Accounts and Records adopted by the State Controller pursuant to  
4           Section 99243 of the Public Utilities Code, and as required by ICTC or the California  
5           Department of Transportation (“Cal Trans”). Such records shall be kept in such detail  
6           and form so as to meet applicable local, State and Federal requirements.

7           **15.10** Accountability. A complete and separate set of books, accounts and/or records shall be  
8           maintained by PROVIDER, which records shall show details of transactions pertaining  
9           to the management, maintenance and operation of only this system under the terms of this  
10          Agreement. System transactions shall not be co-mingled with PROVIDER's other  
11          operations. PROVIDER's records shall be kept with sufficient detail to constitute an audit  
12          trail to verify that any and all costs charged to the system created by this Agreement are  
13          in fact due to operations pursuant to this Agreement, and not due to separate or charter  
14          operations by PROVIDER. ICTC auditors shall perform a random audit of the financial  
15          records of the service on an annual basis.

16          **15.11** Maintenance Records. PROVIDER shall keep and maintain all work orders, warranty  
17          dockets and maintenance records on vehicles and equipment, separated by vehicle, until  
18          this Agreement is terminated. PROVIDER shall release all such documents to ICTC  
19          upon request or upon termination of this Agreement.

20          **15.12** Access. ICTC, Caltrans, FTA and the Comptroller General of the United States, or any  
21          of their duly authorized representatives, shall have access to any books, documents,  
22          papers, and records of PROVIDER which are directly pertinent to this Agreement for the  
23          purpose of making audit, examination, excerpts, and transcription of PROVIDER’s files.  
24          PROVIDER shall maintain all these records for a period of at least five (5) years  
25          following the close-out of this Agreement to allow for audits, examinations, excerpts and  
26          transcriptions of PROVIDER’s files.

27   **16.    MAINTENANCE, EQUIPMENT AND SUPPLIES**  
28

1           **16.1** PROVIDER shall provide all facilities, tools, equipment, tires, fuel, oil, batteries, parts,  
2 cleaning supplies, office supplies, office equipment and such other items or materials  
3 required to professionally operate ICTC’s fixed route services, including phone system  
4 and service.

5           **16.2** PROVIDER shall provide, operate and maintain the radio communications system for the  
6 fixed route service, including but not limited to, securing of Federal Communications  
7 Commission (“FCC”) frequency, base station, transmitter, repeater if needed, and a  
8 mobile unit for each vehicle and a spare. PROVIDER must comply with ICTC policies  
9 and FCC procedures for radio use.

10           **16.3 VEHICLE MAINTENANCE**

11 It shall be PROVIDER’s responsibility to provide maintenance personnel and institute a  
12 vehicle maintenance program to achieve a high level of maintenance on the fleet of ICTC-  
13 owned buses provided to PROVIDER. ICTC expects maintenance of vehicles in the  
14 highest level of condition by covering the following, but not limited to, general  
15 elements:

- 16           • Preventative Maintenance
- 17           • Mechanical Maintenance
- 18           • Zero Tolerance Graffiti Removal
- 19           • Cleaning Program
- 20           • Engine and Transmission
- 21           • Quality Control
- 22           • Warranties on New Buses
- 23           • Interior Bus Maintenance (Seats, Driver Seats, Floors)
- 24           • Wheelchair Lift/Ramp Maintenance
- Farebox Maintenance
- Tire Servicing
- Wheel Cleaning
- Maintenance Performance Analysis
- Maintenance Reporting

25 All preventative maintenance inspections and mechanical maintenance shall be  
26 performed by qualified employees of the PROVIDER unless otherwise noted.  
27 PROVIDER is responsible for providing the necessary trained and qualified staff to  
28 perform all elements required as part of the maintenance program included within this



1 Agreement. PROVIDER shall increase staffing as a function of need to perform all tasks  
2 required of the maintenance program over the course of the project.

3 If PROVIDER staffing levels for maintenance personnel fall below what it required by  
4 the agency and based on the PROVIDER staffing proposed, PROVIDER shall  
5 temporarily utilize existing personnel for additional time, or shifts, to insure that the  
6 maintenance staffing workload meets, or exceeds, the minimum Full Time Equivalent  
7 (FTE) requirements for each of the maintenance staffing categories proposed by  
8 PROVIDER, until such time that additional staff are hired, trained, and employed.  
9 Failure to maintain staffing levels that equal, or exceed the required levels for operating  
10 efficiency may subject PROVIDER to Incentives or Penalties. Subcontracting of  
11 additional or specialized cleaning functions may be considered. However, all  
12 maintenance manager, mechanic and service positions must be employees of the  
13 PROVIDER. PROVIDER's duty and responsibility to maintain all vehicles and  
14 equipment is not delegable to any other person, firm or corporation. All subcontracts of  
15 maintenance functions must be approved by ICTC in advance, and may not substitute for  
16 staffing levels shown in PROVIDER's staffing plan.

17 **16.3.1 MAINTENANCE PERSONNEL**

18 Maintenance personnel assigned to work on ICTC-owned and other contractor  
19 buses shall have thorough knowledge of:

- 20 • Bus engines, transmissions, and related mechanical parts.
- 21 • Methods and procedures used in servicing mechanical equipment.
- 22 • Bus chassis and bodies.
- 23 • Tools, precision instruments, equipment, and procedures used in the general  
24 repair and maintenance of bus equipment.
- 25 • Decimals, fractions, and specifications related to bus mechanics.
- 26
- 27
- 28

- 1 • Specialized areas such as upholstery, brake relining, air conditioning,  
2 wheelchair lift or device, fareboxes, electronic destination signs, and laptop  
3 computer diagnostic programming.

4 **16.3.2 MAINTENANCE PERSONNEL SKILLS**

5 **16.3.2.1** Inspect bus engines, transmissions, fuel systems, and other  
6 mechanical, electric, and electronic parts and components.

7 **16.3.2.2** Diagnose bus engine, transmission, fuel systems, and other  
8 mechanical, electrical, and electronic parts and component system  
9 problems.

10 **16.3.2.3** Repair bus engines, transmissions, fuel systems and other  
11 mechanical, electrical, and electronic parts and components when  
12 necessary.

13 **16.3.2.4** Diagnose and repair electronic components, such as the bus  
14 electronic control system, fareboxes, electronic destination signs,  
15 wheelchair lift/ramp mechanisms and air conditioning systems.

16 **16.3.3 PREVENTIVE MAINTENANCE**

17 PROVIDER shall adopt and maintain a formalized preventative maintenance  
18 program for all vehicles in conformance with manufacturers' preventative  
19 maintenance schedules, state law, industry standard practices, and other detailed  
20 maintenance required by ICTC. Preventative Maintenance Inspection (PMI)  
21 Checklists will be based on PMI intervals, as well as the minimum requirements  
22 for each interval (based on manufacturers recommended schedules). Any PMI  
23 procedures that go above and beyond these minimum requirements are entirely  
24 up to PROVIDER, but the minimum requirements must be met within +/- 500  
25 miles of the specified interval.

26 PMI intervals shall be at the following inspection mileages:

- 27 • **A 3,000 miles or 45 days**  
28 • **B 6,000 miles**  
• **C 24,000 miles**  
• **D 48,000 miles**

1 The mileage intervals are based on a progressive PMI cycle. If a vehicle has been  
2 out of service for more than 30 continuous days, the vehicle must be given an “A”  
3 inspection in order to inspect tanks, brakes, and other related items in an “A”  
4 inspection prior to re-entering revenue service. Any vehicle that has had the repair  
5 of major body damage or collision repairs, shall have an inspection documented  
6 and forwarded to ICTC staff to insure vehicle has been returned to full  
7 compliance.

8 PROVIDER must also meet, or exceed, the PMI requirements set forth by vehicle  
9 builders and all major component manufacturers.

10 Major components include, but are not limited to, engines, transmissions, A/C and  
11 heating, doors, radios, wheelchair lifts, fareboxes, destination signs, and fuel  
12 tanks. Failure to follow manufacturers’ guidelines may result in Incentives or  
13 Penalties and/or termination of the Agreement. ICTC shall determine  
14 PROVIDER’s compliance with the above requirements by reviewing detailed  
15 monthly PMI reports, and or by utilizing an independent maintenance consultant.  
16 ICTC may select buses randomly for independent third party inspections.

17 If PROVIDER wishes to revise some of these requirements during the course of  
18 the service agreement (because of new information, or techniques that have been  
19 approved by the manufacturer), it may present a revised plan, with supporting  
20 documentation, to ICTC for review. ICTC decisions regarding revised PMI  
21 procedures shall be final.

22 In addition to these minimum PMI requirements, PROVIDER must also create  
23 and implement PMI functions for the following equipment:

24 Wheelchair Lifts and Ramps – PMI programs for all lift and ramp systems shall  
25 be developed to meet the manufacturers’ requirements to address warranty, safety,  
26 reliability, and longevity issues.

#### 27 **16.3.4 MECHANICAL MAINTENANCE PROGRAM**

28

1 PROVIDER, at its sole cost and expense, shall provide all lubricants, repairs,  
2 cleaning, cleaning agents, parts, supplies, labor, maintenance, major components,  
3 and component rebuilding and replacement required for the operation of all  
4 equipment pursuant to the Agreement, unless otherwise indicated. PROVIDER  
5 shall be fully responsible for the safe and efficient maintenance of all vehicles and  
6 equipment, radios, fareboxes, and all other ICTC-provided equipment to be used  
7 to perform this Agreement in strict conformity to all CHP regulations and Title  
8 13 requirements.

9 ICTC may inspect any vehicle at any time. PROVIDER shall allow ICTC, or its  
10 designated agent, access to PROVIDER's facilities and records for the purpose of  
11 monitoring the PROVIDER's maintenance performance, as ICTC deems  
12 necessary. ICTC shall be permitted to view and copy any vehicle maintenance  
13 records, inspect vehicles, and request PROVIDER's personnel to drive vehicles  
14 and/or position vehicles to inspect the undercarriage, as is necessary to evaluate  
15 the condition of vehicles used in the performance of this Agreement. ICTC, or its  
16 designated agent(s), shall conduct such inspections on a regular basis.

17 All parts, materials, tires, lubricants, fluids, oils and procedures used by  
18 PROVIDER on all ICTC-owned vehicles, vehicles and equipment shall meet, or  
19 exceed Original Equipment Manufacturer (OEM) specifications and  
20 requirements. All parts installed by PROVIDER on ICTC-owned buses shall  
21 become property of ICTC.

22 At a minimum, the Maintenance Program must provide that:

23 **16.3.4.1** All wheelchair lifts, ramps, and other accessibility-related  
24 equipment shall be inspected, serviced and lubricated at intervals  
25 necessary to insure that all accessibility features are fully  
26 operational whenever the vehicle is used in revenue service.

27 **16.3.4.2** Fareboxes, radios, destination signs, public address systems,  
28 request-to-stop systems, and passenger doors shall be inspected,

1 serviced and lubricated at intervals necessary to ensure that this  
2 equipment is fully operational as designed whenever the vehicle is  
3 used in revenue service.

4 **16.3.4.3** At scheduled oil change intervals, a laboratory engine and  
5 transmission oil analysis shall be performed on every ICTC-  
6 provided bus engine or transmission. The analysis program used  
7 by PROVIDER shall be subject to approval by ICTC.

8 **16.3.4.4** Brake inspections and adjustments shall be performed at intervals  
9 that insure the safe and efficient operation of the braking system.  
10 Brakes must be fully inspected, at a minimum, of 3,000 miles at  
11 the “A” inspection.

12 **16.3.4.5** All components of the bus bodies, appurtenances, and frames shall  
13 be maintained in a safe, sound and undamaged condition at all  
14 times. Damage (including body damage and all bus  
15 appurtenances) shall be repaired in a professional manner within  
16 three weeks (21 calendar days) of occurrences. In the event that  
17 the repairs cannot be made within three weeks due to the severity  
18 of damage, and/or backorder of parts not typically in  
19 PROVIDER’s inventory, PROVIDER shall work with ICTC to  
20 establish a reasonable schedule for completion.

21 **16.4** All mechanical, electrical, fluid, air, and/or hydraulic systems shall be maintained in a  
22 safe and fully functional (as designed) condition at all times.

23 **16.5** The interior passenger compartment shall be free of exhaust fumes from the engine,  
24 engine compartment, and exhaust system of the bus at all times.

25 **16.6** Heating, ventilation and air conditioning (HVAC) systems shall be maintained and used  
26 to insure that the passenger compartment temperature is comfortably maintained under  
27 all climatic conditions at all times during revenue service. PROVIDER shall maintain  
28 the A/C systems in an operable condition throughout the entire year.

- 1           **16.7** Bicycle racks (front two position SportWorks) are provided on all buses provided for this  
2           service. PROVIDER shall maintain bicycle racks in good working order. Racks shall be  
3           inspected every 3,000 miles with the “A” PMI. Racks may need to be sanded, repainted  
4           or polished, or replaced (if not easily repaired).
- 5           **16.8** PROVIDER, as manager of the fleet, shall establish and maintain a spare parts inventory  
6           based on the age and variety of vehicles, sufficient to ensure that peak hour vehicle  
7           requirements are met. Vehicles may not be used to supply spare parts for other buses.
- 8           **16.9** ICTC may remove a vehicle from revenue service if ICTC determines that maintenance  
9           on any vehicle is not in conformity with the Agreement.
- 10          **16.10** PROVIDER, as an agent for ICTC in the case of warranted equipment, will be responsible  
11          for ensuring that the vehicle manufacturers and all component manufacturers perform or  
12          reimburse PROVIDER for all parts and labor, which are covered under warranty.  
13          PROVIDER shall diligently follow the preventative maintenance program so any  
14          warranty coverage on ICTC-owned or provided equipment is not lessened or invalidated.
- 15          **16.11** Upon completion or termination of the Agreement for any reason, PROVIDER shall  
16          return vehicles and all other ICTC-provided equipment to ICTC less reasonable wear-  
17          and-tear, as determined by accepted bus industry standards and approved by ICTC.
- 18          **16.12** Driver and passenger seats shall be maintained in proper operating condition at all times.  
19          It shall include, at a minimum, inspection, repair, and replacement for seat cushions,  
20          frames, armrests, and all electrical, mechanical, and pneumatic components. All rips,  
21          tears, cuts, gum, graffiti and other damage shall be cleaned and/or repaired in a  
22          professional manner immediately upon their discovery. PROVIDER shall replace seat  
23          covers that are worn or cannot be professionally repaired, using materials that are  
24          identical in design and color as those materials being replaced.
- 25          **16.13** PROVIDER is responsible for all towing services related to this AGREEMENT.
- 26          **16.14** Tire maintenance and replacement are the responsibility of the PROVIDER. Any new  
27          buses delivered during the Agreement will be delivered with tires purchased by ICTC as  
28

1 part of the bus procurement. Any replacements for these original tires will be the  
2 responsibility of the PROVIDER when the original tires require replacement.

3 **16.15** Steam cleaning of engine compartments of buses shall be carried out with PROVIDER  
4 equipment on a regular basis. It is expected that the engine compartment be steam cleaned  
5 or pressure washed (at high temperature) prior to every “A” inspection at 3,000  
6 miles.

7 **16.16** MAINTENANCE SHOP PRACTICES

8 The PROVIDER provided Maintenance Manager shall verify the quality of the work  
9 performed, and add his/her signature to the PMI Inspection form.

10 **16.16.1**Tires shall always be matched (by manufacturer, size, and tread pattern) on each  
11 axle. PROVIDER shall follow manufacturer’s recommended guidelines for  
12 wheel maintenance and cleaning. PROVIDER shall clean all wheels weekly and  
13 re-paint steel wheels as necessary.

14 **16.16.2**Broken or cracked glass or window liners shall be replaced immediately upon  
15 discovery. No buses shall enter into revenue service with broken or cracked glass  
16 at any time. Scratched or etched glass or window liners shall be replaced weekly,  
17 unless significant damage or offensive in nature, which shall require immediate  
18 replacement.

19 **16.16.3**Bus Brake Replacement

20 **16.16.3.1** Both brakes on an axle will be replaced at the same time.

21 **16.16.3.2** Wheel seals will be replaced with every brake job, and bearings  
22 will be checked.

23 **16.16.4**Other

24 **16.16.4.1** Cradle motor mounts shall be replaced in pairs.

25 **16.16.4.2** Radiators shall be re-cored or replaced at the time of engine  
26 replacement.

27 **16.16.4.3** Bus maintenance and storage facilities shall be free of freestanding  
28 water. All oil, grease, fluids, dirt, trash, rags, boxes,

1 etc. shall be removed from bus maintenance and storage facilities  
2 daily. ICTC may inspect shop condition on a regular basis.

3 **16.17 BUS MAINTENANCE RECORD KEEPING**

4 PROVIDER will maintain an up-to-date vehicle file for each vehicle containing, at a  
5 minimum, the following information:

6 Year and Make

7 Model

8 Serial number/ICTC fleet number

9 License number

10 Vehicle Identification Number (VIN)

11 Date received

12 Date placed in service

13 Annual miles

14 Contract miles

15 Life miles

16 Major Component Rebuild and Replacement including date and lifemiles

17 Vehicle repairs

18 Preventive Maintenance Inspection Reports

19 Daily "Bus Condition" reports

20 Work Orders

21 The "Preventive Maintenance Inspection" Report will be kept for at least four (4) years  
22 for all vehicles. The Daily Bus Report will be kept for the period required by the  
23 California Highway Patrol (CHP).

24 Copies of the "Preventive Maintenance Inspection" report will be submitted to ICTC on  
25 a quarterly basis, if so requested by ICTC. ICTC shall coordinate with PROVIDER for  
26 submittal of selected summary type reports from the computerized maintenance system.  
27 Any Daily Bus Report shall be submitted to ICTC upon request. PROVIDER shall  
28 submit the entire vehicle file, or selected reports, from the maintenance software system



1 to ICTC upon request. The computerized maintenance software system must be backed  
2 up regularly.

3 At the minimum, PROVIDER shall submit monthly maintenance report summaries each  
4 month including maintenance PMIs done in the past month, and vehicle cleaning  
5 summaries.

6 **16.18 SAFETY**

7 **16.18.1**ICTC will require that the Motor Carrier Unit of the CHP annually prepare and  
8 submit to ICTC a Safety Compliance Report (CHP 343) and Vehicle Inspection  
9 Reports (CHP 343A). PROVIDER shall fully cooperate with, and allow access  
10 as requested to, any CHP officer, or agent, for the purposes of preparing the CHP  
11 343. PROVIDER must attain satisfactory ratings in each category of the Safety  
12 Compliance Report. PROVIDER must expeditiously correct any deficiencies  
13 noted on any CHP vehicle or terminal inspection report.

14 **16.18.2**ICTC requires that PROVIDER regularly inspect and maintain all safety  
15 equipment used or required in the fulfillment of this Agreement. PROVIDER is  
16 responsible for purchasing, at its own cost, replacement fire extinguishers, first  
17 aid kits, first aid kit refill supplies, and triangle reflector kits sufficient to ensure  
18 that spares are always available and that the operation maintains compliance with  
19 local, state, and federal safety regulations. Drivers' daily vehicle inspection shall  
20 include a check of the fire extinguisher and triangle reflector kit. Used, missing,  
21 or broken items must be replaced as soon as practicable. All vehicle and facility  
22 fire extinguishers shall be inspected and tagged no less frequently than annually.  
23 First aid kits shall be inspected and professionally serviced at least once per  
24 year.

25 **16.19 ICTC REIMBURSEMENT OF ENGINE AND TRANSMISSION REBUILD COSTS**

26 ICTC recognizes that during the term of this Agreement, engines and/or transmissions of  
27 ICTC-owned buses not under warranty may have to be rebuilt or replaced. If  
28

1 PROVIDER determines that an engine or transmission needs to be rebuilt or replaced,  
2 the PROVIDER shall notify ICTC, in writing, detailing the reasons for such a  
3 determination including pertinent information from the vehicle file and a detailed cost  
4 estimate. An outside vendor may be used if deemed cost effective after consultation and  
5 approval by ICTC.

6 **16.19.1**After review, ICTC may direct PROVIDER in writing, to proceed with the  
7 recommended work.

8 **16.19.2**PROVIDER will only be permitted to pass through to ICTC the costs related to  
9 any engine or transmission work accomplished following the above-mentioned  
10 procedure. ICTC will not be liable for any costs if PROVIDER does not follow  
11 the above-mentioned procedure. PROVIDER must submit a detailed invoice to  
12 ICTC for all such work.

13 **16.19.3**If ICTC determines that such work is necessary due to poor maintenance  
14 performance by PROVIDER, ICTC will not be liable for any costs.

15 **16.19.4**PROVIDER shall remain responsible for all costs related to repair or replacement  
16 of any engine-driven part including, but not limited to, generators, hydraulic  
17 pumps, water pumps, fuel pumps, valve covers, oil pans, alternators, voltage  
18 regulators, air compressors, air-conditioning compressors, vacuum pumps, starter  
19 motors, and turbocharger. PROVIDER shall also remain responsible for all costs  
20 related to repair or replacement of transmission-related parts including, but not  
21 limited to, oil coolers, external oil lines, external filters, external linkage  
22 modulators, external speedometers/odometers, "driven" gears or sensors, neutral  
23 start switches, and temperature sensors.

24 **17. FACILITIES**

25 **17.1** All facilities and arrangements including office space, furniture, dispatch, maintenance  
26 bays, paved, secured and lighted parking areas, storage, on/off site fueling, radio,  
27 telephone and computer connections are the responsibility of PROVIDER and shall be  
28 sufficient to support the operation of the fixed route services described herein.

1           **17.2** PROVIDER shall ensure that facilities provided are maintained as needed to ensure a  
2           safe, hygienic, professional and attractive working environment that is in compliance with  
3           local, State and Federal regulations.

4           **17.3** Services shall be operated on an inter-city and inter-county basis. Vehicles dispatched out  
5           of the facilities shall travel to various destinations. ICTC does not specify preference for  
6           location; however, the location shall be evaluated for practicality and functionality for the  
7           administration, operations and maintenance of the system.

8           **17.4** PROVIDER shall locate facilities so as to be able to bring a back-up vehicle into service  
9           within sixty (60) minutes from the location.

10          **17.5** The facilities are expected to serve the walk-in passenger, including passengers with  
11          disabilities and / or mobility impairments, collect fare payment, and provide a centralized  
12          site for operations and a distribution point for the sale of passes and brochures.

13   **18.    VEHICLES**

14          **18.1** ICTC shall supply all revenue vehicles for the services. PROVIDER shall supply all non-  
15          revenue service hour vehicles. See Vehicles for Exhibit “A” – “IVT Fixed Route Services  
16          Scope of Work FY 2019-2020 through FY 2023-24”. PROVIDER must examine the  
17          service history and schedule to determine minimum size of vehicles and spares required  
18          for efficient service operation.

19          **18.2** PROVIDER shall maintain adequate air-conditioning and passenger comfort on-board at  
20          all times.

21          **18.3** ICTC may inspect vehicles on- or off-route and pull a vehicle out of service at any time  
22          due to perceived or reported safety violations, lack of air conditioning, lack of functional  
23          wheel chair lift or other condition that impacts the health and welfare of  
24          passengers.

25   **19.    PERSONNEL**

26          **19.1** PROVIDER shall provide all management, office staff, drivers, dispatchers, mechanics,  
27          maintenance clerks, cleaners, service workers, telephone information operators, road  
28          supervisors and such other personnel necessary to responsibly operate ICTC’s fixed route

1 services system, including any onboard security or supervision. It is understood that  
2 PROVIDER may subcontract components of its operations; however, no such subcontract  
3 shall relieve PROVIDER from responsibility to ensure compliance with the terms of this  
4 Agreement.

5 **19.2** PROVIDER will recruit, screen, hire, discipline and train personnel as necessary, conduct  
6 monthly safety and other related employee meetings as necessary and perform liaison  
7 activities with ICTC and other agencies related to execution of this Agreement. A copy  
8 of employee benefits, work rules and union contracts shall be provided to ICTC.  
9 PROVIDER shall meet and coordinate with ICTC on a frequent basis.

10 **19.3** PROVIDER shall supervise all drivers to the end that they are courteous to all patrons at  
11 all times and respond to patrons' questions regarding use of the transit system or  
12 connecting systems accurately.

13 **19.4** PROVIDER shall provide ICTC with an organizational chart prior to start-up. After  
14 startup, PROVIDER shall provide a list of drivers' names and update said list monthly.  
15 PROVIDER shall not place a driver into service without the driver first completing  
16 PROVIDER's training program as outlined in Paragraph 20. Failure to comply with this  
17 section may result in termination of this Agreement.

18 **19.5** PROVIDER's staffing is considered to be essential to the work being performed under  
19 this Agreement.

20 **19.5.1** PROVIDER shall ensure that all employees receive a livable wage that complies  
21 with applicable minimum wage levels in the State of California, with medical  
22 benefits available via choice in the United States and Mexico.

23 **19.5.2** PROVIDER shall ensure that a majority of the employees are considered full time  
24 with benefits, and the use of part time employees while allowable will be  
25 minimized.

26 **20. TRAINING**

27 **20.1.** PROVIDER shall provide full training for PROVIDER's drivers. This training shall be  
28 a minimum of eighty (80) hours per employee, of which at least thirty (30) hours shall be

1 behind the wheel. This training must be completed before a driver can enter unsupervised  
2 passenger service. PROVIDER shall maintain and certify driver records, subject to  
3 review by ICTC and CHP.

4 **20.2** All PROVIDER employees, including dispatchers and supervisor(s), shall be trained and  
5 certified as drivers. Such training shall meet all requirements of the State of California.  
6 A detailed description of PROVIDER's proposed training program shall be submitted to  
7 ICTC within thirty (30) days of the execution of this Agreement. PROVIDER's training  
8 plan shall provide a minimum of eight (8) hours of annual refresher training per driver.

9 **20.3** PROVIDER shall conduct classroom training in at least the following areas: multi-media  
10 first aid training, cardiopulmonary resuscitation ("CPR"), National Safety Council (or  
11 approved equivalent) defensive driving course, customer service, sensitivity/empathy  
12 training, emergency and accident procedures and wheelchair loading and securement  
13 procedures.

14 **20.4** PROVIDER will have all drivers obtain a class of drivers license as required by law, and  
15 certification in CPR and first aid. All PROVIDER employees must pass a pre-  
16 employment physical examination, paid for by PROVIDER, prior to start of training. All  
17 of PROVIDER's drivers shall be subject to a pre-employment background check, a  
18 review of their California Department of Motor Vehicle records.

19 **20.5** Drivers will be trained by a trainer or trainers who are certified by the National Safety  
20 Council (or other approved agency) to instruct the defensive driving course and are  
21 certified by either the American Heart Association or Red Cross (or another approved  
22 agency) to instruct the drivers in first aid and CPR. PROVIDER shall certify their trainer  
23 in customer service, sensitivity training, emergency and accident procedures and  
24 wheelchair loading and securement procedures, or as may otherwise be required by local,  
25 State or Federal law or regulations.

26 **20.6** PROVIDER shall require all drivers to attend a monthly safety meeting that shall be a  
27 minimum of one (1) hour in duration. PROVIDER shall implement a planned program  
28

1 of safety retraining to be conducted at the safety meetings. ICTC and its representatives  
2 shall be allowed to attend said safety meetings.

3 **21. LICENSES**

4 **21.1** PROVIDER shall provide and maintain licenses for its radio system.

5 **21.2** PROVIDER shall be responsible for any locally required business or other licenses,  
6 including FCC and Public Utilities Commission certificates as required and necessary.  
7 PROVIDER shall also be solely responsible for any parking and traffic violations of  
8 vehicles operated in connection with ICTC's fixed route program.

9 **22. UNIFORMS**

10 PROVIDER shall provide and maintain clean, color-coordinated and identical uniforms to be  
11 approved by ICTC for all PROVIDER employees. PROVIDER shall enforce a dress and  
12 appearance code. At a minimum, dress requirements shall include: shirts, slacks or shorts.  
13 Headgear is optional but if worn will be a design of a baseball-type hats. Jackets will be uniform  
14 for use in cold or rainy weather. All shirts and jackets will have sewn name badges and  
15 identification patches with a logo that has been approved by ICTC. Sandals or open-toed shoes  
16 are not allowed.

17 **23. SAFETY AND SECURITY**

18 **23.1** PROVIDER shall be responsible for the safety and security of passengers during  
19 operations and for all related equipment and facilities. PROVIDER shall develop specific  
20 procedures that define the safety and security program for ICTC's fixed route services.  
21 Safety and organizational meetings shall be held with all PROVIDER employees at least  
22 once per month.

23 **23.2** PROVIDER shall report all hazardous conditions (e.g., trees, signs, slides, etc.) in the  
24 service area to ICTC and any other appropriate authority and take necessary precautions  
25 to safeguard passengers and personnel.

26 **23.3** PROVIDER shall comply with all CHP and State and Federal Occupational Health and  
27 Safety Administration requirements. PROVIDER shall not permit drivers to bear  
28 weapons of any type while operating a vehicle under this Agreement.

1 **24. INSURANCE REQUIREMENTS:**

2 **24.1** Throughout the life of this Agreement, PROVIDER shall pay for and maintain in full  
3 force and effect all policies of insurance required hereunder with an insurance  
4 company(ies) either (i) admitted by the California Insurance Commissioner to do business  
5 in the State of California and rated not less than "A- VII" in Best's Insurance Rating  
6 Guide, or (ii) authorized by ICTC's Executive Director or his/her designee at any time  
7 and in his/her sole discretion. The following policies of insurance are required:

8 (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as  
9 the most current version of Insurance Services Office (ISO) Commercial General  
10 Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property  
11 damage" and "personal and advertising injury" with coverage for premises and operations  
12 (including the use of owned and non-owned equipment), products and completed  
13 operations, and contractual liability (including, without limitation, indemnity obligations  
14 under the Contract) with limits of liability of not less than the following:

15 \$20,000,000 per occurrence for bodily injury and property damage

16 \$20,000,000 per occurrence for personal and advertising injury

17 \$20,000,000 aggregate for products and completed operations

18 \$20,000,000 general aggregate

19 (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad  
20 as the most current version of Insurance Service Office (ISO) Business Auto Coverage  
21 Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles  
22 or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than  
23 \$20,000,000 per accident for bodily injury and property damage.

24 (iii) AUTOMOBILE PHYSICAL DAMAGE insurance to include collision, comprehensive  
25 and theft coverage for all ICTC vehicles operated, maintained, used and/or stored by  
26 Provider under this Agreement. This insurance shall include replacement cost coverage  
27 for all ICTC vehicles operated, maintained, used and/or stored by Provider under this  
28 Agreement.

1 (iv) FIDELITY BOND/CRIME insurance which shall be at least as broad as the most current  
2 version of Insurance Services Office (ISO) Commercial Crime Coverage Form CR 00 20  
3 and include coverage for employee theft, forgery or alteration, inside the premises – theft  
4 of money and securities, inside the premises –robbery or safe burglary, outside the  
5 premises, computer fraud, funds transfer fraud and money orders and counterfeit paper  
6 currency, with limits of liability of not less than \$100,000 per claim/occurrence.

7 (v) WORKERS' COMPENSATION insurance as required under the California Labor Code.

8 (vi) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000  
9 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

10 **24.2** In the event PROVIDER purchases an Umbrella or Excess insurance policy(ies) to meet  
11 the minimum limits of insurance set forth above, this insurance policy(ies) shall “follow  
12 form” and afford no less coverage than the primary insurance policy(ies).

13 **24.3** PROVIDER shall be responsible for payment of any deductibles contained in any  
14 insurance policies required hereunder and PROVIDER shall also be responsible for  
15 payment of any self-insured retentions. Any deductibles or self-insured retentions must  
16 be declared to, and approved by, the ICTC’s Executive Director or his/her designee. At  
17 the option of the ICTC’s Executive Director or his/her designee, either: (i) the insurer  
18 shall reduce or eliminate such deductibles or self-insured retentions as respects to ICTC,  
19 its board members, officers, employees, agents and volunteers, or (ii) PROVIDER shall  
20 provide a financial guarantee, satisfactory to ICTC’s Executive Director or his/her  
21 designee, guaranteeing payment of losses and related investigations, claim administration  
22 and defense expenses. At no time shall ICTC be responsible for the payment of any  
23 deductibles or self-insured retentions.

24 **24.4** All policies of insurance required hereunder shall be endorsed to provide that the  
25 coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except  
26 after 30 calendar day written notice has been given to ICTC. Upon issuance by the  
27 insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage  
28 or in limits, PROVIDER shall furnish ICTC with a new certificate and applicable



1           endorsements for such policy(ies). In the event any policy is due to expire during the  
2           work to be performed for ICTC, PROVIDER shall provide a new certificate, and  
3           applicable endorsements, evidencing renewal of such policy not less than 15 calendar  
4           days prior to the expiration date of the expiring policy.

5           **24.5**The General Liability (ongoing operations and completed operations) and Automobile  
6           Liability insurance policies shall be written on an occurrence form and shall name ICTC, its  
7           members, board members, officers, officials, employees, agents and volunteers as an  
8           additional insured. Such policy(ies) of insurance shall be endorsed so PROVIDER's  
9           insurance shall be primary and no contribution shall be required of ICTC. The coverage  
10          shall contain no special limitations on the scope of protection afforded to ICTC, its board  
11          members, officers, employees, agents and volunteers. The Automobile Physical Damage  
12          and Fidelity Bond/Crime insurance policies shall name ICTC as a loss payee. The Workers'  
13          Compensation insurance policy shall contain a waiver of subrogation as to ICTC, its  
14          members, board members, officers, officials, employees, agents and volunteers. Should  
15          Provider maintain insurance with broader coverage and/or limits of liability greater than  
16          those shown above, ICTC requires and shall be entitled to the broader coverage and/or the  
17          higher limits of liability maintained by Provider. Any available insurance proceeds in excess  
18          of the specified coverage and minimum limits of insurance coverage shall be available to  
19          ICTC.  
20

21           **24.6** PROVIDER shall furnish ICTC all certificate(s) and applicable endorsements effecting  
22          coverage required hereunder. Upon request of ICTC and before work commences,  
23          PROVIDER shall immediately furnish ICTC with a complete copy of any insurance  
24          policy and all certificates and applicable endorsements required under this Agreement,  
25          with said copy certified by the underwriter to be a true and correct copy of the original  
26          policy. This requirement shall survive expiration or termination of this Agreement.

27           **24.7** If at any time during the life of this Agreement or any extension, PROVIDER or any of  
28          its subcontractors fail to maintain any required insurance in full force and effect, all work

1 under this Agreement shall be discontinued immediately, and all payments due or that  
2 become due to PROVIDER shall be withheld until notice is received by ICTC that the  
3 required insurance has been restored to full force and effect and that the premiums  
4 therefore have been paid for a period satisfactory to ICTC. Any failure to maintain the  
5 required insurance shall be sufficient cause for ICTC to terminate this Agreement. No  
6 action taken by ICTC hereunder shall in any way relieve PROVIDER of its  
7 responsibilities under this Agreement.

8 **24.8** The fact that insurance is obtained by PROVIDER shall not be deemed to release or  
9 diminish the liability of PROVIDER, including, without limitation, liability under the  
10 indemnity provisions of this Agreement. The duty to indemnify ICTC shall apply to all  
11 claims and liability regardless of whether any insurance policies are applicable. The  
12 policy limits do not act as a limitation upon the amount of indemnification to be provided  
13 by PROVIDER. Approval or purchase of any insurance contracts or policies shall in no  
14 way relieve from liability nor limit the liability of PROVIDER, its principals, officers,  
15 employees, agents, persons under the supervision of PROVIDER, vendors, suppliers,  
16 invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or  
17 indirectly by any of them.

18 If PROVIDER should subcontract all or any portion of the services to be performed under  
19 this Agreement, PROVIDER shall require each subcontractor to provide insurance  
20 protection in favor of ICTC, its board members, officers, employees, agents and  
21 volunteers, in accordance with the terms of each of the preceding paragraphs, except that  
22 the subcontractors' certificates and endorsements shall be on file with PROVIDER, ICTC  
23 prior to the commencement of any work by the subcontractor.

24 **25. TERMINATION**

25 PROVIDER agrees to comply with all Federal Transit Administration and California Department  
26 of Transportation Required Provisions and Third Party Contract Clauses as set forth in the  
27 document attached hereto as **Attachment A** (REV01-2019 and thereafter most currently  
28 revised), the terms of which are incorporated herein by this reference as if fully set forth.

1 **26. FUTURE CONTRACTUAL SERVICE ADJUSTMENTS.**

2 The service provided is dictated by the ridership demand and economics of the annual budget  
3 process. After a contract has been executed, service demand may increase or decrease. Adjustments  
4 within the original scope of work may take place to the contracted revenue service days or hours  
5 that will affect the service pricing. The ICTC or the PROVIDER may initiate a discussion to adjust  
6 the level(s) of service. Adjustments to pricing for a service hour increase or decrease modification  
7 will be based on the variable cost per hour in effect for that fiscal year, as agreed and submitted  
8 in the proposal submitted entitled “IVT Fixed Route Services Proposal 2019” dated May 8, 2019.  
9 Contact service modifications, subsequent extensions, agreement terms and subsidy are subject  
10 to criteria. Criteria for determining and evaluating the appropriateness of the modification or  
11 extension will be reviewed and approved by the ICTC Commission and Caltrans. Changes will  
12 not be made outside of the scope of work of this project. Changes will not be made to the contract  
13 during the first thirty (30) days of operation. Changes may not be made unilaterally or solely at the  
14 request of a passenger.

15 **27. EMPLOYEE WORK RULES**

16 PROVIDER shall enforce the following employee rules:

17 **27.1** Uniforms must be worn at all times when on duty and shall be clean and presentable at  
18 all times. Uniform designs, colors and ID tags are subject to ICTC approval.

19 **27.2** Gratuities shall not be accepted.

20 **27.3** Drivers shall have a thorough knowledge of ICTC transit services and service areas.  
21 Drivers shall also have a basic knowledge of potential transfer locations for all ICTC  
22 transit services.

23 **27.4 General Rules**

24 **27.4.1** No one will be permitted to smoke, eat or drink aboard vehicles at any time. This  
25 includes passengers and staff.

26 **27.4.2** Boisterous language, profanity or incivility to anyone shall not be allowed while  
27 PROVIDER’s personnel is in uniform and representing PROVIDER and ICTC,  
28 whether on- or off-duty.

- 1           **27.4.3** While in uniform, no PROVIDER employee shall purchase, consume or be under  
2           the influence of any narcotic, intoxicant, or harmful drug.
- 3           **27.4.4** Drivers shall be responsible for keeping all vehicles clean and sanitary during  
4           their shift.
- 5           **27.4.5** All PROVIDER employees are responsible for reporting any defects noted in any  
6           vehicle to the supervisor and maintenance department immediately. Drivers shall  
7           conduct a “walk-around” and an in-vehicle inspection of their vehicle and fill out  
8           a form approved by ICTC for denoting the results of such inspection(s) daily.  
9           Drivers shall have maintenance or management personnel resolve any doubt about  
10          the safety of a vehicle prior to placing a vehicle in passenger service.
- 11          **27.4.6** Employees may use vehicles only in accordance with their assigned duties.
- 12          **27.4.7** Employees must conduct themselves and operate vehicles in a safe and courteous  
13          manner at all times.
- 14          **27.4.8** No one shall be permitted to solicit on the vehicle.
- 15          **27.4.9** No item longer than five (5) feet will be permitted on the vehicle.
- 16          **27.4.10** All information regarding accidents shall be treated as confidential. Employees  
17          shall refrain from speaking to anyone concerning any accident unless it is to  
18          police, supervisory personnel, or other person(s) involved in the accident as  
19          required by law.
- 20          **27.4.11** Persons under the influence of any intoxicant, narcotic, or harmful drug shall not  
21          be permitted on the vehicle.
- 22          **27.4.12** Drivers providing service shall be required to travel over prescribed routes. If it  
23          becomes necessary to leave the route, the dispatcher or immediate supervisor shall  
24          be notified immediately.
- 25          **27.4.13** Drivers will provide the assistance required to help elderly and disabled persons  
26          boarding and de-boarding vehicles, moving to their seat and/or maneuvering and  
27          securing wheelchairs. Under no circumstances will drivers enter a passenger’s  
28          residence or physically lift a passenger.

1           **27.4.14** No vehicle shall be operated when its condition is unsafe or uncertain.

2           **27.4.15** No driver shall operate the wheelchair lift until he/she has received the required  
3           training and if there is any doubt whosoever about the mechanical condition of  
4           the lift or safety of the passenger as a result from using the lift. Wheelchair lift  
5           operation shall be in compliance with the methodology recommended by the  
6           organizational equipment manual.

7 **28. ICTC POLICIES AND STANDARDS**

8 PROVIDER shall meet ICTC transit service policies and standards in the operation of ICTC's  
9 IVT Fixed Service. Penalty payments shall be assessed in accordance with the Table of  
10 Incentives and Penalties.

11 **29. CONFLICT OF INTEREST**

12 PROVIDER covenants that it presently has no interest and shall not acquire any interest, direct  
13 or indirect, which would conflict in any manner or degree with the performance of service  
14 required to be performed.

15 **30. COMPLIANCE WITH INDUSTRY REGULATIONS, POLICIES AND LAWS**

16 PROVIDER, by the submission of its Proposal, certifies that it shall operate the fixed route  
17 system in compliance with ICTC operating policies, and with local, State and Federal ordinances,  
18 laws, and regulations applicable to this service. This Agreement may be financed in part with  
19 funding received under §§5307 and 5311 of the Federal Transit Act. All services performed by  
20 PROVIDER shall be performed in accordance and full compliance with all applicable federal  
21 laws and requirements. PROVIDER agrees to comply with all Federal Transit Administration  
22 and California Department of Transportation Required Provisions and Third Party Contract  
23 Clauses as set forth in the document attached hereto as **Attachment A** (REV01-2019 and  
24 thereafter most currently revised), the terms of which are incorporated herein by this reference  
25 as if fully set forth.

26 **31. INDEMNIFICATION**

27 To the furthest extent allowed by law, PROVIDER shall indemnify, hold harmless and defend  
28 ICTC and each of its members, board members, officers, officials, employees, agents and

1 volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages  
2 (whether in contract, tort or strict liability, including but not limited to personal injury, death at  
3 any time and property damage) incurred by ICTC, PROVIDER or any other person, and from  
4 any and all claims, demands and actions in law or equity (including attorney's fees and litigation  
5 expenses), arising or alleged to have arisen directly or indirectly out of performance of this  
6 Agreement. PROVIDER's obligations under the preceding sentence shall apply regardless of  
7 whether Indemnitees are negligent, but shall not apply to any loss, liability, fines, penalties,  
8 forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful  
9 misconduct, of ICTC or its board members, officers, employees, agents and volunteers.

10 If PROVIDER should subcontract all or any portion of the work to be performed under this  
11 Agreement, PROVIDER shall require each subcontractor to indemnify, hold harmless and defend  
12 ICTC and each of its board members, officers, employees, agents and volunteers in accordance  
13 with the terms of the preceding paragraph.

14 This section shall survive termination or expiration of this Agreement.

15 **32. INDEPENDENT CONTRACTOR**

16 In all situations and circumstances arising out of the terms and conditions of this Agreement,  
17 PROVIDER is an independent contractor, and as an independent contractor, the following shall  
18 apply:

19 **32.1** PROVIDER is not an employee or agent of ICTC and is only responsible for the  
20 requirements and results specified by this Agreement or any other Agreement.

21 **32.2** PROVIDER shall be responsible to ICTC only for the requirements and results specified  
22 by this Agreement and except as specifically provided in this Agreement, shall not be  
23 subject to ICTC's control with respect to the physical actions or activities of PROVIDER  
24 in fulfillment of the requirements of this Agreement.

25 **32.3** PROVIDER is not, and shall not be, entitled to receive from, or through, ICTC, and ICTC  
26 shall not provide, or be obligated to provide, PROVIDER with Worker's Compensation  
27 coverage or any other type of employment or worker insurance or benefit coverage  
28

1 required or provided by any Federal, State or local law or regulation for, or normally  
2 afforded to, an employee of ICTC.

3 **32.4** PROVIDER shall not be entitled to have ICTC withhold or pay, and ICTC shall not  
4 withhold or pay, on behalf of PROVIDER, any tax or money relating to the Social  
5 Security Old Age Pension Program, Social Security Disability Program, or any other type  
6 of pension, annuity, or disability program required or provided by any Federal, State or  
7 local law or regulation.

8 **32.5** PROVIDER shall not be entitled to participate in, or receive any benefit from, or make  
9 any claim against any ICTC fringe program, including, but not limited to, ICTC's pension  
10 plan, medical and health care plan, dental plan, life insurance plan, or any other type of  
11 benefit program, plan, or coverage designated for, provided to, or offered to ICTC's  
12 employee.

13 **32.6** ICTC shall not withhold or pay, on behalf of PROVIDER, any Federal, State, or local  
14 tax, including, but not limited to, any personal income tax, owed by PROVIDER.

15 **32.7** PROVIDER is, and at all times during the term of this Agreement, shall represent and  
16 conduct itself as an independent contractor, not as an employee of ICTC.

17 **32.8** PROVIDER shall not have the authority, express or implied, to act on behalf of, bind or  
18 obligate the ICTC in any way without the written consent of ICTC.

19 **33. ASSIGNMENT**

20 Neither this Agreement nor any duties or obligations hereunder shall be assignable by  
21 PROVIDER without the prior written consent of ICTC.

22 **34. CONTRACTUAL DISPUTE RESOLUTION**

23 PROVIDER agrees to comply with all Federal Transit Administration and California  
24 Department of Transportation Required Provisions and Third Party Contract Clauses as set forth in the  
25 document attached hereto as **Attachment A** (REV01-2019 and thereafter most currently revised), the  
26 terms of which are incorporated herein by this reference as if fully set forth.

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1 **35. NOTICES AND REPORTS**

2 All notices and reports under this Agreement shall be in writing and may be given by personal  
3 delivery or by mailing by certified mail, addressed as follows:

4 ICTC  
5 Imperial County  
6 Transportation Commission  
7 Attention: Mark Baza, Executive Director  
8 1503 N Imperial Ave., Suite 104  
9 El Centro, CA 92243

PROVIDER  
First Transit, Inc.  
Jay Jeter, Regional Vice President Southwest  
13200 Crossroads Parkway North Suite 450  
City of Industry, CA 91746

8 Notices and reports under this Agreement may be given by personal delivery or by mailing by  
9 certified mail at such other address as either party may designate in a notice to the other party  
10 given in such manner. Any notice given by mail shall be considered given when deposited in the  
11 United States Mail, postage prepaid, addressed as provided herein.

12 **36. ENTIRE AGREEMENT**

13 This Agreement contains the entire Agreement between ICTC and PROVIDER relating to the  
14 transactions contemplated hereby and supersedes all prior or contemporaneous agreements,  
15 understandings, provisions, negotiations, representations, or statements, either written or oral.

16 **37. MODIFICATION**

17 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid  
18 unless the same is in writing and signed by the party against whom the enforcement of such modification,  
19 waiver, amendment, discharge, or change is or may be sought.

20 **38. CAPTIONS**

21 Captions in this Agreement are inserted for convenience of reference only and do not define,  
22 describe or limit the scope or the intent of this Agreement or any of the terms thereof.

23 **39. PARTIAL INVALIDITY**

24 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void,  
25 or unenforceable, the remaining provisions will nevertheless continue in full force without being  
26 impaired or invalidated in any way.

27 **40. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS**

28 As used in this Agreement and whenever required by the context thereof, each number, both



1 singular and plural, shall include all numbers, and each gender shall include a gender. PROVIDER as  
2 used in this Agreement or in any other document referred to in or made a part of this Agreement shall  
3 likewise include both singular and the plural, a corporation, a partnership, individual, firm or person  
4 acting in any fiduciary capacity as executor, administrator, trustee or in any other representative capacity  
5 or any other entity. All covenants herein contained on the part of PROVIDER shall be joint and several  
6 if more than one person, firm or entity executes the Agreement.

7 **41. WAIVER**

8 No waiver of any breach or of any of the covenants or conditions of this Agreement shall be  
9 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of  
10 the same or any other covenant or condition.

11 **42. CHOICE OF LAW**

12 The laws of the State of California shall govern this Agreement. This Agreement is made and  
13 entered into in Imperial ICTC, California. Any action brought by either party with respect to this  
14 agreement shall be brought in a court of competent jurisdiction within said ICTC.

15 **43. ATTORNEYS' FEES AND COSTS**

16 If either party herein brings an action to enforce the terms thereof or declare rights hereunder, the  
17 prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorneys' fees  
18 as fixed by the court and his actual costs to be paid by the losing party.

19 **44. FORCE MAJEURE**

20 If any party fails to perform its obligation because of strikes, lockouts, labor disputes, embargoes,  
21 acts of God, inability to obtain labor or materials, fuel shortages, government restrictions, governmental  
22 regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil  
23 commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated  
24 to perform, then that party's performance shall be excused. However, PROVIDER shall not receive  
25 payment for vehicle service hours that are not provided.

26 **45. AUTHORITY**

27 Each individual executing this Agreement on behalf of PROVIDER represents and warrants that:  
28

1       **45.1** He/She is duly authorized to execute and deliver this Agreement on behalf of  
2                   PROVIDER;

3       **45.2** Such execution and delivery is in accordance with the terms of the Articles of  
4                   Incorporation or Partnership, any by-laws or Resolutions of PROVIDER and;

5       **45.3** This Agreement is binding upon PROVIDER in accordance with its terms.

6       PROVIDER shall deliver to ICTC evidence acceptable to ICTC of the foregoing within thirty  
7 days of execution of this Agreement.

8       **46.    SUSPENSION AND DEBARMENT**

9           PROVIDER agrees to comply with all Federal Transit Administration and California Department  
10 of Transportation Required Provisions and Third Party Contract Clauses as set forth in the document  
11 attached hereto as **Attachment A** (REV01-2019 and thereafter most currently revised), the terms of  
12 which are incorporated herein by this reference as if fully set forth.

13       **47.    DISADVANTAGED BUSINESS ENTERPRISE**

14           PROVIDER agrees to comply with all Federal Transit Administration and California Department  
15 of Transportation Required Provisions and Third Party Contract Clauses as set forth in the document  
16 attached hereto as **Attachment A** (REV01-2019 and thereafter most currently revised), the terms of  
17 which are incorporated herein by this reference as if fully set forth.

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1           **IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first  
2 above written.

3  
4 **IMPERIAL COUNTY  
TRANSPORTATION COMMISSION:**

**PROVIDER:**

5  
6  
7 By:   
8           Chairperson

  
By: **BRADLEY A. THOMAS**  
President

9  
10 **ATTEST:**

11   
12  
13 **CRISTI LERMA**  
Secretary to ICTC

14  
15 **APPROVED AS TO FORM:**

16 **KATHERINE TURNER**  
County Counsel

17  
18 By:   
19 **Eric Havens**  
Deputy County Counsel