

Appendix J IVT ACCESS Draft Contract

1 Local Transportation Funds (LTF), State Transportation Assistance Funds (STAF) and
2 Local Transportation Authority (LTA).

3 **2. DEFINITIONS**

4 **2.1** “Request for Proposal” shall mean “ IVT ACCESS Paratransit Services Request for
5 Proposal 2024” dated _____ 2024 and is incorporated herein by this reference.

6 **2.2** “Proposal” shall mean CONTRACTOR’s completed proposal entitled “IVT ACCESS
7 Paratransit Services Proposal” dated ____ 2024, CONTRACTOR submitted to ICTC on
8 the proposal due date and is incorporated herein by this reference.

9 **2.3** “Attendant” shall include one (1) individual to assist the disabled passenger.

10 **2.4** “Certified passenger” shall include those individuals deemed eligible for the paratransit
11 service through the formal certification process.

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

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

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

18 **2.8** “Senior” shall include individuals who are fifty-five of age or older.

19 **2.9** “Subscriber” shall include individuals who travel to the same destination at the same time
20 on a regular basis.

21 **3. DESCRIPTION OF WORK**

22 **3.1** The services to be provided under this agreement with ICTC are those contained in the
23 document entitled “IVT ACCESS Paratransit Services Scope of Work FY 2024-2025
24 through FY 2030-31”, attached hereto as Exhibit “A” and incorporated by this reference.

25 **3.2** This Agreement is for specific paratransit services and implies a complimentary service
26 that operates its services based upon the public fixed-route bus schedule. This set,
27 designated pattern and routes of travel, within a designated operating area and with
28 specific hours of operation, shall be called “windows” and “corridors”. There may be

1 fixed-route trips or routes that are in a demonstration phase through the Term and, if
2 applicable, the Extension Term of this Agreement. These demonstration routes will not
3 be subject to the paratransit service required by the Act until, the CONTRACTOR is
4 notified by the Executive Director or his designee, or they are officially made a
5 permanent part of the public regional transit system. The Remote Zones of the fixed
6 route system shall be provided ADA paratransit service utilizing fixed-route deviation
7 service upon request by the public fixed-route bus system and are not subject to this
8 Agreement.

9 **3.3** In the event of a conflict among this Agreement, the Request for Proposal and the
10 Proposal, the Request for Proposal shall take precedence over the Proposal and this
11 Agreement shall take precedence over both.

12 **4. RESPONSIBILITIES OF CONTRACTOR**

13 **4.1** CONTRACTOR shall provide management, technical and operating personnel,
14 services, equipment, non-revenue service hour vehicles and facilities necessary for the
15 operation of ICTC's paratransit services. In addition, CONTRACTOR shall participate
16 fully in the meetings and events of the Social Services Transportation Advisory Council
17 (SSTAC).

18 **4.2** In providing the services and oversight provided pursuant to this Agreement,
19 CONTRACTOR will act in the capacity of an independent contractor and will provide
20 management, technical and operating personnel, services, equipment and facilities
21 necessary for the operation of ICTC's paratransit services.

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

1 **5.5.** An authorized agent of ICTC will handle administration, monitoring and determination
2 of compliance with the requirements of this Agreement. All aspects of daily operations
3 will be available to inspection/observation by an authorized representative of ICTC.

4 **6. SERVICE IMPLEMENTATION**

5 The service area designation, service days and hours, and service miles shall be those specified in
6 Exhibit “A” – “IVT ACCESS Paratransit Services Scope of Work FY 2024-2025 through FY
7 2030-31”.

8 **7. REPRESENTATIONS BY CONTRACTOR.**

9 **7.1** CONTRACTOR understands and agrees that ICTC has limited knowledge in the transit
10 services specified in the description of work. CONTRACTOR has represented itself to be
11 expert in these fields and understands that ICTC is relying upon such representation.

12 **7.2** CONTRACTOR represents and warrants that it is a lawful entity possessing all required
13 licenses and authorities to do business in the State of California and perform all aspects of
14 this Agreement.

15 **7.3** CONTRACTOR shall not commence any work under this Agreement or provide any
16 other services, or materials, in connection therewith until CONTRACTOR has received
17 written authorization from the ICTC Executive Director or his designee, via a Notice to
18 Proceed, to do so.

19 **7.4** CONTRACTOR represents and warrants that the people executing this Agreement on
20 behalf of CONTRACTOR have the authority of CONTRACTOR to sign this
21 Agreement and bind CONTRACTOR to the performance of all duties and obligations
22 assumed by CONTRACTOR herein.

23 **7.5** CONTRACTOR represents and warrants that any employee, CONTRACTOR,
24 subcontractor and agent who will be performing any of the duties and obligations of
25 CONTRACTOR herein possess all required licenses and authorities, as well as the
26 experience and training, to perform such tasks.

27 **7.6** CONTRACTOR represents and warrants that the allegations contained in its Proposal are
28 true and correct.

1 7.7 CONTRACTOR understands that ICTC considers the representations made herein to be
2 material and would not enter into this Agreement with CONTRACTOR if such
3 representations were not made.
4

5 **8. COMPENSATION**

6 CONTRACTOR shall receive compensation monthly based upon the following formats:

7 **8.1.** A fixed hourly rate per fiscal year shall apply for each vehicle service or revenue hour.
8 The fixed hourly rate shall apply for the assigned fiscal year. Vehicle revenue hours
9 will be calculated based upon the actual time that each revenue service vehicle is in
10 service and available to passengers. Vehicle revenue hours shall specifically exclude
11 deadhead hours, including time for travel to and from the first stop and after the last
12 stop, storage facilities, fueling facilities, road tests, inspections training, personnel
13 lunches and breaks.

14 **8.2.** The fixed hourly rate per fiscal year will be determined by the use of the combination of
15 two other rates divided by the total annual vehicle service hours.

16 **8.2.1.** A variable monthly rate for all cost elements assigned to CONTRACTOR that
17 can change.

18 **8.2.2.** A fixed monthly rate for all cost elements assigned to CONTRACTOR with
19 known quantities or costs that are not included in the variable monthly rate.

20 **8.3.** Compensation for services provided for under Exhibit “A” – “IVT ACCESS Paratransit
21 Services Scope of Work FY 2024-2025 through FY 2030-31” shall be as follows:

22 **8.3.1.** For the period June 1, 2024 through June 30, 2025, the price is identified as
23 \$ _____. The fare box is established at _____ percent (___%); therefore the
24 annual not-to-exceed subsidy shall be \$ _____.

25 **8.3.2.** For the period July 1, 2025 through June 30, 2026, the price is identified as
26 \$ _____. The fare box is established at _____ percent (___%); therefore the
27 annual not-to-exceed subsidy shall be \$ _____.
28

1 **8.3.3.** For the period July 1, 2026 through June 30, 2027, the price is identified as
2 \$ _____. The fare box is established at _____ percent (___%); therefore the
3 annual not-to-exceed subsidy shall be \$ _____.

4 **8.3.4.** For the period July 1, 2027 through June 30, 2028, the base price is identified as
5 \$ _____. The fare box is established at _____ percent (___%); therefore the
6 annual not-to-exceed subsidy shall be \$ _____.

7 **8.3.5.** For the period July 1, 2028 through June 30, 2029, the base price is identified as
8 \$ _____. The fare box is established at _____ percent (___%); therefore the
9 annual not-to-exceed subsidy shall be \$ _____.

10 **8.3.6.** For the period July 1, 2029 through June 30, 2030, the base price is identified as
11 \$ _____. The fare box is established at _____ percent (___%); therefore the
12 annual not-to-exceed subsidy shall be \$ _____.

13 **8.3.7.** For the period July 1, 2030 through June 30, 2031, the base price is identified as
14 \$ _____. The fare box is established at _____ percent (___%); therefore the
15 annual not-to-exceed subsidy shall be \$ _____.

16 **8.3.8.** The fare box recovery ratio of 10% (or any other fare box ratio calculated and
17 ultimately required during the course of this Agreement) is subject to the
18 deduction of normal Transportation Development Act operating cost exclusions.

19 **8.3.9.** In the event that the required fare box revenue is not achieved on an annual
20 basis, the CONTRACTOR may be allowed to request compensation from the
21 ICTC for reimbursement up to the agreed upon annual cost. The lack of
22 attainment for the annual fare box revenue must not be due to circumstances
23 affecting the quality of transit service within the CONTRACTOR's control, e.g.
24 ICTC's documentation of poor maintenance affecting the reliability of service or
25 passenger comfort on vehicles, or inappropriate behavior by customer service
26 staff or vehicle drivers.

27 **8.4.** In the event that fuel costs are increased beyond CONTRACTOR's control and the
28 negotiated rate, ICTC will offer CONTRACTOR an additional amount to offset the

1 increase in costs. CONTRACTOR will make every effort to utilize the lowest priced
2 fuel. ICTC will review and monitor fuel expenses to determine if the CONTRACTOR
3 is complying with the requirement. A fuel escalator clause shall contain the following
4 provisions:

5 **8.4.1.** The fuel escalator shall be calculated as follows: the full amount that fuel costs
6 exceed the vehicle fuel budget line item shall be adjusted downward by any
7 savings in any other line item category that has not been fully utilized.
8 CONTRACTOR will reimburse ICTC for any fuel cost savings from the
9 proposed CONTRACTOR budgeted value.

10 **8.4.2.** The request for additional subsidy shall be submitted to ICTC at the conclusion
11 of the fiscal year in which the costs are incurred. The request shall be
12 accompanied by an accounting developed by CONTRACTOR, and invoices
13 substantiating said increase.

14 **8.4.3.** The cost of fuel is negotiated at a rate set at four dollars and thirty cents (\$4.30)
15 per gallon for the term of this Agreement. CONTRACTOR agrees to reimburse
16 ICTC for any savings below the negotiated rate.

17 **9. FARE BOX**

18 **9.1.** Fare Box Revenue. Fare boxes are CONTRACTOR required as part of all services.
19 Fare boxes will be installed on all vehicles under this service contract.

20 **9.2.** Fare Collection. CONTRACTOR's staff can collect fares in advance where feasible.
21 Vehicle operators shall also collect fares as established by ICTC and maintain an
22 accurate count of all boarding passengers by fare category. Vehicle operators shall not
23 make change for passengers.

24 **9.3.** Fare box revenue shall be counted by CONTRACTOR's office employees daily and
25 reconciled against the stated number of passenger trips. Any shortages must be
26 investigated and corrected by CONTRACTOR. CONTRACTOR will deposit farebox
27 revenue daily. Fare box revenue is the property of ICTC, and CONTRACTOR will
28 submit written reports to ICTC of revenue collection.

1 **9.4.** Transfers. CONTRACTOR shall also develop a transfer procedure and collect transfers
2 to and from IVT branded services or other public agency transit services.
3 CONTRACTOR shall account for it in its report of revenue collected.

4 **9.5.** Prepaid Fare Revenue. CONTRACTOR shall develop and collect prepaid fare revenue
5 from individuals, educational facilities and social service agencies. Revenue shall be
6 collected by CONTRACTOR personnel as needed but at a minimum on a monthly
7 basis.

8 **10. PERFORMANCE STANDARDS**

9 Standards and evaluation criteria will be utilized to annually measure performance and
10 efficiency of routes, and CONTRACTOR performance. This criterion is reported to State and
11 Federal agencies annually. For the purposes of this Agreement, criteria will be negotiated and
12 established: Performance standards for service implementation shall be those specified in
13 Exhibit “A” – “IVT ACCESS Paratransit Services Scope of Work FY 2024-2020 through FY
14 2030-31”.

15 **11. MARKETING**

16 **11.1** Approval. Not later than thirty (30) days after the execution of this Agreement and
17 ninety (90) days prior to the end of the fiscal year thereafter, CONTRACTOR shall
18 participate in the development of a marketing plan with ICTC and ICTC’s consultant
19 specific to the IVT ACCESS services for ICTC’s final approval. The marketing plan
20 shall indicate all proposed activities with a corresponding budget of 5% of the total cost
21 of the service for the fiscal year. CONTRACTOR shall be responsible for working with
22 ICTC staff and consultant for the development and preparation, subject to the approval
23 of ICTC, of all marketing materials for the IVT ACCESS paratransit services.
24 CONTRACTOR will coordinate the placement, scheduling and distribution of all
25 advertising and promotional materials designed to inform patrons of ICTC services and
26 to promote ridership.

27 **11.2** Preparation. CONTRACTOR shall be responsible for the preparation and printing of
28 all necessary passes, tickets and transfers to be used in the paratransit service.

1 **11.3** Distribution. CONTRACTOR shall distribute and disseminate such materials in
2 accordance with the provisions of this Agreement and any directions supplemental
3 thereto provided by ICTC.

4 **11.4** Promotion. CONTRACTOR shall promote the service for ICTC, and distribute
5 brochures and other materials.

6 **11.5** Presentation. CONTRACTOR shall, under the direction of ICTC, provide contact on
7 an as-needed basis with private and non-profit community agencies, job resource
8 centers and local governing bodies to promote interest and use in the transit services of
9 ICTC. These contacts shall include, but not be limited to speaking engagements and
10 displays. CONTRACTOR will participate as a technical resource contact with user
11 groups or agencies as required, including meetings of ICTC committees or commission
12 meetings upon request.

13 **11.6** Comment Cards. CONTRACTOR shall develop and distribute passenger comment
14 cards. CONTRACTOR will respond to all comments with copies of response provided
15 to ICTC. CONTRACTOR will provide statistical summaries of frequency and patterns
16 of comments to ICTC on a monthly basis.

17 **12. CUSTOMER SERVICE**

18 **12.1** Phone. CONTRACTOR shall establish at least two (2) customer service telephone
19 numbers, at least one (1) of which shall be toll-free. CONTRACTOR shall provide
20 telephone information service during all hours of system operation, up to one (1) hour
21 before and one (1) hour after services have started and returned from daily operations.
22 CONTRACTOR shall provide statistical summaries of frequency and patterns of
23 telephone comments to ICTC on a monthly basis.

24 **12.2** TDD/FAX. CONTRACTOR's telephone system shall have TDD or equivalent, and
25 FAX capabilities. CONTRACTOR shall publish these phone numbers in local
26 telephone directory(ies).

27 **12.3** Exclusivity of Phone Services. CONTRACTOR's customer service telephone numbers
28 shall be used solely for the purpose of providing customer information, serving trip

1 requests and those activities required under the Scope of Work, and shall not be used by
2 CONTRACTOR for any other purpose or business. These telephones shall be answered
3 as specified by ICTC.

4 **12.4 Rollover of Phone.** Upon termination of this Agreement, CONTRACTOR’s customer
5 service telephone numbers shall remain within the jurisdiction of ICTC. Any new
6 CONTRACTOR would be responsible for transferring CONTRACTOR’s customer
7 service telephone numbers to their service.

8 **12.5 Bilingual Capability.** CONTRACTOR shall provide bilingual dispatchers or
9 information operators, and drivers who can fluently speak both the English and Spanish
10 languages and are knowledgeable of time schedules, routes, window corridors and
11 transit services of ICTC as is necessary to answer customer information requests, refer
12 passengers to other public transit service CONTRACTORS and/or questions in a
13 courteous, timely and professional fashion.

14 **13. COORDINATION**

15 **13.1 Consultation.** CONTRACTOR represents itself as an expert in the field of public
16 paratransit. As such, CONTRACTOR shall provide ICTC with minor technical
17 assistance and consultation in such matters as operating policies, funding and
18 coordination with other transit CONTRACTORS at no additional charge to ICTC. At
19 no time will CONTRACTOR be required to prepare intensive or in-depth studies
20 without mutually agreed-upon compensation. Periodically, consultants will request
21 information or interviews with CONTRACTOR staff. CONTRACTOR is required to
22 cooperate with all ICTC-administered consultant projects.

23 **13.2 Service Recommendations.** CONTRACTOR shall report to ICTC and shall make
24 recommendations as to changes to improve ICTC’s paratransit service on a case-by-
25 case basis. CONTRACTOR may not make any permanent changes that affect the
26 quantity, quality or nature of the paratransit service without obtaining ICTC’s written
27 permission.

28 **14. MANAGEMENT**

- 1 **14.1** General Manager/Operations Manager. ICTC shall participate in the selection and
2 approval of the person serving as General Manager/Operations Manager. In the event
3 that the General Manager must be replaced, ICTC will participate in the selection and
4 approval of the replacement.
- 5 **14.2** Day-to-Day Operations. CONTRACTOR will manage the day-to-day operation in
6 accordance with the adopted operations plan and good management practices.
7 Management of day-to-day operations of the system will be vested in at least one (1)
8 local management individual who shall be experienced in all aspects of public
9 paratransit operations. The individual shall be responsible for managing and monitoring
10 all aspects of the system operation including but not limited to maintenance, repair,
11 fueling, security, supply of on-line and spare vehicles, warranty work, quality of
12 service, accounting, fare collection, personnel and contract administration.
13 CONTRACTOR shall supply ICTC with a twenty-four (24) hour emergency telephone
14 number at which CONTRACTOR can be reached. ICTC reserves the right to adjust any
15 aspect of the service including supervisory staff.
- 16 **14.3** Priority of Service. The General Manager/Operations Manager shall be employed and
17 available on a full-time basis.
- 18 **14.4** Executive Level Availability. CONTRACTOR shall also designate a responsible
19 executive level employee of CONTRACTOR to be available at all times, either by
20 phone or in person, to make decisions or provide coordination as necessary. This
21 executive must be authorized to act throughout the service area on behalf of
22 CONTRACTOR. This individual may not be the same individual as the General
23 Manager/Operations Manager.
- 24 **14.5** Operational Efficiency. CONTRACTOR shall seek out and implement methods of
25 improving system operations, service and cost-effectiveness along with improvements
26 to correct deficiencies and substandard performance. After approval by ICTC, results
27 will be reported to ICTC via the monthly management summary (“MSS”) report,
28 activity report or direct memorandum, along with a summary of any corrective actions

1 that have been taken. CONTRACTOR shall review and comment on plans, equipment
2 purchases, operative changes and related proposals of ICTC.

3 **15. GENERAL REPORTS AND RECORDKEEPING**

4 **15.1** CONTRACTOR shall collect data on the operation of the paratransit service system and
5 supply the data to ICTC on a monthly basis, or as may otherwise be directed below. All
6 such information supplied by CONTRACTOR shall be certified as accurate.

7 **15.2** Management Information System. CONTRACTOR's Management Information System
8 shall utilize Word, Excel, Power Point, Access, Adobe Acrobat and e-mail and provide
9 an adequate methodology to gather, store, retain, calculate, compute, cross-reference
10 and display in textual, tabular and graphic form all operating, performance and
11 financial data associated with this Agreement. In addition, e-mail capability is required
12 to communicate with ICTC. ICTC uses IBM-compatible computer equipment.

13 **15.3** Monthly Reports. CONTRACTOR will report the information on a monthly basis in
14 the format as described in the Appendix to "IVT ACCESS Paratransit Services Proposal
15 2024 – Reporting".

16 **15.4** Annual Reports. CONTRACTOR will report the information on an annual basis in the
17 format as described in the Appendix to "IVT ACCESS Paratransit Services Proposal
18 2024 – Reporting".

19 **15.5** Miscellaneous Reports. In addition to the monthly and annual reporting,
20 CONTRACTOR shall supply any and all reports necessary to comply with
21 requirements of ICTC and other local, State or Federal authorities. These reports shall
22 include but not be limited to all required California Air Resource Board Urban or
23 Medium Bus Operators Emission Requirements, California Transportation
24 Development Act and FTA and National Transit Database reporting requirements.

25 **15.6** Accident Reporting. CONTRACTOR shall provide ICTC with immediate telephone
26 notification of accidents. CONTRACTOR shall forward written copies of accident
27 reports within one (1) business day for injury accidents and three (3) business days for
28 non-injury accidents. CONTRACTOR shall also forward all California Highway Patrol

1 (“CHP”) Safety Compliance Reports within two (2) business days after CHP
2 submission to CONTRACTOR.

3 **15.7 Survey/Study/Analysis Data.** ICTC may periodically conduct surveys of ridership
4 during the term and, if applicable, the extension term of this Agreement. These surveys
5 may determine matters including socioeconomic, origination and destination and fare-
6 type characteristics of paratransit service system users. CONTRACTOR shall
7 cooperate in the conduct of all surveys, including having its in-service drivers
8 participate where operationally possible, at no additional charge to ICTC.

9 **15.8 Proprietary Restriction.** CONTRACTOR agrees that all information it must furnish
10 pursuant to this Agreement shall be free from proprietary restrictions unless identified
11 during negotiation and mutually agreed-upon. CONTRACTOR further agrees that
12 other such data is public and in the public domain.

13 **15.9 Maintenance of Data.** CONTRACTOR shall maintain accurate and complete books,
14 records, data and documents on generally-accepted accounting principles in accordance
15 with Uniform System of Accounts and Records adopted by the State Controller
16 pursuant to Section 99243 of the Public Utilities Code, and as required by ICTC or the
17 California Department of Transportation (“Cal Trans”). Such records shall be kept in
18 such detail and form so as to meet applicable local, State and Federal requirements.

19 **15.10 Accountability.** A complete and separate set of books, accounts and/or records shall be
20 maintained by CONTRACTOR, which records shall show details of transactions
21 pertaining to the management, maintenance and operation of only this system under the
22 terms of this Agreement. System transactions shall not be co-mingled with
23 CONTRACTOR's other operations. CONTRACTOR's records shall be kept with
24 sufficient detail to constitute an audit trail to verify that any and all costs charged to the
25 system created by this Agreement are in fact due to operations pursuant to this
26 Agreement, and not due to separate or charter operations by CONTRACTOR. ICTC
27 auditors shall perform a random audit of the financial records of the service on an
28 annual basis.

1 **15.11** Maintenance Records. CONTRACTOR shall keep and maintain all work orders,
2 warranty dockets and maintenance records on vehicles and equipment, separated by
3 vehicle, until this Agreement is terminated. CONTRACTOR shall release all such
4 documents to ICTC upon request or upon termination of this Agreement.

5 **15.12** Access. ICTC, Caltrans, FTA and the Comptroller General of the United States, or any
6 of their duly authorized representatives, shall have access to any books, documents,
7 papers, and records of CONTRACTOR which are directly pertinent to this Agreement
8 for the purpose of making audit, examination, excerpts, and transcription of
9 CONTRACTOR's files. CONTRACTOR shall maintain all these records for a period
10 of at least five (5) years following the close-out of this Agreement to allow for audits,
11 examinations, excerpts and transcriptions of CONTRACTOR's files.

12 **16. MAINTENANCE, EQUIPMENT AND SUPPLIES**

13 **16.1** CONTRACTOR shall provide all facilities, tools, equipment, tires, fuel, oil, batteries,
14 parts, cleaning supplies, office supplies, office equipment and such other items or
15 materials required to professionally operate ICTC's paratransit services, including
16 phone system and service.

17 **16.2** CONTRACTOR shall provide, operate and maintain the radio communications system
18 for the paratransit service, including but not limited to, securing of Federal
19 Communications Commission ("FCC") frequency, base station, transmitter, repeater if
20 needed, and a mobile unit for each vehicle and a spare. CONTRACTOR must comply
21 with ICTC policies and FCC procedures for radio use.

22 **16.3 VEHICLE MAINTENANCE**

23 It shall be CONTRACTOR's responsibility to provide maintenance personnel and
24 institute a vehicle maintenance program to achieve a high level of maintenance on the
25 fleet of ICTC-owned buses provided to CONTRACTOR. ICTC expects maintenance
26 of vehicles in the highest level of condition by covering the following, but not limited
27 to, general elements:

- 28 • Preventative Maintenance
- Mechanical Maintenance

- Zero Tolerance Graffiti Removal
- Cleaning Program
- Engine and Transmission
- Quality Control
- Warranties on New Buses
- Interior Bus Maintenance (Seats, Driver Seats, Floors)
- Wheelchair Lift/Ramp Maintenance
- Farebox Maintenance
- Tire Servicing
- Wheel Cleaning
- Maintenance Performance Analysis
- Maintenance Reporting

All preventative maintenance inspections and mechanical maintenance shall be performed by qualified employees of the CONTRACTOR unless otherwise noted. CONTRACTOR is responsible for providing the necessary trained and qualified staff to perform all elements required as part of the maintenance program included within this Agreement. CONTRACTOR shall increase staffing as a function of need to perform all tasks required of the maintenance program over the course of the project.

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

1 **16.3.1 MAINTENANCE PERSONNEL**

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

- 4 • Bus engines, transmissions, and related mechanical parts.
- 5 • Methods and procedures used in servicing mechanical equipment.
- 6 • Bus chassis and bodies.
- 7 • Tools, precision instruments, equipment, and procedures used in the general
8 repair and maintenance of bus equipment.
- 9 • Decimals, fractions, and specifications related to bus mechanics.
- 10 • Specialized areas such as upholstery, brake relining, air conditioning,
11 wheelchair lift or device, fareboxes, electronic destination signs, and laptop
12 computer diagnostic programming.

13 **16.3.2 MAINTENANCE PERSONNEL SKILLS**

14 **16.3.2.1** Inspect bus engines, transmissions, fuel systems, and other
15 mechanical, electric, and electronic parts and components.

16 **16.3.2.2** Diagnose bus engine, transmission, fuel systems, and other
17 mechanical, electrical, and electronic parts and component
18 system problems.

19 **16.3.2.3** Repair bus engines, transmissions, fuel systems and other
20 mechanical, electrical, and electronic parts and components when
21 necessary.

22 **16.3.2.4** Diagnose and repair electronic components, such as the bus
23 electronic control system, fareboxes, electronic destination signs,
24 wheelchair lift/ramp mechanisms and air conditioning systems.

25 **16.3.3 PREVENTIVE MAINTENANCE**

26 CONTRACTOR shall adopt and maintain a formalized preventative
27 maintenance program for all vehicles in conformance with manufacturers'
28 preventative maintenance schedules, state law, industry standard practices, and

1 other detailed maintenance required by ICTC. Preventative Maintenance
2 Inspection (PMI) Checklists will be based on PMI intervals, as well as the
3 minimum requirements for each interval (based on manufacturer's recommended
4 schedules). Any PMI procedures that go above and beyond these minimum
5 requirements are entirely up to CONTRACTOR, but the minimum requirements
6 must be met within +/- 500 miles of the specified interval.

7 PMI intervals shall be at the following inspection mileages:

- 8 • **A 3,000 miles or 45 days**
- 9 • **B 6,000 miles**
- 10 • **C 24,000 miles**
- 11 • **D 48,000 miles**

12 The mileage intervals are based on a progressive PMI cycle. If a vehicle has
13 been out of service for more than 30 continuous days, the vehicle must be given
14 an "A" inspection in order to inspect tanks, brakes, and other related items in an
15 "A" inspection prior to re-entering revenue service. Any vehicle that has had
16 the repair of major body damage or collision repairs shall have an inspection
17 documented and forwarded to ICTC staff to insure vehicle has been returned to
18 full compliance.

19 CONTRACTOR must also meet, or exceed, the PMI requirements set forth by
20 vehicle builders and all major component manufacturers.

21 Major components include, but are not limited to, engines, transmissions, A/C
22 and heating, doors, radios, wheelchair lifts, fareboxes, destination signs, and fuel
23 tanks. Failure to follow manufacturers' guidelines may result in liquidated
24 damages and/or termination of the Agreement. ICTC shall determine
25 CONTRACTOR's compliance with the above requirements by reviewing
26 detailed monthly PMI reports, and or by utilizing an independent maintenance
27 consultant. ICTC may select buses randomly for independent third party
28 inspections.

1 If CONTRACTOR wishes to revise some of these requirements during the
2 course of the service agreement (because of new information, or techniques that
3 have been approved by the manufacturer), it may present a revised plan, with
4 supporting documentation, to ICTC for review. ICTC decisions regarding
5 revised PMI procedures shall be final.

6 In addition to these minimum PMI requirements, CONTRACTOR must also
7 create and implement PMI functions for the following equipment:

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

11
12 **16.3.4 MECHANICAL MAINTENANCE PROGRAM**

13 CONTRACTOR, at its sole cost and expense, shall provide all lubricants,
14 repairs, cleaning, cleaning agents, parts, supplies, labor, maintenance, major
15 components, and component rebuilding and replacement required for the
16 operation of all equipment pursuant to the Agreement, unless otherwise
17 indicated. CONTRACTOR shall be fully responsible for the safe and efficient
18 maintenance of all vehicles and equipment, radios, fareboxes, and all other
19 ICTC-provided equipment to be used to perform this Agreement in strict
20 conformity to all CHP regulations and Title 13 requirements.

21 ICTC may inspect any vehicle at any time. CONTRACTOR shall allow ICTC,
22 or its designated agent, access to CONTRACTOR’s facilities and records for the
23 purpose of monitoring the CONTRACTOR’s maintenance performance, as
24 ICTC deems necessary. ICTC shall be permitted to view and copy any vehicle
25 maintenance records, inspect vehicles, and request CONTRACTOR’s personnel
26 to drive vehicles and/or position vehicles to inspect the undercarriage, as is
27 necessary to evaluate the condition of vehicles used in the performance of this
28

1 Agreement. ICTC, or its designated agent(s), shall conduct such inspections on
2 a regular basis.

3 All parts, materials, tires, lubricants, fluids, oils and procedures used by
4 CONTRACTOR on all ICTC-owned vehicles, vehicles and equipment shall
5 meet, or exceed Original Equipment Manufacturer (OEM) specifications and
6 requirements. All parts installed by CONTRACTOR on ICTC-owned buses
7 shall become property of ICTC.

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

9 **16.3.4.1** All wheelchair lifts, ramps, and other accessibility-related
10 equipment shall be inspected, serviced and lubricated at intervals
11 necessary to insure that all accessibility features are fully
12 operational whenever the vehicle is used in revenue service.

13 **16.3.4.2** Fareboxes, radios, destination signs, public address systems,
14 request-to-stop systems, and passenger doors shall be inspected,
15 serviced and lubricated at intervals necessary to ensure that this
16 equipment is fully operational as designed whenever the vehicle
17 is used in revenue service.

18 **16.3.4.3** At scheduled oil change intervals, a laboratory engine and
19 transmission oil analysis shall be performed on every ICTC-
20 provided bus engine or transmission. The analysis program used
21 by CONTRACTOR shall be subject to approval by ICTC.

22 **16.3.4.4** Brake inspections and adjustments shall be performed at intervals
23 that insure the safe and efficient operation of the braking system.
24 Brakes must be fully inspected, at a minimum, of 3,000 miles at
25 the "A" inspection.

26 **16.3.4.5** All components of the bus bodies, appurtenances, and frames
27 shall be maintained in a safe, sound and undamaged condition at
28 all times. Damage (including body damage and all bus

1 appurtenances) shall be repaired in a professional manner within
2 three weeks (21 calendar days) of occurrences. In the event that
3 the repairs cannot be made within three weeks due to the severity
4 of damage, and/or backorder of parts not typically in
5 CONTRACTOR's inventory, CONTRACTOR shall work with
6 ICTC to establish a reasonable schedule for completion.

7 **16.4** All mechanical, electrical, fluid, air, and/or hydraulic systems shall be maintained in a
8 safe and fully functional (as designed) condition at all times.

9 **16.5** The interior passenger compartment shall be free of exhaust fumes from the engine,
10 engine compartment, and exhaust system of the bus at all times.

11 **16.6** Heating, ventilation and air conditioning (HVAC) systems shall be maintained and used
12 to insure that the passenger compartment temperature is comfortably maintained under
13 all climatic conditions at all times during revenue service. CONTRACTOR shall
14 maintain the A/C systems in an operable condition throughout the entire year.

15 **16.7** Bicycle racks (front two position SportWorks) are provided on all buses provided for
16 this service. CONTRACTOR shall maintain bicycle racks in good working order.
17 Racks shall be inspected every 3,000 miles with the "A" PMI. Racks may need to be
18 sanded, repainted or polished, or replaced (if not easily repaired).

19 **16.8** CONTRACTOR, as manager of the fleet, shall establish and maintain a spare parts
20 inventory based on the age and variety of vehicles, sufficient to ensure that peak hour
21 vehicle requirements are met. Vehicles may not be used to supply spare parts for other
22 buses.

23 **16.9** ICTC may remove a vehicle from revenue service if ICTC determines that maintenance
24 on any vehicle is not in conformity with the Agreement.

25 **16.10** CONTRACTOR, as an agent for ICTC in the case of warranted equipment, will be
26 responsible for ensuring that the vehicle manufacturers and all component
27 manufacturers perform or reimburse CONTRACTOR for all parts and labor, which are
28 covered under warranty. CONTRACTOR shall diligently follow the preventative

1 maintenance program so any warranty coverage on ICTC-owned or provided equipment
2 is not lessened or invalidated.

3 **16.11** Upon completion or termination of the Agreement for any reason, CONTRACTOR
4 shall return vehicles and all other ICTC-provided equipment to ICTC less reasonable
5 wear-and-tear, as determined by accepted bus industry standards and approved by
6 ICTC.

7 **16.12** Driver and passenger seats shall be maintained in proper operating condition at all
8 times. It shall include, at a minimum, inspection, repair, and replacement for seat
9 cushions, frames, armrests, and all electrical, mechanical, and pneumatic components.
10 All rips, tears, cuts, gum, graffiti and other damage shall be cleaned and/or repaired in a
11 professional manner immediately upon their discovery. CONTRACTOR shall replace
12 seat covers that are worn or cannot be professionally repaired, using materials that are
13 identical in design and color as those materials being replaced.

14 **16.13** CONTRACTOR is responsible for all towing services related to this AGREEMENT.

15 **16.14** Tire maintenance and replacement are the responsibility of the CONTRACTOR. Any
16 new buses delivered during the Agreement will be delivered with tires purchased by
17 ICTC as part of the bus procurement. Any replacements for these original tires will be
18 the responsibility of the CONTRACTOR when the original tires require replacement.
19 CONTRACTOR must use new tires, refurbished tires are not allowed.

20 **16.15** Steam cleaning of engine compartments of buses shall be carried out with
21 CONTRACTOR equipment on a regular basis. It is expected that the engine
22 compartment be steam cleaned or pressure washed (at high temperature) prior to every
23 “A” inspection at 3,000 miles.

24 **16.16** MAINTENANCE SHOP PRACTICES

25 The CONTRACTOR provided Maintenance Manager shall verify the quality of the
26 work performed, and add his/her signature to the PMI Inspection form. Daily vehicle
27 inspection reports shall be completed prior to vehicle use. The Maintenance Manager
28 will be responsible for review of Vehicle Inspection Reports. Should a Vehicle

1 Inspection Report be submitted post vehicle use, the Maintenance Manager will review
2 and schedule any repairs immediately.

3 **16.16.1** Tires shall always be matched (by manufacturer, size, and tread pattern) on each
4 axle. CONTRACTOR shall follow manufacturer's recommended guidelines for
5 wheel maintenance and cleaning. CONTRACTOR shall clean all wheels weekly
6 and re-paint steel wheels as necessary.

7 **16.16.2** Broken or cracked glass or window liners shall be replaced immediately upon
8 discovery. No buses shall enter into revenue service with broken or cracked
9 glass at any time. Scratched or etched glass or window liners shall be replaced
10 weekly, unless significant damage or offensive in nature, which shall require
11 immediate replacement.

12 **16.16.3** Bus Brake Replacement

13 **16.16.3.1** Both brakes on an axle will be replaced at the same time.

14 **16.16.3.2** Wheel seals will be replaced with every brake job, and bearings
15 will be checked.

16 **16.16.4** Other

17 **16.16.4.1** Cradle motor mounts shall be replaced in pairs.

18 **16.16.4.2** Radiators shall be re-cored or replaced at the time of engine
19 replacement.

20 **16.16.4.3** Bus maintenance and storage facilities shall be free of
21 freestanding water. All oil, grease, fluids, dirt, trash, rags, boxes,
22 etc. shall be removed from bus maintenance and storage facilities
23 daily. ICTC may inspect shop condition on a regular basis.

24 **16.17** BUS MAINTENANCE RECORD KEEPING

25 CONTRACTOR will maintain an up-to-date vehicle file for each vehicle containing, at
26 a minimum, the following information:

27 Year and Make

28 Model

1 Serial number/ICTC fleet number
2 License number
3 Vehicle Identification Number (VIN)
4 Date received
5 Date placed in service
6 Annual miles
7 Contract miles
8 Life miles
9 Major Component Rebuild and Replacement including date and lifemiles
10 Vehicle repairs
11 Preventive Maintenance Inspection Reports
12 Daily "Bus Condition" reports
13 Work Orders

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

17 Copies of the "Preventive Maintenance Inspection" report will be submitted to ICTC on
18 a quarterly basis, if so requested by ICTC. ICTC shall coordinate with CONTRACTOR
19 for submittal of selected summary type reports from the computerized maintenance
20 system. Any Daily Bus Report shall be submitted to ICTC upon request.
21 CONTRACTOR shall submit the entire vehicle file, or selected reports, from the
22 maintenance software system to ICTC upon request. The computerized maintenance
23 software system must be backed up regularly.

24 At the minimum, CONTRACTOR shall submit monthly maintenance report summaries
25 each month including maintenance PMIs done in the past month, and vehicle cleaning
26 summaries.

27 **16.18 SAFETY**

1 **16.18.1**ICTC will require that the Motor Carrier Unit of the CHP annually prepare and
2 submit to ICTC a Safety Compliance Report (CHP 343) and Vehicle Inspection
3 Reports (CHP 343A). CONTRACTOR shall fully cooperate with, and allow
4 access as requested to, any CHP officer, or agent, for the purposes of preparing
5 the CHP 343. CONTRACTOR must attain satisfactory ratings in each category
6 of the Safety Compliance Report. CONTRACTOR must expeditiously correct
7 any deficiencies noted on any CHP vehicle or terminal inspection report.

8 **16.18.2**ICTC requires that CONTRACTOR regularly inspect and maintain all safety
9 equipment used or required in the fulfillment of this Agreement.
10 CONTRACTOR is responsible for purchasing, at its own cost, replacement fire
11 extinguishers, first aid kits, first aid kit refill supplies, and triangle reflector kits
12 sufficient to ensure that spares are always available and that the operation
13 maintains compliance with local, state, and federal safety regulations. Drivers'
14 daily vehicle inspection shall include a check of the fire extinguisher and
15 triangle reflector kit. Used, missing, or broken items must be replaced as soon
16 as practicable. All vehicle and facility fire extinguishers shall be inspected and
17 tagged no less frequently than annually. First aid kits shall be inspected and
18 professionally serviced at least once per year.

19 **16.19 ICTC REIMBURSEMENT OF ENGINE AND TRANSMISSION REBUILD COSTS**

20 ICTC recognizes that during the term of this Agreement, engines and/or transmissions
21 of ICTC-owned buses not under warranty may have to be rebuilt or replaced. If
22 CONTRACTOR determines that an engine or transmission needs to be rebuilt or
23 replaced, the CONTRACTOR shall notify ICTC, in writing, detailing the reasons for
24 such a determination including pertinent information from the vehicle file and a detailed
25 cost estimate. An outside vendor may be used if deemed cost effective after consultation
26 and approval by ICTC.

27 **16.19.1**After review, ICTC may direct CONTRACTOR in writing, to proceed with the
28 recommended work.

1 **16.19.2**CONTRACTOR will only be permitted to pass through to ICTC the costs
2 related to any engine or transmission work accomplished following the above-
3 mentioned procedure. ICTC will not be liable for any costs if CONTRACTOR
4 does not follow the above-mentioned procedure. CONTRACTOR must submit
5 a detailed invoice to ICTC for all such work.

6 **16.19.3**If ICTC determines that such work is necessary due to poor maintenance
7 performance by CONTRACTOR, ICTC will not be liable for any costs.

8 **16.19.4**CONTRACTOR shall remain responsible for all costs related to repair or
9 replacement of any engine-driven part including, but not limited to, generators,
10 hydraulic pumps, water pumps, fuel pumps, valve covers, oil pans, alternators,
11 voltage regulators, air compressors, air-conditioning compressors, vacuum
12 pumps, starter motors, and turbocharger. CONTRACTOR shall also remain
13 responsible for all costs related to repair or replacement of transmission-related
14 parts including, but not limited to, oil coolers, external oil lines, external filters,
15 external linkage modulators, external speedometers/odometers, "driven" gears or
16 sensors, neutral start switches, and temperature sensors.

17 **17. FACILITIES**

18 **17.1** All facilities and arrangements including office space, furniture, dispatch, maintenance
19 bays, paved, secured and lighted parking areas, storage, on/off site fueling, radio,
20 telephone and computer connections are the responsibility of CONTRACTOR and shall
21 be sufficient to support the operation of the paratransit services described herein.

22 **17.2** CONTRACTOR shall ensure that facilities provided are maintained as needed to ensure
23 a safe, hygienic, professional and attractive working environment that is in compliance
24 with local, State and Federal regulations.

25 **17.3** Services shall be operated on an inter-city and inter-county basis. Vehicles dispatched
26 out of the facilities shall travel to various destinations. ICTC does not specify
27 preference for location; however, the location shall be evaluated for practicality and
28 functionality for the administration, operations and maintenance of the system.

1 **17.4** CONTRACTOR shall locate facilities so as to be able to bring a back-up vehicle into
2 service within sixty (60) minutes from the location.

3 **17.5** The facilities are expected to serve the walk-in passenger, collect fare payment, and
4 provide a centralized site for operations and a distribution point for the sale of passes
5 and brochures.

6 **18. VEHICLES**

7 **18.1** ICTC shall supply all revenue vehicles for the services. CONTRACTOR shall supply
8 all non-revenue service hour vehicles. See Vehicles for Exhibit “A” – “IVT ACCESS
9 Paratransit Services Scope of Work FY 2024-2025 through FY 2030-231”.
10 CONTRACTOR must examine the service history and schedule to determine minimum
11 size of vehicles and spares required for efficient service operation.

12 **18.2** CONTRACTOR shall maintain adequate air-conditioning and passenger comfort on-
13 board at all times.

14 **18.3** ICTC may inspect vehicles on- or off-route and pull a vehicle out of service at any time
15 due to perceived or reported safety violations, lack of air conditioning, lack of
16 functional wheel chair lift or other condition that impacts the health and welfare of
17 passengers.

18 **19. PERSONNEL**

19 **19.1** CONTRACTOR shall provide all management, office staff, drivers, dispatchers,
20 mechanics, maintenance clerks, cleaners, service workers, telephone information
21 operators, road supervisors and such other personnel necessary to responsibly operate
22 ICTC’s paratransit services system, including any onboard security or supervision. It
23 is understood that CONTRACTOR may subcontract components of its operations;
24 however, no such subcontract shall relieve CONTRACTOR from responsibility to
25 ensure compliance with the terms of this Agreement. ICTC reserves the right to make
26 any adjustments to the service, methodology to the delivery of service and operations.
27 All road supervisors and service managers shall be licensed and trained to drive
28 applicable service vehicles.

1 **19.2** CONTRACTOR will recruit, screen, hire, discipline and train personnel as necessary,
2 conduct monthly safety and other related employee meetings as necessary and perform
3 liaison activities with ICTC and other agencies related to execution of this Agreement.
4 A copy of employee benefits, work rules and union contracts shall be provided to ICTC.
5 CONTRACTOR shall meet and coordinate with ICTC on a frequent basis.

6 **19.3** CONTRACTOR shall supervise all drivers to the end that they are courteous to all
7 patrons at all times and respond to patrons' questions regarding use of the transit system
8 or connecting systems accurately.

9 **19.4** CONTRACTOR shall provide ICTC with an organizational chart prior to start-up.
10 After startup, CONTRACTOR shall provide a list of drivers' names and update said list
11 monthly. CONTRACTOR shall not place a driver into service without the driver first
12 completing CONTRACTOR's training program as outlined in Paragraph 20. Failure to
13 comply with this section may result in termination of this Agreement.

14 **20. TRAINING**

15 **20.1.** CONTRACTOR shall provide full training for CONTRACTOR's drivers. This training
16 shall be a minimum of eighty (80) hours per employee, of which at least thirty (30)
17 hours shall be behind the wheel. This training must be completed before a driver can
18 enter unsupervised passenger service. CONTRACTOR shall maintain and certify
19 driver records, subject to review by ICTC and CHP.

20 **20.2** All CONTRACTOR employees, including dispatchers and supervisor(s), shall be
21 trained and certified as drivers. Such training shall meet all requirements of the State of
22 California. A detailed description of CONTRACTOR's proposed training program
23 shall be submitted to ICTC within thirty (30) days of the execution of this Agreement.
24 CONTRACTOR's training plan shall provide a minimum of eight (8) hours of annual
25 refresher training per driver.

26 **20.3** CONTRACTOR shall conduct classroom training in at least the following areas: multi-
27 media first aid training, cardiopulmonary resuscitation ("CPR"), National Safety
28 Council (or approved equivalent) defensive driving course, customer service,

1 sensitivity/empathy training, emergency and accident procedures and wheelchair
2 loading and securement procedures.

3 **20.4** CONTRACTOR will have all drivers obtain a class of drivers license as required by
4 law, and certification in CPR and first aid. All CONTRACTOR employees must pass a
5 pre-employment physical examination, paid for by CONTRACTOR, prior to start of
6 training. All of CONTRACTOR's drivers shall be subject to a pre-employment
7 background check, a review of their California Department of Motor Vehicle records.

8 **20.5** Drivers will be trained by a trainer or trainers who are certified by the National Safety
9 Council (or other approved agency) to instruct the defensive driving course and are
10 certified by either the American Heart Association or Red Cross (or another approved
11 agency) to instruct the drivers in first aid and CPR. CONTRACTOR shall certify their
12 trainer in customer service, sensitivity training, emergency and accident procedures and
13 wheelchair loading and securement procedures, or as may otherwise be required by
14 local, State or Federal law or regulations.

15 **20.6** CONTRACTOR shall require all drivers to attend a monthly safety meeting that shall
16 be a minimum of one (1) hour in duration. CONTRACTOR shall implement a planned
17 program of safety retraining to be conducted at the safety meetings. ICTC and its
18 representatives shall be allowed to attend said safety meetings.

19 **21. LICENSES**

20 **21.1** CONTRACTOR shall provide and maintain licenses for its radio system.

21 **21.2** CONTRACTOR shall be responsible for any locally required business or other licenses,
22 including FCC and Public Utilities Commission certificates as required and necessary.
23 CONTRACTOR shall also be solely responsible for any parking and traffic violations
24 of vehicles operated in connection with ICTC's paratransit program.

25 **22. UNIFORMS**

26 CONTRACTOR shall provide and maintain clean, color-coordinated and identical uniforms to
27 be approved by ICTC for all CONTRACTOR employees. CONTRACTOR shall enforce a
28 dress and appearance code. At a minimum, dress requirements shall include: shirts, slacks or

1 shorts. Headgear is optional but if worn will be a design of a baseball-type hats. Jackets will
2 be uniform for use in cold or rainy weather. All shirts and jackets will have sewn name badges
3 and identification patches with a logo that has been approved by ICTC. Sandals or open-toed
4 shoes are not allowed.

5 **23. SAFETY AND SECURITY**

6 **23.1** CONTRACTOR shall be responsible for the safety and security of passengers during
7 operations and for all related equipment and facilities. CONTRACTOR shall develop
8 specific procedures that define the safety and security program for ICTC’s paratransit
9 services. Safety and organizational meetings shall be held with all CONTRACTOR
10 employees at least once per month.

11 **23.2** CONTRACTOR shall report all hazardous conditions (e.g., trees, signs, slides, etc.) in
12 the service area to ICTC and any other appropriate authority and take necessary
13 precautions to safeguard passengers and personnel.

14 **23.3** CONTRACTOR shall comply with all CHP and State and Federal Occupational Health
15 and Safety Administration requirements. CONTRACTOR shall not permit drivers to
16 bear weapons of any type while operating a vehicle under this Agreement.

17 **24. INSURANCE REQUIREMENTS:**

18 **24.1** Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in
19 full force and effect all policies of insurance required hereunder with an insurance
20 company(ies) either (i) admitted by the California Insurance Commissioner to do
21 business in the State of California and rated not less than "A- VII" in Best's Insurance
22 Rating Guide, or (ii) authorized by ICTC’s Executive Director or his/her designee at
23 any time and in his/her sole discretion. The following policies of insurance are
24 required:

- 25 (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as
26 the most current version of Insurance Services Office (ISO) Commercial General
27 Liability Coverage Form CG 00 01 and include insurance for “bodily injury,” “property
28 damage” and “personal and advertising injury” with coverage for premises and

1 operations (including the use of owned and non-owned equipment), products and
2 completed operations, and contractual liability (including, without limitation, indemnity
3 obligations under the Contract) with limits of liability of not less than the following:

4 \$20,000,000 per occurrence for bodily injury and property damage

5 \$20,000,000 per occurrence for personal and advertising injury

6 \$20,000,000 aggregate for products and completed operations

7 \$20,000,000 general aggregate

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

13 (iii) GARAGEKEEPERS LIABILITY insurance which shall include coverage for all ICTC
14 vehicles in the care, custody, and control of the CONTRACTOR with limits of liability
15 of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

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

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

25 (vi) EMPLOYERS' LIABILITY insurance with limits of liability of not less than
26 \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each
27 employee.
28

- 1 **24.2** Should CONTRACTOR maintain higher limits than the minimum limits shown above,
2 ICTC requires and shall be entitled to coverage for the higher limits maintained by
3 CONTRACTOR. Any available insurance proceeds in excess of the specified minimum
4 limits of insurance and coverage shall be available to ICTC.
- 5 **24.3** In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to
6 meet the minimum limits of insurance set forth above, this insurance policy(ies) shall
7 “follow form” and afford no less coverage than the primary insurance policy(ies).
- 8 **24.4** CONTRACTOR shall be responsible for payment of any deductibles contained in any
9 insurance policies required hereunder and CONTRACTOR shall also be responsible for
10 payment of any self-insured retentions. Any deductibles or self-insured retentions must
11 be declared to, and approved by, the ICTC’s Executive Director or his/her designee. At
12 the option of the ICTC’s Executive Director or his/her designee, either: (i) the insurer
13 shall reduce or eliminate such deductibles or self-insured retentions as respects to ICTC,
14 its board members, officers, employees, agents and volunteers, and Cities and their
15 elected officials, officers, employees, agents and volunteers: or (ii) CONTRACTOR
16 shall provide a financial guarantee, satisfactory to ICTC’s Executive Director or his/her
17 designee, guaranteeing payment of losses and related investigations, claim
18 administration and defense expenses. At no time shall ICTC or Cities be responsible
19 for the payment of any deductibles or self-insured retentions.
- 20 **24.5** All policies of insurance required hereunder shall be endorsed to provide that the
21 coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except
22 after 30 calendar day written notice has been given to ICTC. Upon issuance by the
23 insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in
24 coverage or in limits, CONTRACTOR shall furnish ICTC with a new certificate and
25 applicable endorsements for such policy(ies). In the event any policy is due to expire
26 during the work to be performed for ICTC, CONTRACTOR shall provide a new
27
28

1 certificate, and applicable endorsements, evidencing renewal of such policy not less
2 than 15 calendar days prior to the expiration date of the expiring policy.

3 **24.6** The General Liability and Automobile Liability insurance policies shall be written on an
4 occurrence form and shall name ICTC, its board members, officers, employees and
5 agents as an additional insured. Such policy(ies) of insurance shall be endorsed so
6 CONTRACTOR's insurance shall be primary and no contribution shall be required of
7 ICTC. The coverage shall contain no special limitations on the scope of protection
8 afforded to ICTC, its board members, officers, employees and agents. Garagekeepers
9 Liability insurance shall be written on a direct primary coverage form and include
10 comprehensive and collision coverage. The Workers' Compensation insurance policy
11 shall contain a waiver of subrogation as to ICTC, its board members, officers,
12 employees and agents.

13
14 **24.7** CONTRACTOR shall furnish ICTC all certificate(s) and applicable endorsements
15 effecting coverage required hereunder. All certificates and applicable endorsements are
16 to be received by ICTC and approved by ICTC's Executive Director or his/her designee
17 prior to ICTC's execution of the Agreement and before work commences. Upon
18 request of ICTC, CONTRACTOR shall immediately furnish ICTC with a complete
19 copy of any insurance policy required under this Agreement, including all
20 endorsements, with said copy certified by the underwriter to be a true and correct copy
21 of the original policy. This requirement shall survive expiration or termination of this
22 Agreement.

23 **24.8** If at any time during the life of this Agreement or any extension, CONTRACTOR or
24 any of its subcontractors fail to maintain any required insurance in full force and effect,
25 all work under this Agreement shall be discontinued immediately, and all payments due
26 or that become due to CONTRACTOR shall be withheld until notice is received by
27 ICTC that the required insurance has been restored to full force and effect and that the
28 premiums therefore have been paid for a period satisfactory to ICTC. Any failure to

1 maintain the required insurance shall be sufficient cause for ICTC to terminate this
2 Agreement. No action taken by ICTC hereunder shall in any way relieve
3 CONTRACTOR of its responsibilities under this Agreement.

4 **24.9** The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or
5 diminish the liability of CONTRACTOR, including, without limitation, liability under
6 the indemnity provisions of this Agreement. The duty to indemnify ICTC shall apply to
7 all claims and liability regardless of whether any insurance policies are applicable. The
8 policy limits do not act as a limitation upon the amount of indemnification to be
9 provided by CONTRACTOR. Approval or purchase of any insurance contracts or
10 policies shall in no way relieve from liability nor limit the liability of CONTRACTOR,
11 its principals, officers, employees, agents, persons under the supervision of
12 CONTRACTOR, vendors, suppliers, invitees, consultants, sub-consultants,
13 subcontractors, or anyone employed directly or indirectly by any of them.

14 **24.10** If CONTRACTOR should subcontract all or any portion of the services to be performed
15 under this Agreement, CONTRACTOR shall require each subcontractor to provide
16 insurance protection in favor of ICTC, its board members, officers, employees and
17 agents in accordance with the terms of each of the preceding paragraphs, except that the
18 subcontractors' certificates and endorsements shall be on file with CONTRACTOR and
19 ICTC prior to the commencement of any work by the subcontractor.

20 **25. TERMINATION**

21 **25.1 Termination Provisions:** Termination clauses are located in Attachment A and in accordance
22 with Section 30 of this Agreement.

23 **26. FUTURE CONTRACTUAL SERVICE ADJUSTMENTS.**

24 The service provided is dictated by the ridership demand and economics of the annual budget
25 process. After a contract has been executed, service demand may increase or decrease.
26 Adjustments within the original scope of work may take place to the contracted revenue service
27 days or hours that will affect the service pricing. The ICTC or the CONTRACTOR may initiate a
28 discussion to adjust the level(s) of service. Adjustments to pricing for a service hour increase or

1 decrease modification will be based on the cost per hour in effect for that fiscal year, as agreed
2 and submitted in the proposal submitted entitled “IVT IVT ACCESS Paratransit Services
3 Proposal” dated ____ 2024. Contact service modifications, subsequent extensions, agreement
4 terms and subsidy are subject to criteria. Criteria for determining and evaluating the
5 appropriateness of the modification or extension will be reviewed and approved by the ICTC
6 Commission and Caltrans. Changes will not be made outside of the scope of work of this project.
7 Changes will not be made to the contract during the first thirty (30) days of operation. Changes
8 may not be made unilaterally or solely at the request of a passenger.

9 **27. EMPLOYEE WORK RULES**

10 CONTRACTOR shall enforce the following employee rules:

11 **27.1** Uniforms must be worn at all times when on duty and shall be clean and presentable at
12 all times. Uniform designs, colors and ID tags are subject to ICTC approval.

13 **27.2** Gratuities shall not be accepted.

14 **27.3** Drivers shall have a thorough knowledge of ICTC transit services and service areas.
15 Drivers shall also have a basic knowledge of potential transfer locations for all ICTC
16 transit services.

17 **27.4 General Rules**

18 **27.4.1** No one will be permitted to smoke, eat or drink aboard vehicles at any time.
19 This includes passengers and staff.

20 **27.4.2** Boisterous language, profanity or incivility to anyone shall not be allowed while
21 CONTRACTOR’s personnel is in uniform and representing CONTRACTOR
22 and ICTC, whether on- or off-duty.

23 **27.4.3** While in uniform, no CONTRACTOR employee shall purchase, consume or be
24 under the influence of any narcotic, intoxicant, or harmful drug.

25 **27.4.4** Drivers shall be responsible for keeping all vehicles clean and sanitary during
26 their shift.

27 **27.4.5** All CONTRACTOR employees are responsible for reporting any defects noted
28 in any vehicle to the supervisor and maintenance department immediately.

1 Drivers shall conduct a “walk-around” and an in-vehicle inspection of their
2 vehicle and fill out a form approved by ICTC for denoting the results of such
3 inspection(s) daily. Vehicle inspection documentation shall be reviewed by
4 management staff on a daily basis and corrective items noted should be
5 addressed as quickly as possible. Drivers shall have maintenance or
6 management personnel resolve any doubt about the safety of a vehicle prior to
7 placing a vehicle in passenger service.

8 **27.4.6** Employees may use vehicles only in accordance with their assigned duties.

9 **27.4.7** Employees must conduct themselves and operate vehicles in a safe and
10 courteous manner at all times.

11 **27.4.8** No one shall be permitted to solicit on the vehicle.

12 **27.4.9** No item longer than five (5) feet will be permitted on the vehicle.

13 **27.4.10** All information regarding accidents shall be treated as confidential. Employees
14 shall refrain from speaking to anyone concerning any accident unless it is to
15 police, supervisory personnel, or other person(s) involved in the accident as
16 required by law.

17 **27.4.11** Persons under the influence of any intoxicant, narcotic, or harmful drug shall
18 not be permitted on the vehicle.

19 **27.4.12** Drivers providing service shall be required to travel over prescribed routes. If it
20 becomes necessary to leave the route, the dispatcher or immediate supervisor
21 shall be notified immediately. ICTC reserves the right to modify routes or
22 create deviations as necessary to provide effective service.

23 **27.4.13** Drivers will provide the assistance required to help elderly and disabled persons
24 boarding and de-boarding vehicles, moving to their seat and/or maneuvering and
25 securing wheelchairs. Under no circumstances will drivers enter a passenger’s
26 residence or physically lift a passenger.

27 **27.4.14** No vehicle shall be operated when its condition is unsafe or uncertain.
28

1 **27.4.15** No driver shall operate the wheelchair lift until he/she has received the required
2 training and if there is any doubt whosoever about the mechanical condition of
3 the lift or safety of the passenger as a result from using the lift. Wheelchair lift
4 operation shall be in compliance with the methodology recommended by the
5 organizational equipment manual.

6 **28. ICTC POLICIES AND STANDARDS**

7 CONTRACTOR shall meet ICTC transit service policies and standards in the operation of
8 ICTC’s IVT ACCESS paratransit services. Penalty payments shall be assessed in accordance
9 with the Table of Incentives and Penalties.

10 **29. CONFLICT OF INTEREST**

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

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

15 CONTRACTOR is required to acknowledge and abide by the required federal clauses
16 contained in Attachment A as “Required Clauses”. CONTRACTOR further agrees to comply
17 with 49 CFR Part 40 as it pertains to Drug and Alcohol compliance.

18 **31. INDEMNIFICATION**

19 To the furthest extent allowed by law, CONTRACTOR shall indemnify, hold harmless and
20 defend ICTC and each of its board members, officers, employees and agents from any and all
21 loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict
22 liability, including but not limited to personal injury, death at any time and property damage)
23 incurred by ICTC, CONTRACTOR or any other person, and from any and all claims, demands
24 and actions in law or equity (including attorney's fees and litigation expenses), arising or
25 alleged to have arisen directly or indirectly out of performance of this
26 Agreement. CONTRACTOR’s obligations under the preceding sentence shall apply regardless
27 of whether ICTC and each of its board members, officers, employees and agents are actively or
28 passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs

1 or damages caused solely by the active negligence, or caused by the willful misconduct, of
2 ICTC or its board members, officers, employees and agents.

3 **31.1** If CONTRACTOR should subcontract all or any portion of the work to be performed
4 under this Agreement, CONTRACTOR shall require each subcontractor to indemnify,
5 hold harmless and defend ICTC and each of its board members, officers, employees
6 and agents in accordance with the terms of the preceding paragraph.

7 **31.2** This section shall survive termination or expiration of this Agreement.

8 **32. INDEPENDENT CONTRACTOR**

9 In all situations and circumstances arising out of the terms and conditions of this Agreement,
10 CONTRACTOR is an independent contractor, and as an independent contractor, the following
11 shall apply:

12 **32.1** CONTRACTOR is not an employee or agent of ICTC and is only responsible for the
13 requirements and results specified by this Agreement or any other Agreement.

14 **32.2** CONTRACTOR shall be responsible to ICTC only for the requirements and results
15 specified by this Agreement and except as specifically provided in this Agreement, shall
16 not be subject to ICTC's control with respect to the physical actions or activities of
17 CONTRACTOR in fulfillment of the requirements of this Agreement.

18 **32.3** CONTRACTOR is not, and shall not be, entitled to receive from, or through, ICTC, and
19 ICTC shall not provide, or be obligated to provide, CONTRACTOR with Worker's
20 Compensation coverage or any other type of employment or worker insurance or benefit
21 coverage required or provided by any Federal, State or local law or regulation for, or
22 normally afforded to, an employee of ICTC.

23 **32.4** CONTRACTOR shall not be entitled to have ICTC withhold or pay, and ICTC shall not
24 withhold or pay, on behalf of CONTRACTOR, any tax or money relating to the Social
25 Security Old Age Pension Program, Social Security Disability Program, or any other
26 type of pension, annuity, or disability program required or provided by any Federal,
27 State or local law or regulation.

28

1 **32.5** CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or
2 make any claim against any ICTC fringe program, including, but not limited to, ICTC’s
3 pension plan, medical and health care plan, dental plan, life insurance plan, or any other
4 type of benefit program, plan, or coverage designated for, provided to, or offered to
5 ICTC’s employee.

6 **32.6** ICTC shall not withhold or pay, on behalf of CONTRACTOR, any Federal, State, or
7 local tax, including, but not limited to, any personal income tax, owed by
8 CONTRACTOR.

9 **32.7** CONTRACTOR is, and at all times during the term of this Agreement, shall represent
10 and conduct itself as an independent contractor, not as an employee of ICTC.

11 **32.8** CONTRACTOR shall not have the authority, express or implied, to act on behalf of,
12 bind or obligate the ICTC in any way without the written consent of ICTC.

13 **33. ASSIGNMENT**

14 Neither this Agreement nor any duties or obligations hereunder shall be assignable by
15 CONTRACTOR without the prior written consent of ICTC.

16 **34. CONTRACTUAL DISPUTE RESOLUTION**

17 **34.1** Disputes arising in the performance of this Agreement which are not resolved by
18 agreement of the parties shall be decided in writing by the ICTC Board. Each party
19 shall have the right to submit any unresolved dispute to mediation. If the parties cannot
20 agree on a mediator, then each party shall select its own mediator and those mediators
21 will jointly select a third mediator to mediate the dispute. If mediation is not successful,
22 the parties may pursue their remedies as they choose.

23 **34.2** Unless otherwise directed by ICTC, CONTRACTOR shall continue performance under
24 this Agreement while matters in dispute are being resolved.

25 **34.3** The duties and obligations imposed by this Agreement and the rights and remedies
26 available hereunder shall be in addition to and not a limitation of any duties,
27 obligations, rights and remedies otherwise imposed or available by law. No action or
28 failure to act by either party shall constitute a waiver of any right or duty afforded any

1 of them under this Agreement, nor shall any such action or failure to act constitute an
2 approval of or acquiescence in any breach hereunder, except as may be specifically
3 agreed in writing.

4 **35. NOTICES AND REPORTS**

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

7 <u>ICTC</u>	<u>CONTRACTOR</u>
8 Imperial County	
9 Transportation Commission	
10 Attention: David Aguirre, Executive Director	
11 1503 N Imperial Ave., Suite 104	
12 El Centro, CA 92243	

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

17 **36. ENTIRE AGREEMENT**

18 This Agreement contains the entire Agreement between ICTC and CONTRACTOR relating to
19 the transactions contemplated hereby and supersedes all prior or contemporaneous agreements,
20 understandings, provisions, negotiations, representations, or statements, either written or oral.

21 **37. MODIFICATION**

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

25 **38. CAPTIONS**

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

28 **39. PARTIAL INVALIDITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid,
void, or unenforceable, the remaining provisions will nevertheless continue in full force

1 without being impaired or invalidated in any way.

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

3 As used in this Agreement and whenever required by the context thereof, each number, both
4 singular and plural, shall include all numbers, and each gender shall include a gender.
5 CONTRACTOR as used in this Agreement or in any other document referred to in or made a
6 part of this Agreement shall likewise include both singular and the plural, a corporation, a
7 partnership, individual, firm or person acting in any fiduciary capacity as executor,
8 administrator, trustee or in any other representative capacity or any other entity. All covenants
9 herein contained on the part of CONTRACTOR shall be joint and several if more than one
10 person, firm or entity executes the Agreement.

11 **41. WAIVER**

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

15 **42. CHOICE OF LAW**

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

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

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

23 **44. FORCE MAJEURE**

24 If any party fails to perform its obligation because of strikes, lockouts, labor disputes,
25 embargoes, acts of God, inability to obtain labor or materials, fuel shortages, government
26 restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile
27 governmental action, civil commotion, fire or other casualty, or other causes beyond the
28 reasonable control of the party obligated to perform, then that party's performance shall be

1 excused. However, CONTRACTOR shall not receive payment for vehicle service hours that are
2 not provided.

3 **45. AUTHORITY**

4 Each individual executing this Agreement on behalf of CONTRACTOR represents and warrants
5 that:

6 **45.1** He/She is duly authorized to execute and deliver this Agreement on behalf of
7 CONTRACTOR;

8 **45.2** Such execution and delivery is in accordance with the terms of the Articles of
9 Incorporation or Partnership, any by-laws or Resolutions of CONTRACTOR and;

10 **45.3** This Agreement is binding upon CONTRACTOR in accordance with its terms.

11 CONTRACTOR shall deliver to ICTC evidence acceptable to ICTC of the foregoing
12 within thirty days of execution of this Agreement.

13 **46. SUSPENSION AND DEBARMENT**

14 **46.1.** This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such,
15 CONTRACTOR is required to verify that neither CONTRACTOR, its principals, as
16 defined at 49 CFR 29.995, or its affiliates, as defined at 49 CFR 29.905, are excluded or
17 disqualified as defined at 49 CFR 29.940 and 29.945.

18 **46.2.** CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the
19 requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction
20 it enters into.

21 **46.3.** By executing this Agreement, CONTRACTOR certifies that the certification in this
22 clause is a material representation of fact relied upon by ICTC. If it is later determined
23 that CONTRACTOR knowingly rendered an erroneous certification, in addition to
24 remedies available to ICTC, the Federal Government may pursue available remedies,
25 including but not limited to suspension and/or debarment. CONTRACTOR agrees to
26 comply with the requirements of 49 CFR 29, Subpart C for the duration of the term of
27 this Agreement. CONTRACTOR further agrees to include a provision requiring such
28 compliance in its lower tier covered transactions.

1 **47. DISADVANTAGED BUSINESS ENTERPRISE**

2 CONTRACTOR acknowledges and understands that this Agreement is subject to the
3 requirements of Title 49, Code of Federal Regulations, Part 26, entitled "Participation by
4 Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."
5 CONTRACTOR shall reference and abide by these requirements when working pursuant to this
6 Agreement.

7
8 **IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first
9 above written.

10
11
12 **IMPERIAL COUNTY
TRANSPORTATION COMMISSION:**

CONTRACTOR:

13
14
15 By: _____
16 Chairperson

By: _____

17
18 **ATTEST:**
19
20
21 _____
22 **CRISTI LERMA**
Secretary to ICTC

23 **APPROVED AS TO FORM:**
24 **ERIC HAVENS**
County Counsel

25
26
27 By: _____
28 County Counsel

Appendix J-1 IVT ACCESS Contract Clauses

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

1. Source of Funding:

This contract entered on _____ between Imperial County Transportation Commission _____
(DATE) (AWARDING AGENCY)
and _____ for
(CONTRACTOR)
IVT Access ADA Paratransit System Paratransit Services RFP FY 2024
(PROJECT)
is being funded with the following fund source(s) and amounts:

FUND SOURCE	AMOUNT
Federal Transit Administration	
Transportation Development Act	
State Transit Assistance	

Parties referenced in the following clauses are defined as:

“AWARDING AGENCY” is the subrecipient of the State of California Department of Transportation.

“PROJECT” is the AWARDING AGENCY’s federally-supported project.

“CONTRACTOR” is the third-party vendor who has entered into this third-party contract with the AWARDING AGENCY to provide goods or services directly to the AWARDING AGENCY for the accomplishment of the PROJECT.

“Subagreements” are agreements made between the CONTRACTOR and any subcontractors to facilitate the accomplishment of this third-party contract.

For All Third-Party Contract Awards Excluding Micro-Purchases, Except Construction Contracts Exceeding \$2,000.00

No Obligation to Third-Parties by use of a Disclaimer

- A. No Federal Government Obligation to Third Parties. The CONTRACTOR agrees that, absent of the Federal Government’s express written consent, the Federal Government shall not be subject to any obligations or liabilities to any contractor, any third-party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the PROJECT. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, or third-party agreement, the Federal Government continues to have no obligation or liabilities to any party, including the CONTRACTOR or third-party contractor.
- B. Third-Party Contracts and Subagreements Affected. To the extent applicable, federal requirements extend to third-party contractors and their contracts at every tier, and to the subagreements of third-party contractors and the subagreements at every tier. Accordingly, the CONTRACTOR agrees to include, and to require its third-party contractors to include appropriate clauses in each third-party contract and each subagreement financed in whole or in part with financial assistance provided by the FTA.
- C. No Relationship between the California Department of Transportation and Third-Party Contractors. Nothing contained in this Contract or otherwise, shall create any contractual

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

relationship, obligation or liability between the California Department of Transportation and any third-party contractors, and no third-party contract shall relieve the CONTRACTOR of his responsibilities and obligations hereunder. The CONTRACTOR agrees to be fully responsible to the AWARDING AGENCY for the acts and omissions of its third-party contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONTRACTOR. The CONTRACTOR'S obligation to pay its third-party contractors is an independent obligation from the AWARDING AGENCY'S obligation to make payments to the CONTRACTOR. As a result, the California Department of Transportation shall have no obligation to pay or to enforce the payment of any moneys to any third-party contractor.

- D. Obligations on Behalf of the California Department of Transportation. The CONTRACTOR shall have no authority to contract for or on behalf of, or incur obligations on behalf of the California Department of Transportation.
- E. AWARDING AGENCY Approval of Subagreements. The AWARDING AGENCY shall approve in writing all proposed Subagreements, Memorandums of Understanding (MOU), or similar documents relating to the performance of the Contract prior to implementation. The CONTRACTOR agrees that it will not enter into any Subagreements unless the same are approved in writing by the AWARDING AGENCY. Any proposed amendments or modifications to such Subagreements must be approved by the AWARDING AGENCY prior to implementation.

Program Fraud and False or Fraudulent Statements or Related Acts

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq. and US Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the federally assisted PROJECT for which this contracted work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 in the CONTRACTOR to the extent the Federal Government deems appropriate.
- B. The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a PROJECT that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.
- C. The CONTRACTOR agrees to include the above two clauses in each subagreement financed in whole or in part with Federal Assistance provided by the California Department of

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

Transportation. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records

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

Record Keeping

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

Accounting Records

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

Federal Changes, Amendments to State, and Local Laws, Regulations, and Directives

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

Civil Rights (Title VI, EEO, & ADA)

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

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and federal transit law at 49 U.S.C. Section 5332, the CONTRACTOR Agrees to comply with all applicable equal employment opportunity (EEO) requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

termination, rates of pay or other forms of compensation; and selection from training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation any issue.

- B. Nondiscrimination. The CONTRACTOR, with regard to the work performed by it during the contract term shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. Department of Transportation's Regulations, including employment practices when the Contract covers a program whose goal is employment. Further, in accordance with Section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements the California Department of Transportation may issue.
- C. Solicitations for Subcontractors Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation by the CONTRACTOR for work performed under a subagreement, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the subcontractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports. The CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the AWARDING AGENCY or the California Department of Transportation to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish the information, the CONTRACTOR shall certify to the AWARDING AGENCY of the California Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the CONTRACTOR'S noncompliance with the nondiscrimination provisions of the Contract, the AWARDING AGENCY shall:
1. Withholding of payment to the CONTRACTOR under the Contract until the CONTRACTOR complies, and/or
 2. Cancellation, termination, or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions. The CONTRACTOR shall include the provisions of these paragraphs A through F in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor or procurement as the AWARDING AGENCY or the California Department of Transportation may direct as a

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the CONTRACTOR may request the AWARDING AGENCY to enter into such litigation to protect the interest of the AWARDING AGENCY, and, in addition, the CONTRACTOR may request the California Department of Transportation to enter into such litigation to protect the interests of the California Department of Transportation.

G. Section 504 and Americans with Disabilities Act Program Requirements

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

Incorporation of FTA Terms

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

Prohibition on certain telecommunications and video surveillance services or equipment.

AWARDING AGENCY is prohibited from obligating or expending loan or grant funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

- D. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- E. CONTRACTOR represents and warrants that it has performed a due diligence review of its supply chain and that no such “covered telecommunications equipment or services” shall be provided to the AWARDING AGENCY that would cause the AWARDING AGENCY to be in violation of the prohibition contained in the Act.

Energy Conservation

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

Awards Exceeding \$10,000.00

Additional Termination Provisions

- A. Termination for Convenience (General Provision). When it is in the AWARDING AGENCY’s best interest, the AWARDING AGENCY reserves the right to terminate this Contract, in whole or in part, at any time by providing a TEN (10) DAY WRITTEN NOTICE to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to the AWARDING AGENCY. If the CONTRACTOR has any property in its possession belonging to the AWARDING AGENCY, the CONTRACTOR will account for the same, and dispose of it in the manner the AWARDING AGENCY directs.
- B. Termination for Default (General Provision). If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, the AWARDING AGENCY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

- C. Mutual Termination. The PROJECT may also be terminated if the AWARDING AGENCY and the CONTRACTOR agree that its continuation would not produce beneficial results

THIRD PARTY CONTRACT CLAUSES

Federal Transit Administration and California Department of Transportation Required Provisions

commensurate with the further expenditure of funds or if there are inadequate funds to operate the PROJECT equipment or otherwise complete the PROJECT.

Awards Exceeding \$25,000.00

Debarment and Suspension

- A. The CONTRACTOR agrees to comply with the requirements of Executive Order Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note; and U.S. DEPARTMENT OF TRANSPORTATION regulations on Debarment and Suspension and 49 CFR Part 29.
- B. Unless otherwise permitted by the California Department of Transportation, the CONTRACTOR agrees to refrain from awarding any third-party contract of any amount to or entering into any sub-contract of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal procurement and Non-procurement Program," implementing Executive Order Nos. 12549 and 12689, "Debarment and Suspension" and 49 CFR Part 29. The list also include the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12546 and 12689.
- C. Before entering into any subagreements with any subcontractor, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information of that AWARDING AGENCY and its "principals," as defined at 49 CFR Part 29.
- D. Before entering into any third-party contract exceeding \$25,000.00, the CONTRACTOR agrees to obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). The CONTRACTOR also agrees to require each third-party contractor to refrain from awarding any subagreements of any amount, at any tier, to a debarred or suspended subcontractor, and to obtain a similar certification for any third-party subcontractor, at any tier, seeking a contract exceeding \$25,000.00.

Legal Matters Concerning a Covered Transaction

- A. If a current or prospective legal matter that may affect the Federal Government or STATE emerges, the AWARDING AGENCY must promptly notify the STATE. The AWARDING AGENCY must include a similar notification requirement in its Third Party Agreements and must require each CONTRACTOR to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
 - 1. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government or STATE as a party to litigation or a legal disagreement in any forum for any reason.
 - 2. Matters that may affect the Federal Government or STATE include, but are not limited to, the Federal or STATE Government's interests in the Award, the accompanying Underlying

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Agreement, and any Amendments thereto, or the Federal or STATE Government's administration or enforcement of federal laws, regulations, and requirements.

3. The AWARDING AGENCY must promptly notify the STATE, if the AWARDING AGENCY has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving FY2020 Contractors Manual – Procurement 9-49 federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the AWARDING AGENCY and STATE, or an agreement involving a principal, officer, employee, agent, or CONTRACTOR of the AWARDING AGENCY. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the AWARDING AGENCY, including divisions tasked with law enforcement or investigatory functions.

Awards Exceeding \$100,000.00

Provisions for Resolution of Disputes, Breaches, or Other Litigation

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

Lobbying

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

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cooperative agreement, or any other federal award from which funding for the PROJECT is originally derived, consistent with 31 U.S.C. Section 1352, and;

- B. If applicable, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with the form instructions.
- C. The CONTRACTOR shall require that the language of the above two clauses be included in the award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) which exceed \$100,000.00 and that all awarding agencies shall certify and disclose accordingly.

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

Clean Water

- A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the AWARDING AGENCY and understands and agrees that the AWARDING AGENCY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The CONTRACTOR also agrees to include these requirements in each subagreement exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Awards Exceeding \$150,000.00

Buy America

The CONTRACTOR shall comply with the Buy-America requirements of 49 U.S.C. 5323(j) and 49 CFR Part 661 for all procurements of steel, iron, and manufactured products used in PROJECT. Buy-America requirements apply to all purchases, including materials and supplies funded as operating costs, if the purchase equals or exceeds \$150,000.00. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Clean Air

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

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

Awards with Transport of Property or Persons

U.S. Flag Requirements (Cargo Preferences)(Fly America)

- A. Shipments by Ocean Vessel. For third-party contacts that may involve equipment, materials, or commodities which may be transported by ocean vessels, the CONTRACTOR and subagreements must comply with 46 U.S.C. Section 55303 and 46 CFR Part 381, "Cargo Preferences-U.S. Flag Vessels."
- B. Shipments by Air Carrier. For third-party contracts that may involve shipments of federally assisted property by air carrier, the CONTRACTOR and subagreements must comply with the "Fly America" Act and 49 U.S.C. Section 40118, "Use of United States of America Flag Carriers," and 41 CFR Section 301-10.131 through 301-10.143.
- C. Project Travel. In accordance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1973, as amended, ("Fly America" Act), 49 U.S.C. 40118 and 41 CFR Part 301-10, the CONTRACTOR and all subcontractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation, to the extent such service is available or applicable.

Awards with Transit Operations

Transit Employee Protective Arrangements (Transit Operation Only)

The CONTRACTOR agrees to comply with applicable transit employee protective requirements, as follows:

- A. The CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. 5333(b), and U.S.DOL guidelines at 29 CFR Part 215, and any amendments there to.
- B. The CONTRACTOR also agrees to include the applicable requirements in each subagreement involving transit operations financed in whole or in part with federal assistance provided by the FTA.

Charter Service Operations

(Transit Operation and Rolling Stock Only) The CONTRACTOR agrees to comply with 49 U.S.C. Section 5323(d) and 49 CFR Part 604, which provides that recipients and awarding agencies of the FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR-Subpart B. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on federally assisted equipment) of providing the service. The

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CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this contract, and any violation of this contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

School Bus Operations

(Transit Operation and Rolling Stock Only) Pursuant to 49 U.S.C. 5323(F) and 49 CFR Part 605, the CONTRACTOR agrees that it and all its subcontractors will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(F) and implementing regulations, and (2) comply with requirements of 49 CFR Part 605 before providing any school transportation using equipment of facilities acquired with federal assistance awarded by the FTA and authorized by 49 U.S.C. Chapter 53 or Title 23 U.S.C. for transportation projects. The CONTRACTOR understands that the requirements of 49 CFR Part 605 will apply to any school transportation it provides, that the definitions of 49 CFR Part 605 apply to any school transportation agreement, and a violation of the contract may require corrective measures and the imposition of penalties, including debarment from the receipt of further federal assistance for transportation.

Vehicle Operator Licensing

The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration regulations and the California Vehicle Code including, but not limited to, the requirement that all vehicle operators have a valid State of California driver's license, including any special operator license that may be necessary for the type of vehicle operated.

Drug-Free Workplace (FTA Section 5311 Awards)

The CONTRACTOR certifies by signing a Contract with the AWARDING AGENCY that it will provide a drug-free workplace, and shall establish policy prohibiting activities involving controlled substances in compliance with Government Code Section 8355, et seq. The CONTRACTOR is required to include the language of this paragraph in award documents for all sub-awards at all tiers (including subagreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all awarding agencies shall disclose accordingly. To the extent the CONTRACTOR, any third-party contractor at any tier, any AWARDING AGENCY at any tier, or their employees, perform a safety sensitive function under the PROJECT, the CONTRACTOR agrees to comply with, and assure the compliance of each affected third-party contractor at any tier, each affected AWARDING AGENCY at any tier, and their employees with 49 U.S.C. Section 5331, and the FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.

Drug and Alcohol Testing

The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the California Department of Transportation, or the AWARDING AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Part 655 before (insert date) and to submit the Management Information System (MIS) reports before (insert date) to (the Executive Director of the Imperial County Transportation Commission). To certify compliance the

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CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The CONTRACTOR agrees further to submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program; In addition, the CONTRACTOR agrees to: (to be determined by the AWARDING AGENCY, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

Awards with Rolling Stock

Bus Testing

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5318(e), 5323(c), and the FTA regulations, "Bus Testing," 49 CFR Part 665, and any revision thereto, including the certification that before expending any federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or before authorizing final acceptance of that bus, that model of bus will have been tested at the ALTOONA Bus Research and Testing Center. The CONTRACTOR must obtain the final testing report and provide a copy of the report to the AWARDING AGENCY.

Pre-Award and Post Delivery Audit

The CONTRACTOR agrees to comply with the requirements of 49 U.S.C. Section 5323(l), 5323(m), and the FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.

Miscellaneous Special Requirements

Intelligent Transportation Systems (ITS) National Architecture

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

Prompt Payment and Return of Retainage

- A. The AWARDING AGENCY shall comply with 49 CFR Part 26.29 and ensure the CONTRACTOR pay its subcontractors performing work satisfactorily completed related to this contract no later than thirty (30) days after the CONTRACTOR's receipt of payment for that work from the AWARDING AGENCY.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the AWARDING AGENCY. In addition, the CONTRACTOR is required to

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return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

Recycled Products

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 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.