

Appendix J IVT Draft Contract

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

2
3 THIS AGREEMENT FOR IVT FIXED ROUTE SERVICES (“this Agreement”), made and entered
4 into effective the ____ day of _____, 20___, is by and between the IMPERIAL COUNTY
5 TRANSPORTATION COMMISSION (“ICTC”), and _____, a _____
6 authorized to conduct business in California (“CONTRACTOR”).

7 **W I T N E S S E T H**

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

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

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

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

16 **1. TERM AND RIGHT OF EXTENSION**

17 **1.1.** This Agreement shall commence on June 1, 2024 (service shall begin July 1, 2024) and
18 shall continue until June 30, 2029, and if all two (2) one (1) year extension option periods
19 are exercised pursuant to paragraph 1.2 herein, the Agreement shall continue until June
20 30, 2031.

21 **1.2.** ICTC may, at its sole option and discretion, extend this Agreement up to two (2) times as
22 follows:

23 **1.2.1.** From July 1, 2029 through June 30, 2030; and

24 **1.2.2.** From July 1, 2030 through June 30, 2031; and

25 **1.3.** This Agreement is contingent upon the receipt of funds by the ICTC. Such funds include
26 but are not limited to Federal Transit Administration (FTA) Section 5307, 5310, and 5311
27 Grants, Local Transportation Funds (LTF), State Transportation Assistance Funds
28 (STAF) and Local Transportation Authority (LTA).

1
2 **2. DEFINITIONS**

3 **2.1** “Request for Proposal” shall mean “ IVT Fixed Route Services Request for Proposal 2024”
4 dated _____ 2024 and is incorporated herein by this reference.

5 **2.2** “Proposal” shall mean CONTRACTOR’s completed proposal entitled “IVT Fixed Route
6 Services Proposal” dated _____ 2024, CONTRACTOR submitted to ICTC on the proposal
7 due date and is incorporated herein by this reference.

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

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

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

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

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

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

20 **2.9** “Senior” shall include individuals who are fifty-five of age or older.

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

23 **3. DESCRIPTION OF WORK**

24 **3.1** The services to be provided under this agreement with ICTC are those contained in the
25 document entitled “IVT Fixed Route Services Scope of Work FY 2024-2025 through FY
26 2030-31”, attached hereto as Exhibit “A” and incorporated by this reference.

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

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

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

9 **4. RESPONSIBILITIES OF CONTRACTOR**

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

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

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

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

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

1 **5. RESPONSIBILITIES OF ICTC**

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

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

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

21 **5.4.** ICTC reserves the right to impose financial penalties for situations or items in this
22 Agreement that are violated. (See Exhibit "B" for Table of Liquidated Damages).
23 Adjustments would be made at the time of monthly compensation.

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

27 **6. SERVICE IMPLEMENTATION**

1 The service area designation, service days and hours, and service miles shall be those specified in
2 Exhibit “A” – “IVT Fixed Route Services Scope of Work FY 2024-2025 through FY 2030-31”.

3 **7. REPRESENTATIONS BY CONTRACTOR.**

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

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

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

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

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

22 **7.6** CONTRACTOR represents and warrants that the allegations contained in its Proposal are
23 true and correct.

24 **7.7** CONTRACTOR understands that ICTC considers the representations made herein to be
25 material and would not enter into this Agreement with CONTRACTOR if such
26 representations were not made.

27
28 **8. COMPENSATION**

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

2 **8.1.** A fixed hourly rate per fiscal year shall apply for each vehicle service or revenue hour.

3 The fixed hourly rate shall apply for the assigned fiscal year. Vehicle revenue hours will
4 be calculated based upon the actual time that each revenue service vehicle is in service
5 and available to passengers. Vehicle revenue hours shall specifically exclude
6 deadhead hours, including time for travel to and from the first stop and after the last stop,
7 storage facilities, fueling facilities, road tests, inspections training, personnel lunches and
8 breaks.

9 **8.2.** The fixed hourly rate per fiscal year will be determined by the use of the combination of
10 two other rates divided by the total annual vehicle service hours.

11 **8.2.1.** A variable monthly rate for all cost elements assigned to CONTRACTOR that
12 can change.

13 **8.2.2.** A fixed monthly rate for all cost elements assigned to CONTRACTOR with
14 known quantities or costs that are not included in the variable monthly rate.

15 **8.3.** Compensation for services provided for under Exhibit “A” – “IVT Fixed Route Services
16 Scope of Work FY 2024-2025 through FY 2030-31” shall be as follows:

17 **8.3.1.** For the period June 1, 2024 through June 30, 2025, the price is identified as
18 \$ _____. The fare box is established at _____ percent (___%); therefore the
19 annual not-to-exceed subsidy shall be \$ _____.

20 **8.3.2.** For the period July 1, 2025 through June 30, 2026, the price is identified as
21 \$ _____. The fare box is established at _____ percent (___%); therefore the
22 annual not-to-exceed subsidy shall be \$ _____.

23 **8.3.3.** For the period July 1, 2026 through June 30, 2027, the price is identified as
24 \$ _____. The fare box is established at _____ percent (___%); therefore the
25 annual not-to-exceed subsidy shall be \$ _____.

26 **8.3.4.** For the period July 1, 2027 through June 30, 2028, the base price is identified as
27 \$ _____. The fare box is established at _____ percent (___%); therefore the
28 annual not-to-exceed subsidy shall be \$ _____.

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

4 **8.3.6.** For the period July 1, 2029 through June 30, 2030, 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 **8.3.7.** For the period July 1, 2030 through June 30, 2031, 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 **8.3.8.** The fare box recovery ratio of ___% (or any other fare box ratio calculated and
11 ultimately required during the course of this Agreement) is subject to the
12 deduction of normal Transportation Development Act operating cost exclusions.

13 **8.4.** Compensation for services provided for under Exhibit “A” – “IVT Fixed Route Services
14 Scope of Work- Blue and Green Lines Fixed-Route Bus FY 2024-2025 through FY 2030-
15 31” shall be as follows:

16 **8.4.1.** For the period June 1, 2024 through June 30, 2025, the price is identified as
17 \$ _____. The fare box is established at _____ percent (___%); therefore the
18 annual not-to-exceed subsidy shall be \$ _____.

19 **8.4.2.** For the period July 1, 2025 through June 30, 2026, the price is identified as
20 \$ _____. The fare box is established at _____ percent (___%); therefore the
21 annual not-to-exceed subsidy shall be \$ _____.

22 **8.4.3.** For the period July 1, 2026 through June 30, 2027, the price is identified as
23 \$ _____. The fare box is established at _____ percent (___%); therefore the
24 annual not-to-exceed subsidy shall be \$ _____.

25 **8.4.4.** For the period July 1, 2027 through June 30, 2028, the base price is identified as
26 \$ _____. The fare box is established at _____ percent (___%); therefore the
27 annual not-to-exceed subsidy shall be \$ _____.

28

1 **8.4.5.** For the period July 1, 2028 through June 30, 2029, the base price is identified as
2 \$ _____. The fare box is established at _____ percent (___%); therefore the
3 annual not-to-exceed subsidy shall be \$ _____.

4 **8.4.6.** For the period July 1, 2029 through June 30, 2030, 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 **8.4.7.** For the period July 1, 2030 through June 30, 2031, 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 **8.4.8.** The fare box recovery ratio of ___% (or any other fare box ratio calculated and
11 ultimately required during the course of this Agreement) is subject to the
12 deduction of normal Transportation Development Act operating cost exclusions.

13 **8.5.** Compensation for services provided for under Exhibit “A” – “IVT Fixed Route Services
14 Scope of Work- IVT Gold Line Fixed Route-Bus FY 2024-2025 through FY 2030-31” shall
15 be as follows:

16 **8.5.1.** For the period June 1, 2024 through June 30, 2025, the price is identified as
17 \$ _____. The fare box is established at _____ percent (___%); therefore the
18 annual not-to-exceed subsidy shall be \$ _____.

19 **8.5.2.** For the period July 1, 2025 through June 30, 2026, the price is identified as
20 \$ _____. The fare box is established at _____ percent (___%); therefore the
21 annual not-to-exceed subsidy shall be \$ _____.

22 **8.5.3.** For the period July 1, 2026 through June 30, 2027, the price is identified as
23 \$ _____. The fare box is established at _____ percent (___%); therefore the
24 annual not-to-exceed subsidy shall be \$ _____.

25 **8.5.4.** For the period July 1, 2027 through June 30, 2028, the base price is identified as
26 \$ _____. The fare box is established at _____ percent (___%); therefore the
27 annual not-to-exceed subsidy shall be \$ _____.

28

1 **8.5.5.** For the period July 1, 2028 through June 30, 2029, the base price is identified as
2 \$ _____. The fare box is established at _____ percent (___%); therefore the
3 annual not-to-exceed subsidy shall be \$ _____.

4 **8.5.6.** For the period July 1, 2029 through June 30, 2030, 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 **8.5.7.** For the period July 1, 2030 through June 30, 2031, 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 **8.5.8.** The fare box recovery ratio of ___% (or any other fare box ratio calculated and
11 ultimately required during the course of this Agreement) is subject to the
12 deduction of normal Transportation Development Act operating cost exclusions.

13 **8.6.** Compensation for services provided for under Exhibit “A” – “IVT Fixed Route Services
14 Scope of Work- Calexico On Demand Micro Transit Services FY 2024-2025 through FY
15 2030-31” shall be as follows:

16 **8.6.1.** For the period June 1, 2024 through June 30, 2025, the price is identified as
17 \$ _____. The fare box is established at _____ percent (___%); therefore the
18 annual not-to-exceed subsidy shall be \$ _____. *FY24-25 may be an abbreviated
19 year due to existing agreement.

20 **8.6.2.** For the period July 1, 2025 through June 30, 2026, the price is identified as
21 \$ _____. The fare box is established at _____ percent (___%); therefore the
22 annual not-to-exceed subsidy shall be \$ _____.

23 **8.6.3.** For the period July 1, 2026 through June 30, 2027, the price is identified as
24 \$ _____. The fare box is established at _____ percent (___%); therefore the
25 annual not-to-exceed subsidy shall be \$ _____.

26 **8.6.4.** For the period July 1, 2027 through June 30, 2028, the base price is identified as
27 \$ _____. The fare box is established at _____ percent (___%); therefore the
28 annual not-to-exceed subsidy shall be \$ _____.

1 **8.6.5.** For the period July 1, 2028 through June 30, 2029, the base price is identified as
2 \$ _____. The fare box is established at _____ percent (___%); therefore the
3 annual not-to-exceed subsidy shall be \$ _____.

4 **8.6.6.** For the period July 1, 2029 through June 30, 2030, 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 **8.6.7.** For the period July 1, 2030 through June 30, 2031, 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 **8.6.8.** The fare box recovery ratio of ___% (or any other fare box ratio calculated and
11 ultimately required during the course of this Agreement) is subject to the
12 deduction of normal Transportation Development Act operating cost exclusions.

13 **8.6.9.** In the event that the required fare box revenue is not achieved on an annual basis,
14 the CONTRACTOR may be allowed to request compensation from the ICTC for
15 reimbursement up to the agreed upon annual cost. The lack of attainment for the
16 annual fare box revenue must not be due to circumstances affecting the quality of
17 transit service within the CONTRACTOR's control, e.g. ICTC's documentation
18 of poor maintenance affecting the reliability of service or passenger comfort on
19 vehicles, or inappropriate behavior by customer service staff or vehicle drivers.

20 **8.7.** In the event that fuel costs are increased beyond CONTRACTOR's control and the
21 negotiated rate, ICTC will offer CONTRACTOR an additional amount to offset the
22 increase in costs. CONTRACTOR will make every effort to utilize the lowest priced fuel.
23 ICTC will review and monitor fuel expenses to determine if the CONTRACTOR is
24 complying with the requirement. A fuel escalator clause shall contain the following
25 provisions:

26 **8.7.1.** The fuel escalator shall be calculated as follows: the full amount that fuel costs
27 exceed the vehicle fuel budget line item shall be adjusted downward by any
28 savings in any other line item category that has not been fully utilized.

1 CONTRACTOR will reimburse ICTC for any fuel cost savings from the proposed
2 CONTRACTOR budgeted value.

3 **8.7.2.** The request for additional subsidy shall be submitted to ICTC at the conclusion
4 of the fiscal year in which the costs are incurred. The request shall be
5 accompanied by an accounting developed by CONTRACTOR, and invoices
6 substantiating said increase.

7 **8.7.3.** The cost of fuel is negotiated at a rate set at four dollars and thirty cents (\$4.30)
8 per gallon for the term of this Agreement. CONTRACTOR agrees to reimburse
9 ICTC for any savings below the negotiated rate. CONTRACTOR agrees to utilize
10 the most cost effective fuel possible. ICTC will review CONTRACTOR's fueling
11 records to determine if CONTRACTOR is utilizing the most cost effective fuel
12 possible. Should ICTC determine that the CONTRACTOR is not emphasizing the
13 use of the most cost effective fuel possible, the CONTRACTOR will bear the cost
14 above the reasonable lowest priced fuel.

15 **9. FARE BOX**

16 **9.1. Fare Box Revenue.** Fare boxes are CONTRACTOR required as part of all services. Fare
17 boxes will be installed on all vehicles under this service contract.

18 **9.2. Fare Collection.** CONTRACTOR's staff will collect fares in advance where feasible.
19 Vehicle operators shall also collect fares as established by ICTC and maintain an accurate
20 count of all boarding passengers by fare category. Vehicle operators shall not make
21 change for passengers.

22 **9.3.** Fare box revenue shall be counted by CONTRACTOR's office employees daily and
23 reconciled against the stated number of passenger trips. Any shortages must be
24 investigated and corrected by CONTRACTOR. CONTRACTOR will deposit farebox
25 revenue daily. Fare box revenue is the property of ICTC, and CONTRACTOR will
26 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 or other public agency transit services. CONTRACTOR shall
3 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 basis.

7 **10. PERFORMANCE STANDARDS**

8 Standards and evaluation criteria will be utilized to annually measure performance and efficiency
9 of routes, and CONTRACTOR performance. This criterion is reported to State and Federal
10 agencies annually. For the purposes of this Agreement, criteria will be negotiated and
11 established: Performance standards for service implementation shall be those specified in
12 Exhibit “A” – “IVT Fixed Route Services Scope of Work FY 2024-2025 through FY 2030-31”.

13 **11. MARKETING**

14 **11.1 Approval.** Not later than thirty (30) days after the execution of this Agreement and ninety
15 (90) days prior to the end of the fiscal year thereafter, CONTRACTOR shall participate
16 in the development of a marketing plan with ICTC and ICTC’s consultant specific to the
17 IVT services for ICTC’s final approval. The marketing plan shall indicate all proposed
18 activities with a corresponding budget of 5% of the total cost of the service for the fiscal
19 year. CONTRACTOR shall be responsible for working with ICTC staff and consultant
20 for the development and preparation, subject to the approval of ICTC, of all marketing
21 materials for the IVT Fixed Route services. CONTRACTOR will coordinate the
22 placement, scheduling and distribution of all advertising and promotional materials
23 designed to inform patrons of ICTC services and to promote ridership.

24 **11.2 Preparation.** CONTRACTOR shall be responsible for the preparation and printing of all
25 necessary passes, tickets and transfers to be used in the fixed route service.

26 **11.3 Distribution.** CONTRACTOR shall distribute and disseminate such materials in
27 accordance with the provisions of this Agreement and any directions supplemental thereto
28 provided by ICTC.

1 **11.4 Promotion.** CONTRACTOR shall promote the service for ICTC, and distribute
2 brochures and other materials.

3 **11.5 Presentation.** CONTRACTOR shall, under the direction of ICTC, provide contact on an
4 as-needed basis with private and non-profit community agencies, job resource centers and
5 local governing bodies to promote interest and use in the transit services of ICTC. These
6 contacts shall include, but not be limited to speaking engagements and displays.
7 CONTRACTOR will participate as a technical resource contact with user groups or
8 agencies as required, including meetings of ICTC committees or commission meetings
9 upon request.

10 **11.6 Comment Cards.** CONTRACTOR shall develop and distribute passenger comment
11 cards. CONTRACTOR will respond to all comments with copies of response provided
12 to ICTC. CONTRACTOR will provide statistical summaries of frequency and patterns
13 of comments to ICTC on a monthly basis.

14 **12. CUSTOMER SERVICE**

15 **12.1 Phone.** CONTRACTOR shall establish at least two (2) customer service telephone
16 numbers, at least one (1) of which shall be toll-free. CONTRACTOR shall provide
17 telephone information service during all hours of system operation, up to one (1) hour
18 before and one (1) hour after services have started and returned from daily operations.
19 CONTRACTOR shall provide statistical summaries of frequency and patterns of
20 telephone comments to ICTC on a monthly basis.

21 **12.2 TDD/FAX.** CONTRACTOR's telephone system shall have TDD or equivalent, and FAX
22 capabilities. CONTRACTOR shall publish these phone numbers in local telephone
23 directory(ies).

24 **12.3 Exclusivity of Phone Services.** CONTRACTOR's customer service telephone numbers
25 shall be used solely for the purpose of providing customer information, serving trip
26 requests and those activities required under the Scope of Work, and shall not be used by
27 CONTRACTOR for any other purpose or business. These telephones shall be answered
28 as specified by ICTC.

1 **12.4** Rollover of Phone. Upon termination of this Agreement, CONTRACTOR’s customer
2 service telephone numbers shall remain within the jurisdiction of ICTC. Any new
3 CONTRACTOR would be responsible for transferring CONTRACTOR’s customer
4 service telephone numbers to their service.

5 **12.5** Bilingual Capability. CONTRACTOR shall provide bilingual dispatchers or information
6 operators, and drivers who can fluently speak both the English and Spanish languages
7 and are knowledgeable of time schedules, routes, window corridors and transit services
8 of ICTC as is necessary to answer customer information requests, refer passengers to
9 other public transit service CONTRACTORS and/or questions in a courteous, timely and
10 professional fashion.

11 **13. COORDINATION**

12 **13.1** Consultation. CONTRACTOR represents itself as an expert in the field of public fixed
13 route transit service. As such, CONTRACTOR shall provide ICTC with minor technical
14 assistance and consultation in such matters as operating policies, funding and
15 coordination with other transit CONTRACTORS at no additional charge to ICTC. At no
16 time will CONTRACTOR be required to prepare intensive or in-depth studies without
17 mutually agreed-upon compensation. Periodically, consultants will request information
18 or interviews with CONTRACTOR staff. CONTRACTOR is required to cooperate with
19 all ICTC-administered consultant projects.

20 **13.2** Service Recommendations. CONTRACTOR shall report to ICTC and shall make
21 recommendations as to changes to improve ICTC’s fixed route service on a case-by-case
22 basis. CONTRACTOR may not make any permanent changes that affect the quantity,
23 quality or nature of the fixed route service without obtaining ICTC’s written permission.

24 **14. MANAGEMENT**

25 **14.1** General Manager/Operations Manager. ICTC shall participate in the selection and
26 approval of the person serving as General Manager/Operations Manager. In the event
27 that the General Manager must be replaced, ICTC will participate in the selection and
28 approval of the replacement.

1 **14.2** Day-to-Day Operations. CONTRACTOR will manage the day-to-day operation in
2 accordance with the adopted operations plan and good management practices.
3 Management of day-to-day operations of the system will be vested in at least one (1) local
4 management individual who shall be experienced in all aspects of public fixed route
5 operations. The individual shall be responsible for managing and monitoring all aspects
6 of the system operation including but not limited to maintenance, repair, fueling, security,
7 supply of on-line and spare vehicles, warranty work, quality of service, accounting, fare
8 collection, personnel and contract administration. CONTRACTOR shall supply ICTC
9 with a twenty-four (24) hour emergency telephone number at which CONTRACTOR can
10 be reached. ICTC reserves the right to adjust any aspect of the service including
11 supervisory staff.

12 **14.3** Priority of Service. The General Manager/Operations Manager shall be employed and
13 available on a full-time basis.

14 **14.4** Executive Level Availability. CONTRACTOR shall also designate a responsible
15 executive level employee of CONTRACTOR to be available at all times, either by phone
16 or in person, to make decisions or provide coordination as necessary. This executive must
17 be authorized to act throughout the service area on behalf of CONTRACTOR. This
18 individual may not be the same individual as the General Manager/Operations Manager.

19 **14.5** Operational Efficiency. CONTRACTOR shall seek out and implement methods of
20 improving system operations, service and cost-effectiveness along with improvements to
21 correct deficiencies and substandard performance. After approval by ICTC, results will
22 be reported to ICTC via the monthly management summary (“MSS”) report, activity
23 report or direct memorandum, along with a summary of any corrective actions that have
24 been taken. CONTRACTOR shall review and comment on plans, equipment purchases,
25 operative changes and related proposals of ICTC.

26 **15. GENERAL REPORTS AND RECORDKEEPING**

- 1 **15.1** CONTRACTOR shall collect data on the operation of the fixed route service system and
2 supply the data to ICTC on a monthly basis, or as may otherwise be directed below. All
3 such information supplied by CONTRACTOR shall be certified as accurate.
- 4 **15.2** Management Information System. CONTRACTOR's Management Information System
5 shall utilize Word, Excel, Power Point, Access, Adobe Acrobat and e-mail and provide
6 an adequate methodology to gather, store, retain, calculate, compute, cross-reference and
7 display in textural, tabular and graphic form all operating, performance and financial data
8 associated with this Agreement. In addition, e-mail capability is required to communicate
9 with ICTC. ICTC uses IBM-compatible computer equipment.
- 10 **15.3** Monthly Reports. CONTRACTOR will report the information on a monthly basis in the
11 format as described in the Appendix to "IVT 2024" Request for Proposal dated _____
12 2024 - Reporting.
- 13 **15.4** Annual Reports. CONTRACTOR will report the information on an annual basis in the
14 format as described in the Appendix to "IVT 2024" Request for Proposal dated _____
15 2024 - Reporting.
- 16 **15.5** Miscellaneous Reports. In addition to the monthly and annual reporting,
17 CONTRACTOR shall supply any and all reports necessary to comply with requirements
18 of ICTC and other local, State or Federal authorities. These reports shall include but not
19 be limited to all required California Air Resource Board Urban or Medium Bus Operators
20 Emission Requirements, California Transportation Development Act and FTA and
21 National Transit Database reporting requirements.
- 22 **15.6** Accident Reporting. CONTRACTOR shall provide ICTC with immediate telephone
23 notification of accidents. CONTRACTOR shall forward written copies of accident
24 reports within one (1) business day for injury accidents and three (3) business days for
25 non-injury accidents. CONTRACTOR shall also forward all California Highway Patrol
26 ("CHP") Safety Compliance Reports within two (2) business days after CHP submission
27 to CONTRACTOR.
28

1 **15.7** Survey/Study/Analysis Data. ICTC may periodically conduct surveys of ridership during
2 the term and, if applicable, the extension term of this Agreement. These surveys may
3 determine matters including socioeconomic, origination and destination and fare-type
4 characteristics of fixed route service system users. CONTRACTOR shall cooperate in
5 the conduct of all surveys, including having its in-service drivers participate where
6 operationally possible, at no additional charge to ICTC.

7 **15.8** Proprietary Restriction. CONTRACTOR agrees that all information it must furnish
8 pursuant to this Agreement shall be free from proprietary restrictions unless identified
9 during negotiation and mutually agreed-upon. CONTRACTOR further agrees that other
10 such data is public and in the public domain.

11 **15.9** Maintenance of Data. CONTRACTOR shall maintain accurate and complete books,
12 records, data and documents on generally-accepted accounting principles in accordance
13 with Uniform System of Accounts and Records adopted by the State Controller pursuant
14 to Section 99243 of the Public Utilities Code, and as required by ICTC or the California
15 Department of Transportation (“Cal Trans”). Such records shall be kept in such detail
16 and form so as to meet applicable local, State and Federal requirements.

17 **15.10** Accountability. A complete and separate set of books, accounts and/or records shall be
18 maintained by CONTRACTOR, which records shall show details of transactions
19 pertaining to the management, maintenance and operation of only this system under the
20 terms of this Agreement. System transactions shall not be co-mingled with
21 CONTRACTOR's other operations. CONTRACTOR's records shall be kept with
22 sufficient detail to constitute an audit trail to verify that any and all costs charged to the
23 system created by this Agreement are in fact due to operations pursuant to this
24 Agreement, and not due to separate or charter operations by CONTRACTOR. ICTC
25 auditors shall perform a random audit of the financial records of the service on an annual
26 basis.

27 **15.11** Maintenance Records. CONTRACTOR shall keep and maintain all work orders,
28 warranty dockets and maintenance records on vehicles and equipment, separated by

1 vehicle, until this Agreement is terminated. CONTRACTOR shall release all such
2 documents to ICTC upon request or upon termination of this Agreement.

3 **15.12 Access.** ICTC, Caltrans, FTA and the Comptroller General of the United States, or any
4 of their duly authorized representatives, shall have access to any books, documents,
5 papers, and records of CONTRACTOR which are directly pertinent to this Agreement
6 for the purpose of making audit, examination, excerpts, and transcription of
7 CONTRACTOR's files. CONTRACTOR shall maintain all these records for a period of
8 at least five (5) years following the close-out of this Agreement to allow for audits,
9 examinations, excerpts and transcriptions of CONTRACTOR's files.

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

11 **16.1** CONTRACTOR shall provide all facilities, tools, equipment, tires, fuel, oil, batteries,
12 parts, cleaning supplies, office supplies, office equipment and such other items or
13 materials required to professionally operate ICTC's fixed route services, including phone
14 system and service.

15 **16.2** CONTRACTOR shall provide, operate and maintain the radio communications system
16 for the fixed route service, including but not limited to, securing of Federal
17 Communications Commission ("FCC") frequency, base station, transmitter, repeater if
18 needed, and a mobile unit for each vehicle and a spare. CONTRACTOR must comply
19 with ICTC policies and FCC procedures for radio use.

20 **16.3 VEHICLE MAINTENANCE**

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

- 26 • Preventative Maintenance
- 27 • Mechanical Maintenance
- 28 • 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 ensure 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.

16.3.1 MAINTENANCE PERSONNEL

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

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

12 **16.3.2 MAINTENANCE PERSONNEL SKILLS**

13 **16.3.2.1** Inspect bus engines, transmissions, fuel systems, and other
14 mechanical, electric, and electronic parts and components.

15 **16.3.2.2** Diagnose bus engine, transmission, fuel systems, and other
16 mechanical, electrical, and electronic parts and component system
17 problems.

18 **16.3.2.3** Repair bus engines, transmissions, fuel systems and other
19 mechanical, electrical, and electronic parts and components when
20 necessary.

21 **16.3.2.4** Diagnose and repair electronic components, such as the bus
22 electronic control system, fareboxes, electronic destination signs,
23 wheelchair lift/ramp mechanisms and air conditioning systems.

24 **16.3.3 PREVENTIVE MAINTENANCE**

25 CONTRACTOR shall adopt and maintain a formalized preventative maintenance
26 program for all vehicles in conformance with manufacturers' preventative
27 maintenance schedules, state law, industry standard practices, and other detailed
28 maintenance required by ICTC. Preventative Maintenance Inspection (PMI)

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

6 PMI intervals shall be at the following inspection mileages:

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

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

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

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

27 If CONTRACTOR wishes to revise some of these requirements during the course
28 of the service agreement (because of new information, or techniques that have
been approved by the manufacturer), it may present a revised plan, with

1 supporting documentation, to ICTC for review. ICTC decisions regarding revised
2 PMI procedures shall be final.

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

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

8
9 **16.3.4 MECHANICAL MAINTENANCE PROGRAM**

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

18 ICTC may inspect any vehicle at any time. CONTRACTOR shall allow ICTC, or
19 its designated agent, access to CONTRACTOR’s facilities and records for the
20 purpose of monitoring the CONTRACTOR’s maintenance performance, as ICTC
21 deems necessary. ICTC shall be permitted to view and copy any vehicle
22 maintenance records, inspect vehicles, and request CONTRACTOR’s personnel
23 to drive vehicles and/or position vehicles to inspect the undercarriage, as is
24 necessary to evaluate the condition of vehicles used in the performance of this
25 Agreement. ICTC, or its designated agent(s), shall conduct such inspections on a
26 regular basis.

27 All parts, materials, tires, lubricants, fluids, oils and procedures used by
28 CONTRACTOR on all ICTC-owned vehicles, vehicles and equipment shall meet,

1 or exceed Original Equipment Manufacturer (OEM) specifications and
2 requirements. All parts installed by CONTRACTOR on ICTC-owned buses shall
3 become property of ICTC.

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

5 **16.3.4.1** All wheelchair lifts, ramps, and other accessibility-related
6 equipment shall be inspected, serviced and lubricated at intervals
7 necessary to insure that all accessibility features are fully
8 operational whenever the vehicle is used in revenue service.

9 **16.3.4.2** Fareboxes, radios, destination signs, public address systems,
10 request-to-stop systems, and passenger doors shall be inspected,
11 serviced and lubricated at intervals necessary to ensure that this
12 equipment is fully operational as designed whenever the vehicle is
13 used in revenue service.

14 **16.3.4.3** At scheduled oil change intervals, a laboratory engine and
15 transmission oil analysis shall be performed on every ICTC-
16 provided bus engine or transmission. The analysis program used
17 by CONTRACTOR shall be subject to approval by ICTC.

18 **16.3.4.4** Brake inspections and adjustments shall be performed at intervals
19 that insure the safe and efficient operation of the braking system.
20 Brakes must be fully inspected, at a minimum, of 3,000 miles at
21 the "A" inspection.

22 **16.3.4.5** All components of the bus bodies, appurtenances, and frames shall
23 be maintained in a safe, sound and undamaged condition at all
24 times. Damage (including body damage and all bus appurtenances)
25 shall be repaired in a professional manner within three weeks (21
26 calendar days) of occurrences. In the event that the repairs cannot
27 be made within three weeks due to the severity of damage, and/or
28 backorder of parts not typically in CONTRACTOR's inventory,

1 CONTRACTOR shall work with ICTC to establish a reasonable
2 schedule for completion.

3 **16.4** All mechanical, electrical, fluid, air, and/or hydraulic systems shall be maintained in a
4 safe and fully functional (as designed) condition at all times.

5 **16.5** The interior passenger compartment shall be free of exhaust fumes from the engine,
6 engine compartment, and exhaust system of the bus at all times.

7 **16.6** Heating, ventilation and air conditioning (HVAC) systems shall be maintained and used
8 to ensure that the passenger compartment temperature is comfortably maintained under
9 all climatic conditions at all times during revenue service. CONTRACTOR shall
10 maintain the A/C systems in an operable condition throughout the entire year.

11 **16.7** Bicycle racks (front two position SportWorks) are provided on all buses provided for this
12 service. CONTRACTOR shall maintain bicycle racks in good working order. Racks
13 shall be inspected every 3,000 miles with the “A” PMI. Racks may need to be sanded,
14 repainted or polished, or replaced (if not easily repaired).

15 **16.8** CONTRACTOR, as manager of the fleet, shall establish and maintain a spare parts
16 inventory based on the age and variety of vehicles, sufficient to ensure that peak hour
17 vehicle requirements are met. Vehicles may not be used to supply spare parts for other
18 buses.

19 **16.9** ICTC may remove a vehicle from revenue service if ICTC determines that maintenance
20 on any vehicle is not in conformity with the Agreement.

21 **16.10** CONTRACTOR, as an agent for ICTC in the case of warranted equipment, will be
22 responsible for ensuring that the vehicle manufacturers and all component manufacturers
23 perform or reimburse CONTRACTOR for all parts and labor, which are covered under
24 warranty. CONTRACTOR shall diligently follow the preventative maintenance program
25 so any warranty coverage on ICTC-owned or provided equipment is not lessened or
26 invalidated.

1 **16.11** Upon completion or termination of the Agreement for any reason, CONTRACTOR shall
2 return vehicles and all other ICTC-provided equipment to ICTC less reasonable wear-
3 and-tear, as determined by accepted bus industry standards and approved by ICTC.

4 **16.12** Driver and passenger seats shall be maintained in proper operating condition at all times.
5 It shall include, at a minimum, inspection, repair, and replacement for seat cushions,
6 frames, armrests, and all electrical, mechanical, and pneumatic components. All rips,
7 tears, cuts, gum, graffiti and other damage shall be cleaned and/or repaired in a
8 professional manner immediately upon their discovery. CONTRACTOR shall replace
9 seat covers that are worn or cannot be professionally repaired, using materials that are
10 identical in design and color as those materials being replaced.

11 **16.13** CONTRACTOR is responsible for all towing services related to this AGREEMENT.

12 **16.14** Tire maintenance and replacement are the responsibility of the CONTRACTOR. Any
13 new buses delivered during the Agreement will be delivered with tires purchased by ICTC
14 as part of the bus procurement. Any replacements for these original tires will be the
15 responsibility of the CONTRACTOR when the original tires require replacement.
16 CONTRACTOR must use new tires, refurbished tires are not allowed.

17 **16.15** Steam cleaning of engine compartments of buses shall be carried out with
18 CONTRACTOR equipment on a regular basis. It is expected that the engine
19 compartment be steam cleaned or pressure washed (at high temperature) prior to every
20 “A” inspection at 3,000 miles.

21 **16.16** MAINTENANCE SHOP PRACTICES

22 The CONTRACTOR provided Maintenance Manager shall verify the quality of the work
23 performed, and add his/her signature to the PMI Inspection form. Daily vehicle inspection
24 reports shall be completed prior to vehicle use. The Maintenance Manager will be
25 responsible for the review of Vehicle Inspection Reports. Should a Vehicle Inspection
26 Report be submitted post vehicle use, the Maintenance Manager will review and schedule
27 any repairs immediately.

1 **16.16.1**Tires shall always be matched (by manufacturer, size, and tread pattern) on each
2 axle. CONTRACTOR shall follow manufacturer’s recommended guidelines for
3 wheel maintenance and cleaning. CONTRACTOR shall clean all wheels weekly
4 and re-paint steel wheels as necessary.

5 **16.16.2**Broken or cracked glass or window liners shall be replaced immediately upon
6 discovery. No buses shall enter into revenue service with broken or cracked glass
7 at any time. Scratched or etched glass or window liners shall be replaced weekly,
8 unless significant damage or offensive in nature, which shall require immediate
9 replacement.

10 **16.16.3**Bus Brake Replacement

11 **16.16.3.1** Both brakes on an axle will be replaced at the same time.

12 **16.16.3.2** Wheel seals will be replaced with every brake job, and bearings
13 will be checked.

14 **16.16.4**Other

15 **16.16.4.1** Cradle motor mounts shall be replaced in pairs.

16 **16.16.4.2** Radiators shall be re-cored or replaced at the time of engine
17 replacement.

18 **16.16.4.3** Bus maintenance and storage facilities shall be free of freestanding
19 water. All oil, grease, fluids, dirt, trash, rags, boxes,
20 etc. shall be removed from bus maintenance and storage facilities
21 daily. ICTC may inspect shop condition on a regular basis.

22 **16.17** BUS MAINTENANCE RECORD KEEPING

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

25 Year and Make

26 Model

27 Serial number/ICTC fleet number

28 License number

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

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

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

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

25 **16.18 SAFETY**

26 **16.18.1**ICTC will require that the Motor Carrier Unit of the CHP annually prepare and
27 submit to ICTC a Safety Compliance Report (CHP 343) and Vehicle Inspection
28 Reports (CHP 343A). CONTRACTOR shall fully cooperate with, and allow

1 access as requested to, any CHP officer, or agent, for the purposes of preparing
2 the CHP 343. CONTRACTOR must attain satisfactory ratings in each category
3 of the Safety Compliance Report. CONTRACTOR must expeditiously correct
4 any deficiencies noted on any CHP vehicle or terminal inspection report.

5 **16.18.2** ICTC requires that CONTRACTOR regularly inspect and maintain all safety
6 equipment used or required in the fulfillment of this Agreement. CONTRACTOR
7 is responsible for purchasing, at its own cost, replacement fire extinguishers, first
8 aid kits, first aid kit refill supplies, and triangle reflector kits sufficient to ensure
9 that spares are always available and that the operation maintains compliance with
10 local, state, and federal safety regulations. Drivers' daily vehicle inspection shall
11 include a check of the fire extinguisher and triangle reflector kit. Used, missing,
12 or broken items must be replaced as soon as practicable. All vehicle and facility
13 fire extinguishers shall be inspected and tagged no less frequently than annually.
14 First aid kits shall be inspected and professionally serviced at least once per
15 year.

16 **16.19** ICTC REIMBURSEMENT OF ENGINE AND TRANSMISSION REBUILD COSTS

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

24 **16.19.1** After review, ICTC may direct CONTRACTOR in writing, to proceed with the
25 recommended work.

26 **16.19.2** CONTRACTOR will only be permitted to pass through to ICTC the costs related
27 to any engine or transmission work accomplished following the above-mentioned
28 procedure. ICTC will not be liable for any costs if CONTRACTOR does not

1 follow the above-mentioned procedure. CONTRACTOR must submit a detailed
2 invoice to ICTC for all such work.

3 **16.19.3** If ICTC determines that such work is necessary due to poor maintenance
4 performance by CONTRACTOR, ICTC will not be liable for any costs.

5 **16.19.4** CONTRACTOR shall remain responsible for all costs related to repair or
6 replacement of any engine-driven part including, but not limited to, generators,
7 hydraulic pumps, water pumps, fuel pumps, valve covers, oil pans, alternators,
8 voltage regulators, air compressors, air-conditioning compressors, vacuum
9 pumps, starter motors, and turbocharger. CONTRACTOR shall also remain
10 responsible for all costs related to repair or replacement of transmission-related
11 parts including, but not limited to, oil coolers, external oil lines, external filters,
12 external linkage modulators, external speedometers/odometers, "driven" gears or
13 sensors, neutral start switches, and temperature sensors.

14 **17. FACILITIES**

15 **17.1** All facilities and arrangements including office space, furniture, dispatch, maintenance
16 bays, paved, secured and lighted parking areas, storage, on/off site fueling, radio,
17 telephone and computer connections are the responsibility of CONTRACTOR and shall
18 be sufficient to support the operation of the fixed route services described herein.

19 **17.2** CONTRACTOR shall ensure that facilities provided are maintained as needed to ensure
20 a safe, hygienic, professional and attractive working environment that is in compliance
21 with local, State and Federal regulations.

22 **17.3** Services shall be operated on an inter-city and inter-county basis. Vehicles dispatched out
23 of the facilities shall travel to various destinations. ICTC does not specify preference for
24 location; however, the location shall be evaluated for practicality and functionality for the
25 administration, operations and maintenance of the system.

26 **17.4** CONTRACTOR shall locate facilities so as to be able to bring a back-up vehicle into
27 service within sixty (60) minutes from the location.
28

1 **17.5** The facilities are expected to serve the walk-in passenger, collect fare payment, and
2 provide a centralized site for operations and a distribution point for the sale of passes and
3 brochures.

4 **18. VEHICLES**

5 **18.1** ICTC shall supply all revenue vehicles for the services. CONTRACTOR shall supply all
6 non-revenue service hour vehicles. See Vehicles for Exhibit “A” – “IVT Fixed Route
7 Services Scope of Work FY 2024-2025 through FY 2030-31”. CONTRACTOR must
8 examine the service history and schedule to determine minimum size of vehicles and
9 spares required for efficient service operation.

10 **18.2** CONTRACTOR shall maintain adequate air-conditioning and passenger comfort on-
11 board at all times.

12 **18.3** ICTC may inspect vehicles on- or off-route and pull a vehicle out of service at any time
13 due to perceived or reported safety violations, lack of air conditioning, lack of functional
14 wheel chair lift or other condition that impacts the health and welfare of
15 passengers.

16 **19. PERSONNEL**

17 **19.1** CONTRACTOR shall provide all management, office staff, drivers, dispatchers,
18 mechanics, maintenance clerks, cleaners, service workers, telephone information
19 operators, road supervisors and such other personnel necessary to responsibly operate
20 ICTC’s fixed route services system, including any onboard security or supervision. It is
21 understood that CONTRACTOR may subcontract components of its operations;
22 however, no such subcontract shall relieve CONTRACTOR from responsibility to ensure
23 compliance with the terms of this Agreement. ICTC reserves the right to make any
24 adjustments to the service, methodology to the delivery of service and operations. All
25 road supervisors and service managers shall be licensed and trained to drive applicable
26 service vehicles.

27 **19.2** CONTRACTOR will recruit, screen, hire, discipline and train personnel as necessary,
28 conduct monthly safety and other related employee meetings as necessary and perform

liaison activities with ICTC and other agencies related to execution of this Agreement. A copy of employee benefits, work rules and union contracts shall be provided to ICTC. CONTRACTOR shall meet and coordinate with ICTC on a frequent basis.

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

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

20. TRAINING

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

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

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

1 **20.4** CONTRACTOR will have all drivers obtain a class of drivers license as required by law,
2 and certification in CPR and first aid. All CONTRACTOR employees must pass a pre-
3 employment physical examination, paid for by CONTRACTOR, prior to start of training.
4 All of CONTRACTOR’s drivers shall be subject to a pre-employment background check,
5 a review of their California Department of Motor Vehicle records.

6 **20.5** Drivers will be trained by a trainer or trainers who are certified by the National Safety
7 Council (or other approved agency) to instruct the defensive driving course and are
8 certified by either the American Heart Association or Red Cross (or another approved
9 agency) to instruct the drivers in first aid and CPR. CONTRACTOR shall certify their
10 trainer in customer service, sensitivity training, emergency and accident procedures and
11 wheelchair loading and securement procedures, or as may otherwise be required by local,
12 State or Federal law or regulations.

13 **20.6** CONTRACTOR shall require all drivers to attend a monthly safety meeting that shall be
14 a minimum of one (1) hour in duration. CONTRACTOR shall implement a planned
15 program of safety retraining to be conducted at the safety meetings. ICTC and its
16 representatives shall be allowed to attend said safety meetings.

17 **21. LICENSES**

18 **21.1** CONTRACTOR shall provide and maintain licenses for its radio system.

19 **21.2** CONTRACTOR shall be responsible for any locally required business or other licenses,
20 including FCC and Public Utilities Commission certificates as required and necessary.
21 CONTRACTOR shall also be solely responsible for any parking and traffic violations of
22 vehicles operated in connection with ICTC’s fixed route program.

23 **22. UNIFORMS**

24 CONTRACTOR shall provide and maintain clean, color-coordinated and identical uniforms to
25 be approved by ICTC for all CONTRACTOR employees. CONTRACTOR shall enforce a dress
26 and appearance code. At a minimum, dress requirements shall include: shirts, slacks or shorts.
27 Headgear is optional but if worn will be a design of a baseball-type hats. Jackets will be uniform
28 for use in cold or rainy weather. All shirts and jackets will have sewn name badges and

1 identification patches with a logo that has been approved by ICTC. Sandals or open-toed shoes
2 are not allowed.

3 **23. SAFETY AND SECURITY**

4 **23.1** CONTRACTOR shall be responsible for the safety and security of passengers during
5 operations and for all related equipment and facilities. CONTRACTOR shall develop
6 specific procedures that define the safety and security program for ICTC’s fixed route
7 services. Safety and organizational meetings shall be held with all CONTRACTOR
8 employees at least once per month.

9 **23.2** CONTRACTOR shall report all hazardous conditions (e.g., trees, signs, slides, etc.) in
10 the service area to ICTC and any other appropriate authority and take necessary
11 precautions to safeguard passengers and personnel.

12 **23.3** CONTRACTOR shall comply with all CHP and State and Federal Occupational Health
13 and Safety Administration requirements. CONTRACTOR shall not permit drivers to
14 bear weapons of any type while operating a vehicle under this Agreement.

15 **24. INSURANCE REQUIREMENTS:**

16 **24.1** Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full
17 force and effect all policies of insurance required hereunder with an insurance
18 company(ies) either (i) admitted by the California Insurance Commissioner to do business
19 in the State of California and rated not less than "A- VII" in Best's Insurance Rating
20 Guide, or (ii) authorized by ICTC’s Executive Director or his/her designee at any time
21 and in his/her sole discretion. The following policies of insurance are required:

- 22 (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as
23 the most current version of Insurance Services Office (ISO) Commercial General
24 Liability Coverage Form CG 00 01 and include insurance for “bodily injury,” “property
25 damage” and “personal and advertising injury” with coverage for premises and operations
26 (including the use of owned and non-owned equipment), products and completed
27 operations, and contractual liability (including, without limitation, indemnity obligations
28 under the Contract) with limits of liability of not less than the following:

1 \$20,000,000 per occurrence for bodily injury and property damage

2 \$20,000,000 per occurrence for personal and advertising injury

3 \$20,000,000 aggregate for products and completed operations

4 \$20,000,000 general aggregate

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

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

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

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

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

22 **24.2** Should CONTRACTOR maintain higher limits than the minimum limits shown above,
23 ICTC requires and shall be entitled to coverage for the higher limits maintained by
24 CONTRACTOR. Any available insurance proceeds in excess of the specified minimum
25 limits of insurance and coverage shall be available to ICTC.

26 **24.3** In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to
27 meet the minimum limits of insurance set forth above, this insurance policy(ies) shall
28 “follow form” and afford no less coverage than the primary insurance policy(ies).

1 **24.4** CONTRACTOR shall be responsible for payment of any deductibles contained in any
2 insurance policies required hereunder and CONTRACTOR shall also be responsible for
3 payment of any self-insured retentions. Any deductibles or self-insured retentions must
4 be declared to, and approved by, the ICTC's Executive Director or his/her designee. At
5 the option of the ICTC's Executive Director or his/her designee, either: (i) the insurer
6 shall reduce or eliminate such deductibles or self-insured retentions as respects to ICTC,
7 its board members, officers, employees, agents and volunteers, and Cities and their
8 elected officials, officers, employees, agents and volunteers: or (ii) CONTRACTOR shall
9 provide a financial guarantee, satisfactory to ICTC's Executive Director or his/her
10 designee, guaranteeing payment of losses and related investigations, claim administration
11 and defense expenses. At no time shall ICTC or Cities be responsible for the payment of
12 any deductibles or self-insured retentions.

13 **24.5** All policies of insurance required hereunder shall be endorsed to provide that the
14 coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except
15 after 30 calendar day written notice has been given to ICTC. Upon issuance by the
16 insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage
17 or in limits, CONTRACTOR shall furnish ICTC with a new certificate and applicable
18 endorsements for such policy(ies). In the event any policy is due to expire during the
19 work to be performed for ICTC, CONTRACTOR shall provide a new certificate, and
20 applicable endorsements, evidencing renewal of such policy not less than 15 calendar
21 days prior to the expiration date of the expiring policy.

22 **24.6** The General Liability and Automobile Liability insurance policies shall be written on an
23 occurrence form and shall name ICTC, its board members, officers, employees and agents
24 as an additional insured. Such policy(ies) of insurance shall be endorsed so
25 CONTRACTOR's insurance shall be primary and no contribution shall be required of
26 ICTC. The coverage shall contain no special limitations on the scope of protection
27 afforded to ICTC, its board members, officers, employees and agents. Garagekeepers
28

1 Liability insurance shall be written on a direct primary coverage form and include
2 comprehensive and collision coverage. The Workers' Compensation insurance policy
3 shall contain a waiver of subrogation as to ICTC, its board members, officers, employees
4 and agents.

5 **24.7** CONTRACTOR shall furnish ICTC all certificate(s) and applicable endorsements
6 effecting coverage required hereunder. All certificates and applicable endorsements are
7 to be received by ICTC and approved by ICTC's Executive Director or his/her designee
8 prior to ICTC's execution of the Agreement and before work commences. Upon request
9 of ICTC, CONTRACTOR shall immediately furnish ICTC with a complete copy of any
10 insurance policy required under this Agreement, including all endorsements, with said
11 copy certified by the underwriter to be a true and correct copy of the original policy. This
12 requirement shall survive expiration or termination of this Agreement.

13 **24.8** If at any time during the life of this Agreement or any extension, CONTRACTOR or any
14 of its subcontractors fail to maintain any required insurance in full force and effect, all
15 work under this Agreement shall be discontinued immediately, and all payments due or
16 that become due to CONTRACTOR shall be withheld until notice is received by ICTC
17 that the required insurance has been restored to full force and effect and that the premiums
18 therefore have been paid for a period satisfactory to ICTC. Any failure to maintain the
19 required insurance shall be sufficient cause for ICTC to terminate this Agreement. No
20 action taken by ICTC hereunder shall in any way relieve CONTRACTOR of its
21 responsibilities under this Agreement.

22 **24.9** The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or
23 diminish the liability of CONTRACTOR, including, without limitation, liability under
24 the indemnity provisions of this Agreement. The duty to indemnify ICTC shall apply to
25 all claims and liability regardless of whether any insurance policies are applicable. The
26 policy limits do not act as a limitation upon the amount of indemnification to be provided
27 by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall
28 in no way relieve from liability nor limit the liability of CONTRACTOR, its principals,

1 officers, employees, agents, persons under the supervision of CONTRACTOR, vendors,
2 suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed
3 directly or indirectly by any of them.

4 **24.10** If CONTRACTOR should subcontract all or any portion of the services to be performed
5 under this Agreement, CONTRACTOR shall require each subcontractor to provide
6 insurance protection in favor of ICTC, its board members, officers, employees and agents
7 in accordance with the terms of each of the preceding paragraphs, except that the
8 subcontractors' certificates and endorsements shall be on file with CONTRACTOR and
9 ICTC prior to the commencement of any work by the subcontractor.

10 **25. TERMINATION**

11 **25.1 Termination Provisions:** Termination clauses are located in Attachment A and in accordance
12 with Section 30 of this Agreement.

13 **26. FUTURE CONTRACTUAL SERVICE ADJUSTMENTS.**

14 The service provided is dictated by the ridership demand and economics of the annual budget
15 process. After a contract has been executed, service demand may increase or decrease. Adjustments
16 within the original scope of work may take place to the contracted revenue service, routes, days or
17 hours that will affect the service pricing. The ICTC or the CONTRACTOR may initiate a discussion
18 to adjust the level(s) of service. Adjustments to pricing for a service hour increase or decrease
19 modification will be based on the cost per hour in effect for that fiscal year, as agreed and
20 submitted in the proposal submitted entitled "IVT Fixed Route Services Proposal 2024" dated
21 ____ 2024. Contact service modifications, subsequent extensions, agreement terms and subsidy
22 are subject to criteria. Criteria for determining and evaluating the appropriateness of the
23 modification or extension will be reviewed and approved by the ICTC Commission and Caltrans.
24 Changes will not be made outside of the scope of work of this project. Changes will not be made
25 to the contract during the first thirty (30) days of operation. Changes may not be made unilaterally
26 or solely at the request of a passenger.

27 **27. EMPLOYEE WORK RULES**

28 CONTRACTOR shall enforce the following employee rules:

1 **27.1** Uniforms must be worn at all times when on duty and shall be clean and presentable at
2 all times. Uniform designs, colors and ID tags are subject to ICTC approval.

3 **27.2** Gratuities shall not be accepted.

4 **27.3** Drivers shall have a thorough knowledge of ICTC transit services and service areas.
5 Drivers shall also have a basic knowledge of potential transfer locations for all ICTC
6 transit services.

7 **27.4** General Rules

8 **27.4.1** No one will be permitted to smoke, eat or drink aboard vehicles at any time. This
9 includes passengers and staff.

10 **27.4.2** Boisterous language, profanity or incivility to anyone shall not be allowed while
11 CONTRACTOR's personnel is in uniform and representing CONTRACTOR and
12 ICTC, whether on- or off-duty.

13 **27.4.3** While in uniform, no CONTRACTOR employee shall purchase, consume or be
14 under the influence of any narcotic, intoxicant, or harmful drug.

15 **27.4.4** Drivers shall be responsible for keeping all vehicles clean and sanitary during
16 their shift.

17 **27.4.5** All CONTRACTOR employees are responsible for reporting any defects noted in
18 any vehicle to the supervisor and maintenance department immediately. Drivers
19 shall conduct a "walk-around" and an in-vehicle inspection of their vehicle and
20 fill out a form approved by ICTC for denoting the results of such inspection(s)
21 daily. Vehicle inspection documentation shall be reviewed by management staff
22 on a daily basis and corrective items noted should be addressed as quickly as
23 possible. Drivers shall have maintenance or management personnel resolve any
24 doubt about the safety of a vehicle prior to placing a vehicle in passenger service.

25 **27.4.6** Employees may use vehicles only in accordance with their assigned duties.

26 **27.4.7** Employees must conduct themselves and operate vehicles in a safe and courteous
27 manner at all times.

28 **27.4.8** No one shall be permitted to solicit on the vehicle.

1 **27.4.9** No item longer than five (5) feet will be permitted on the vehicle.

2 **27.4.10** All information regarding accidents shall be treated as confidential. Employees
3 shall refrain from speaking to anyone concerning any accident unless it is to
4 police, supervisory personnel, or other person(s) involved in the accident as
5 required by law.

6 **27.4.11** Persons under the influence of any intoxicant, narcotic, or harmful drug shall not
7 be permitted on the vehicle.

8 **27.4.12** Drivers providing service shall be required to travel over prescribed routes. If it
9 becomes necessary to leave the route, the dispatcher or immediate supervisor shall
10 be notified immediately. ICTC reserves the right to modify routes or create
11 deviations as necessary to provide effective service.

12 **27.4.13** Drivers will provide the assistance required to help elderly and disabled persons
13 boarding and de-boarding vehicles, moving to their seat and/or maneuvering and
14 securing wheelchairs. Under no circumstances will drivers enter a passenger’s
15 residence or physically lift a passenger.

16 **27.4.14** No vehicle shall be operated when its condition is unsafe or uncertain.

17 **27.4.15** No driver shall operate the wheelchair lift until he/she has received the required
18 training and if there is any doubt whatsoever about the mechanical condition of
19 the lift or safety of the passenger as a result from using the lift. Wheelchair lift
20 operation shall be in compliance with the methodology recommended by the
21 organizational equipment manual.

22 **28. ICTC POLICIES AND STANDARDS**

23 CONTRACTOR shall meet ICTC transit service policies and standards in the operation of
24 ICTC’s IVT Fixed Service. Penalty payments shall be assessed in accordance with the Table of
25 Incentives and Penalties.

26 **29. CONFLICT OF INTEREST**

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

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

5 CONTRACTOR is required to acknowledge and abide by the required federal clauses contained
6 in Attachment A as “Required Clauses”. CONTRACTOR further agrees to comply with 49 CFR
7 Part 40 as it pertains to Drug and Alcohol compliance.
8

9 **31. INDEMNIFICATION**

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

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

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

27 **32. INDEPENDENT CONTRACTOR**

28

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

4 **32.1** CONTRACTOR is not an employee or agent of ICTC and is only responsible for the
5 requirements and results specified by this Agreement or any other Agreement.

6 **32.2** CONTRACTOR shall be responsible to ICTC only for the requirements and results
7 specified by this Agreement and except as specifically provided in this Agreement, shall
8 not be subject to ICTC's control with respect to the physical actions or activities of
9 CONTRACTOR in fulfillment of the requirements of this Agreement.

10 **32.3** CONTRACTOR is not, and shall not be, entitled to receive from, or through, ICTC, and
11 ICTC shall not provide, or be obligated to provide, CONTRACTOR with Worker's
12 Compensation coverage or any other type of employment or worker insurance or benefit
13 coverage required or provided by any Federal, State or local law or regulation for, or
14 normally afforded to, an employee of ICTC.

15 **32.4** CONTRACTOR shall not be entitled to have ICTC withhold or pay, and ICTC shall not
16 withhold or pay, on behalf of CONTRACTOR, any tax or money relating to the Social
17 Security Old Age Pension Program, Social Security Disability Program, or any other type
18 of pension, annuity, or disability program required or provided by any Federal, State or
19 local law or regulation.

20 **32.5** CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or
21 make any claim against any ICTC fringe program, including, but not limited to, ICTC's
22 pension plan, medical and health care plan, dental plan, life insurance plan, or any other
23 type of benefit program, plan, or coverage designated for, provided to, or offered to
24 ICTC's employee.

25 **32.6** ICTC shall not withhold or pay, on behalf of CONTRACTOR, any Federal, State, or local
26 tax, including, but not limited to, any personal income tax, owed by CONTRACTOR.

27 **32.7** CONTRACTOR is, and at all times during the term of this Agreement, shall represent
28 and conduct itself as an independent contractor, not as an employee of ICTC.

1 **32.8** CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind
2 or obligate the ICTC in any way without the written consent of ICTC.

3 **33. ASSIGNMENT**

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

6 **34. CONTRACTUAL DISPUTE RESOLUTION**

7 **34.1** Disputes arising in the performance of this Agreement which are not resolved by
8 agreement of the parties shall be decided in writing by the ICTC Board. Each party shall
9 have the right to submit any unresolved dispute to mediation. If the parties cannot agree
10 on a mediator, then each party shall select its own mediator and those mediators will
11 jointly select a third mediator to mediate the dispute. If mediation is not successful, the
12 parties may pursue their remedies as they choose.

13 **34.2** Unless otherwise directed by ICTC, CONTRACTOR shall continue performance under
14 this Agreement while matters in dispute are being resolved.

15 **34.3** The duties and obligations imposed by this Agreement and the rights and remedies
16 available hereunder shall be in addition to and not a limitation of any duties, obligations,
17 rights and remedies otherwise imposed or available by law. No action or failure to act by
18 either party shall constitute a waiver of any right or duty afforded any of them under this
19 Agreement, nor shall any such action or failure to act constitute an approval of or
20 acquiescence in any breach hereunder, except as may be specifically agreed in writing.

21 **35. NOTICES AND REPORTS**

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

24 <u>ICTC</u>	<u>CONTRACTOR</u>
25 Imperial County	
26 Transportation Commission	
27 Attention: David Aguirre, Executive Director	
28 1503 N Imperial Ave., Suite 104	
El Centro, CA 92243	

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

5 **36. ENTIRE AGREEMENT**

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

9 **37. MODIFICATION**

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

13 **38. CAPTIONS**

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

16 **39. PARTIAL INVALIDITY**

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

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

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

28 **41. WAIVER**

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

4 **42. CHOICE OF LAW**

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

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

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

12 **44. FORCE MAJEURE**

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

19 **45. AUTHORITY**

20 Each individual executing this Agreement on behalf of CONTRACTOR represents and warrants
21 that:

22 **45.1** He/She is duly authorized to execute and deliver this Agreement on behalf of
23 CONTRACTOR;

24 **45.2** Such execution and delivery is in accordance with the terms of the Articles of
25 Incorporation or Partnership, any by-laws or Resolutions of CONTRACTOR and;

26 **45.3** This Agreement is binding upon CONTRACTOR in accordance with its terms.

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

1 **46. SUSPENSION AND DEBARMENT**

2 **46.1.** This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such,
3 CONTRACTOR is required to verify that neither CONTRACTOR, its principals, as
4 defined at 49 CFR 29.995, or its affiliates, as defined at 49 CFR 29.905, are excluded or
5 disqualified as defined at 49 CFR 29.940 and 29.945.

6 **46.2.** CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the
7 requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction
8 it enters into.

9 **46.3.** By executing this Agreement, CONTRACTOR certifies that the certification in this
10 clause is a material representation of fact relied upon by ICTC. If it is later determined
11 that CONTRACTOR knowingly rendered an erroneous certification, in addition to
12 remedies available to ICTC, the Federal Government may pursue available remedies,
13 including but not limited to suspension and/or debarment. CONTRACTOR agrees to
14 comply with the requirements of 49 CFR 29, Subpart C for the duration of the term of
15 this Agreement. CONTRACTOR further agrees to include a provision requiring such
16 compliance in its lower tier covered transactions.

17 **47. DISADVANTAGED BUSINESS ENTERPRISE**

18 CONTRACTOR acknowledges and understands that this Agreement is subject to the requirements
19 of Title 49, Code of Federal Regulations, Part 26, entitled "Participation by Disadvantaged Business
20 Enterprises in Department of Transportation Financial Assistance Programs." CONTRACTOR shall
21 reference and abide by these requirements and the requirements noted within ICTC DBE when working
22 pursuant to this Agreement.

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

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**IMPERIAL COUNTY
TRANSPORTATION COMMISSION:**

CONTRACTOR:

By: _____

By: _____

Chairperson

ATTEST:

CRISTI LERMA
Secretary to ICTC

APPROVED AS TO FORM:

ERIC HAVENS
County Counsel

By: _____

County Counsel

Appendix J-1 IVT 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)
Imperial Valley Transit Operations and Maintenance Services _____
(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

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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

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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.

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- 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

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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.